WYOMING RULES OF CRIMINAL PROCEDURE

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Editor's notes. — The original Wyoming Rules of Criminal Procedure, as adopted November 21, 1968, became effective February 11, 1969.

The revised Wyoming Rules of Criminal Procedure were published on January 24, 1992, and became effective on March 24, 1992, as called for in the court order adopting the rules. The history cites for these rules do not contain any pre-1992 history. For the present location of the former rules, see the table at the end of this set of rules.

Many of the annotations cited in these criminal rules were taken from cases decided prior to the 1992 revision. The user should consult the case for its continuing viability before relying on it for authority. Similarly, many of the research references cited were written prior to the revision, and the user should evaluate their usefulness accordingly.

Rule 1. Scope and definitions.

(a) *Scope.* — Except as provided in Rule 54, these rules govern the procedures to be followed in all criminal proceedings in all Wyoming courts. When not inconsistent with the Juvenile Court Act, these rules shall also apply in delinquency proceedings. In the event that a procedure is not established by these rules, the Wyoming Rules of Civil Procedure shall govern.

(b) *Definitions.* —

(1) "Commissioner" means commissioner of the district court.

(2) "Judicial officer" means justices of the supreme court, district judges, circuit judges, magistrates, municipal judges and district court commissioners.

(3) "Attorney for the state" means an attorney authorized by statute or by ordinance to prosecute criminal cases.

(4) "Clerk" means, depending on context:

(A) The elected clerk of district court in each county; or

(B) For circuit and municipal courts the person so designated by the court.

(5) "State" means State of Wyoming except in prosecutions in municipal court in which it shall mean the municipality.

(6) "Sheriff" means a county sheriff except for prosecutions in municipal court in which it shall include the chief of police for the municipality.

(7) "Custodial officer" means the sheriff, chief of police or the officer in charge of a facility in which a defendant is being held on criminal charges.

(8) "Citation" means a document charging a defendant with an offense and requiring the defendant to appear in court and answer to the charge.

(Amended January 8, 1992, effective March 24, 1992; amended July 22, 1993, effective October 19, 1993; amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003.)

Compare. — Rule 1, Fed. Rules Cr. Proc.

Application of Rules of Civil Procedure. — Where defendant filed a motion for reconsideration of an order denying defendant's motion for sentence reduction, pursuant to W.R.Cr.P. 1(a), the court applied the Wyoming Rules of Civil Procedure to the extent the issues to be addressed were not covered by the Wyoming Rules of Criminal Procedure. Padilla v. State, 91 P.3d 920 (Wyo. 2004).

Application of civil procedure rules in criminal matters. — Appellate court assumed jurisdiction over an appeal of denial of postconviction relief although the district court declined to rule on the motion for over a year; the appeals court acknowledged that this rule provides for application of civil procedure rules where there is no rule of criminal procedure on point, but declined to apply the "deemed denied rule" of W.R.C.P. 6(c)(2). Patrick v. State, 108 P.3d 838 (Wyo. 2005).

Cited in MJS v. State (in re MJS), 20 P.3d 506 (Wyo. 2001).

Law reviews. — For a symposium on the Wyoming Rules of Criminal Procedure, see V Land & Water L. Rev. 579 (1970).

Am. Jur. 2d, ALR and C.J.S. references. — Application of civil or criminal procedural rules in federal court proceeding on motion in nature of writ of error coram nobis, 53 ALR Fed 762.

Rule 2. Purpose and construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Compare. — Rule 2, Fed. Rules Cr. Proc.

"Verdict" for purposes of alternate-juror selection. — Reading W.R.C.P. 2 and 24(e) together, and in light of the purpose served by alternate jurors, it seems clear that the term "verdict" in W.R.C.P. 24(e) must be read in a broad sense to refer to a final jury decision on any matter specifically committed to it. Thus, the term must be read to refer not only to a determination of a defendant's guilt of a crime, but also to a jury's separate determination of a matter of the sort typically involved in bifurcated proceedings, such as a defendant's habitual-criminal status or the propriety of the death penalty. Pursuant to such a view, a capital-case jury may be said to retire to consider its verdict twice, once for the guilt phase and once for the sentencing phase, and alternate jurors are authorized to serve in sentencing-phase deliberations even if they did not serve during the guilt phase, so long as the replacement is made before the jury retires to begin sentencing-phase deliberations. Olsen v. State, 67 P.3d 536 (Wyo. 2003).

Quoted in Detheridge v. State, 963 P.2d 233 (Wyo. 1998); Doney v. State, 59 P.3d 730 (Wyo. 2002).

Law reviews. — For comment discussing the constitutional requirements for guilty pleas, see VI Land & Water L. Rev. 753 (1971).

Rule 3. Indictment, information or citation.

(a) *In general.* — Prosecution of all offenses shall be by indictment, information or by citation when a citation is authorized by law and shall be carried on in the name and by the authority of the State of Wyoming, and all indictments, informations and citations shall conclude 'against the peace and dignity of the State of Wyoming'.

(b) *Nature and contents.* —

(1) Indictment. — Prosecution by indictment shall be carried on in the name and by the authority of the State of Wyoming, and shall conclude "against the peace and dignity of the State of Wyoming". The indictment shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and it shall be signed by the attorney for the state. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that the defendant committed it by one or more specified means. The indictment shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) Information. — The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the state. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The information shall state:

(A) The name of the court where it was filed;

(B) The names of the state and the defendant if the defendant is known, and, if not, then any names or description by which the defendant can be identified with reasonable certainty; and

(C) For each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(3) Citation. — Except as provided in W.S. 14-6-203(d) and (f), a citation may be issued as a charging document for any misdemeanor for which the issuing officer

has probable cause to believe was committed by the person to whom the citation was issued. By accepting the citation, the person issued the citation signifies his promise to appear in court on the date and time stated on the citation. A citation may be issued by any peace officer authorized to do so by statute or ordinance. A paper citation shall be signed by the issuing officer but need not be under oath. When a citation is issued by the officer, the electronic transfer of citation information is the electronic equivalent of a written signature of the officer, and thereby signifies the officer has delivered a copy of the citation to the defendant in accordance with W.S. 31-5-1205. The citation must state:

(A) The name of the court where it is to be filed;

(B) The names of the state or municipality and the defendant;

(C) For each citation there shall be only one charge, with a reference to the statute, ordinance, rule, regulation or other provision of law which the defendant is alleged to have violated;

(D) The date and time the defendant must appear in court; and

(E) Whether a court appearance may be avoided by paying a fine and costs or forfeiture of bail.

(c) *Harmless error.* — Error in the citation of a statute or its omission, or any other defect or imperfection, shall not be grounds for dismissal of the indictment, information or citation or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice. When harmless error in an electronic citation is identified, an email describing the error shall be sent to the citing officer. The citing officer shall email the correction to the Court and to the records division of the Department of Transportation.

(d) *Surplusage.* — The court on motion of the defendant may strike surplusage from the indictment, information or citation.

(e) *Amendment of information or citation.* — Without leave of the court, the attorney for the state may amend an information or citation until five days before a preliminary examination in a case required to be tried in district court or until five days before trial for a case not required to be tried in district court. The court may permit an information or citation to be amended:

(1) With the defendant's consent, at any time before sentencing.

(2) Whether or not the defendant consents:

(A) At any time before trial if substantial rights of the defendant are not prejudiced.

(B) At any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) *Bill of particulars.* — The court may direct the filing of a bill of particulars. A motion for bill of particulars may be made before arraignment, within 10 days after arraignment, or at such later time as the court may permit. The bill of particulars may be amended at any time subject to such conditions as justice requires.

(Amended July 22, 1993, effective October 19, 1993; amended May 8, 2001, effective September 1, 2001; amended May 18, 2011, effective July 18, 2011; amended August 7, 2012, effective November 1, 2012; amended April 1, 2014, effective July 1, 2014; amended April 7, 2015, effective June 1, 2015.)

Editor's notes. — *Many of the following cases were decided under former Rule 7.*

Compare. — Rule 3, Fed. Rules Cr. Proc.

In a probable cause determination, the complaint provides a foundation for a neutral judgment by a judicial officer that resort to further criminal process is justified. State v. Faltynowicz, 660 P.2d 368 (Wyo. 1983) (decided under former rule).

Sufficiency of indictment. — Where the charge follows the statutory language and such language contains all that is essential to constitute the crime, the indictment is sufficient. Boyd v. State, 528 P.2d 287 (Wyo. 1974), cert. denied, 423 U.S. 871, 96 S. Ct. 137, 46 L. Ed. 2d 102 (1975).

Defendant was fully and fairly informed of the murder and kidnapping charges in the

information, which identified the approximate location, approximate time frame, and the specific victim, and the jury's question to the court during deliberations and possible confusion had no bearing on the adequacy of the notice provided to defendant of the charges against him, nor did it indicate that the evidence at trial demonstrated facts different from those alleged in the information; thus, no variance between the information and the facts proven at trial occurred. Rolle v. State, 236 P.3d 259 (Wyo. 2010).

In a criminal indictment it is only necessary to allege sufficiently to allow the accused to understand the charge and prepare his defense. Boyd v. State, 528 P.2d 287 (Wyo. 1974), cert. denied, 423 U.S. 871, 96 S. Ct. 137, 46 L. Ed. 2d 102 (1975); Gonzales v. State, 551 P.2d 929 (Wyo. 1976).

An indictment to be legally sufficient must fairly indicate the crime charged, must state the essential elements of the alleged crime and be sufficiently definite so that the defendant can prepare his defense and grant protection from further prosecution for the same offense. Gonzales v. State, 551 P.2d 929 (Wyo. 1976).

An indictment is sufficient if it contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend and enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. Hovee v. State, 596 P.2d 1127 (Wyo. 1979).

It was clear that defendant had adequate notice of the charge for which he was convicted, one count of larceny by bailee in violation of Wyo. Stat. Ann. § 6-3-402(b) (2001), in comparing the charging documents with the trial court's oral ruling. The court did not see the amount of evidence presented as creating a problem with defendant's right to notice of the charges against him; it simply amounted to a failure of proof on the State's part; moreover, there was no prejudice to defendant as the trial court specifically rejected the State's contentions as to the other items. Barker v. State, 141 P.3d 106 (Wyo. 2006).

Where an information charging defendant with five counts of sexual assault and the affidavit accompanying it indicated that the sexual assaults began after defendant moved into the home of the 10-year-old victim's grandmother, defendant was not misled by a claimed variance between a date discrepancy in the information and the evidence, and the trial court did not abuse its discretion in permitting the State to amend the information to more accurately allege time period during which the offenses occurred. Spagner v. State, 200 P.3d 793 (Wyo. 2009).

Defendant was adequately advised of the stalking charges against him; an amended affidavit of probable cause contained a detailed account of the incidents of harassment, the dates on which those incidents occurred, and the various protection orders and conditions of probation in effect at the time of those incidents. Walker v. State, 302 P.3d 182 (May 10, 2013).

Conformity of language in indictment to statute. — Where a defendant is not misled to his prejudice, an indictment is not invalid because it does not conform exactly to the language of the statute. However, any variations from the statutory language must be in words carrying the same import as the statute. Gonzales v. State, 551 P.2d 929 (Wyo. 1976).

Failure to cite the statute or an incorrect citation of the statute which the defendant is alleged to have violated bears only upon the question whether the defendant was confused to the point that he did not know the crime with which he was charged and was prejudiced in his defense. Capwell v. State, 686 P.2d 1148 (Wyo. 1984).

As to evaluating a complaint for probable cause sufficiency, see State v. Faltynowicz, 660 P.2d 368 (Wyo. 1983) (decided under former rule).

Amendment proper. — An amendment of the information prior to the preliminary hearing in the county court to substitute one count of premeditated murder and felony murder for charges of felony murder and second-degree murder was proper. Hightower v. State, 901 P.2d 397 (Wyo. 1995).

In a case in which defendant was convicted of unlawfully touching a household member for a third or subsequent time in the past ten years, the trial court did not abuse its discretion by permitting the State to amend the information after the case was submitted to the jury. The State was simply correcting a mechanical error. Garnica v. State, 253 P.3d 489 (Wyo. 2011).

Amendment of information was not error, where it was not accomplished by trial court on its own motion, but was suggested by prosecution and approved by trial court, and both prosecuting attorney and defendant's attorney concurred in the amendment. Britton v. State, 976 P.2d 669 (Wyo. 1999).

Amendment of information was properly made pursuant to the consent provision of Wyo. R. Crim. P. 3(c)(1), where the record showed that defendant failed to object to the amended felony information and expressly adopted the amended document as the correct charging document, both through defense counsel's statements during the arraignment and through defendant's contemporaneous acknowledgement of the document. Jones v. State, 203 P.3d 1091 (Wyo. 2009).

Amendment of criminal information mid-trial was not erroneous, where the proceedings strongly supported a conclusion that defense counsel accepted the district court's decision to allow the amendment under Wyo. R. Crim. P. 3(e)(2)(B). Additionally, no additional or different offense was charged and defendant's substantial rights were not prejudiced. Temen v.

State, 201 P.3d 1139 (Wyo. 2009).

Trial court did not err under Wyo. R. Crim. P. 3(e) in allowing the State to amend an information to remove a charge of attempting to interfere with a peace officer because defendant was on notice of the attempted and completed versions of the crime from the beginning of the case, and the attempted version was based in the same statutory provision and arose out of identical factual circumstances as the completed crime. Mowery v. State, 247 P.3d 866 (Wyo. 2011).

During defendant's trial for felony stalking, the court did not err under Wyo. R. Crim. P. 3(e) in allowing the State to amend the information to include incidents of harassment occurring prior to the entry of a December 2009 protection order; defendant's conduct constituted acts of harassment relevant in establishing a course of conduct occurring in violation of the protective order. Walker v. State, 302 P.3d 182 (May 10, 2013).

Judicial discretion. — By its very terms, Wyo. R. Crim. P. 3(e) vests a trial court with wide discretion in granting or denying a motion to amend an information. Mowery v. State, 247 P.3d 866 (Wyo. 2011).

Amendment not prejudicial. — In a prosecution for child abuse, although the conduct of the State, in filing a motion to amend the information to change the date the alleged abuse occurred, was in many ways inexcusable and demonstrated a disregard for the time-honored processes of the criminal justice system, there was no demonstrable prejudice to defendant; defendant was not charged with an additional or different crime, and did not deny the incident at issue. Beaugureau v. State, 56 P.3d 626 (Wyo. 2002).

Charging alternative theories. — Charging the defendant with alternative ways of committing the same crime does not result in a duplicitous pleading. Hightower v. State, 901 P.2d 397 (Wyo. 1995).

Conviction of uncharged crime warrants reversal. — To charge a defendant with first degree sexual assault and attempted first degree sexual assault, and then convict him of third degree sexual assault and attempted third degree sexual assault, not only prevents an adequate defense, but allows for the conviction of an uncharged crime, which materially prejudices the defendant and warrants reversal. Craney v. State, 798 P.2d 1202 (Wyo. 1990).

Conviction on one count charging multiple acts. — There was sufficient evidence to sustain convenience store clerk's forgery conviction even though the amended information did not identify the specific transaction constituting the basis of the charge where, although the state could have charged her with 15 counts of forgery, each of which would support a forgery conviction, she was convicted of one court that embraced all 15 acts, and she neither cited authority that this was improper nor contended that she was not aware of the basis of the charge against her or that her ability to defend herself was in any way compromised. Howard v. State, 42 P.3d 483 (Wyo. 2002).

Omission of year of offense does not require dismissal. — The trial court does not have the discretion to dismiss a complaint, information or indictment which omits the year of the alleged offense where the defendant obviously knows the date of the offense with which she is being charged. State v. Faltynowicz, 660 P.2d 368 (Wyo. 1983).

"A True Bill" need not be endorsed. — An indictment was not required to be dismissed even though the foreman of the grand jury did not endorse the words "A True Bill" on the indictment. The words "A True Bill" were typed upon the indictment, as required by § 7-5-104(c). Hennigan v. State, 746 P.2d 360 (Wyo. 1987).

Changing the name of the defendant in an indictment is of form only and not of substance, so that such change would have been permissible even if defendant had not requested it be done. Boyd v. State, 528 P.2d 287 (Wyo. 1974), cert. denied, 423 U.S. 871, 96 S. Ct. 137, 46 L. Ed. 2d 102 (1975).

It is not error to amend an information without leave of court. Schuler v. State, 668 P.2d 1333 (Wyo. 1983).

Design of bill of particulars. — A bill of particulars is designed to make more specific the general allegations in the information to enable the defendant to prepare his defense and avoid being surprised at the trial. Booth v. State, 517 P.2d 1034 (Wyo. 1974).

Failure to file bill not error absent surprise. — A bill of particulars is designed to make more specific the general allegations in the information to enable the defendant to prepare his defense and avoid being surprised at the trial, and absent such surprise or claim, failure of the state to file a bill is not prejudicial error. Brown v. State, 581 P.2d 189 (Wyo. 1978).

Prosecution limited to certain acts set out in bill of particulars. — In the trial, the prosecution is limited to those acts which were set out in the bill of particulars which it deemed to constitute the gravamen of the offense. Booth v. State, 517 P.2d 1034 (Wyo. 1974).

Fatal variance in information. — Where there was evidence at trial that a defendant who lived in California sold drugs to Wyoming residents in California, to be sold in Wyoming, and where the defendant was convicted of conspiracy with intent to deliver methamphetamine, but where the information alleged that the defendant conspired "to commit any offense within the State of Wyoming or conspired to commit an act beyond the State of Wyoming," the information's failure to include an element of the offense charged in the information, that a conspiracy occurred that was intended to have had an effect in Wyoming, was a fatal variance. A detailed affidavit did not cure the informa-

tion, and the defendant's failure to obtain a bill of particulars did not waive the defendant's right to challenge the information. Estrada-Sanchez v. State, 66 P.3d 703 (Wyo. 2003).

Applied in Baumgartner v. State, 7 P.3d 912 (Wyo. 2000); Meek v. State, 37 P.3d 1279 (Wyo. 2002); Burton v. State, 46 P.3d 309 (Wyo. 2002).

Quoted in Cheatham v. State, 719 P.2d 612 (Wyo. 1986); Metzger v. State, 4 P.3d 901 (Wyo. 2000).

Stated in Cisneros v. City of Casper, 479 P.2d 198 (Wyo. 1971); McDermott v. State, 870 P.2d 339 (Wyo. 1994).

Cited in Auclair v. State, 660 P.2d 1156 (Wyo. 1983); Derksen v. State, 845 P.2d 1383 (Wyo. 1993).

Law reviews. — For article, "Supreme Court Jurisdiction and the Wyoming Constitution: Justice v. Judicial Restraint," see XX Land & Water L. Rev. 159 (1985).

Am. Jur. 2d, ALR and C.J.S. references. — 1 Am. Jur. 2d Actions §§ 70 to 80.

Use of abbreviation in indictment or information, 92 ALR3d 494.

Defendant's state of mind necessary or sufficient to warrant award of punitive damages in action for malicious prosecution, 94 ALR3d 791.

Finding or return of indictment, or filing of information, as tolling limitation period, 18 ALR4th 1202.

Limitations on state prosecuting attorney's discretion to initiate prosecution by indictment or by information, 44 ALR4th 401.

Propriety of blanket or per se rule prohibiting federal grand jury from indicting witness who has previously testified before same grand jury under grant of use immunity, 139 ALR Fed 489.

71 C.J.S. Pleading §§ 6, 7.

Rule 3.1. Use of citations; bail.

(a) *Where filed.* — Citations shall be filed in the circuit court or municipal court in the county or municipality where the offense allegedly occurred.

(b) *When Citation May Issue.* — A person arrested and taken into custody for any crime shall be brought before a judicial officer as provided in Rule 5, except:

(1) A person who has been stopped, detained or arrested for a misdemeanor may, then or after further investigation, be issued a citation to avoid further detention. If the person to whom the citation is issued accepts the citation (thereby signifying his promise to appear in court on a date and time certain to answer to the offense charged in the citation), the person shall then be released from custody; and

(2) A person arrested and taken into custody for a "forfeit" offense (as later defined in this rule) must be taken before a judicial officer within 12 hours. If the person is not taken before a judicial officer within 12 hours, the person must be issued a citation and released from custody, but only if the person signs a promise to appear in court on a date and time certain to answer to the offense charged in the citation. A judicial officer may, but is not required to, hold an initial appearance hearing for forfeit offenses other than during the regular business hours of the court.

(c) *Appearance in court.* — The peace officer issuing the citation shall specify on the citation the name and address of the court in which the citation will be filed and a date and time when the person cited must appear in that court. The time specified must be at least five days after the alleged violation unless the person cited consents to an earlier hearing. A person to whom a citation has issued must appear on the day and at the time and place specified in the citation, unless:

(1) The appearance is continued or excused by a judicial officer of that court; or

(2) The citing officer checks the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation.

(d) *Payment of fines and costs or forfeiture of bail in lieu of appearance.* — A citing officer may require any person to appear in court on a date and time certain to answer to the offense charged in the citation by checking the "MUST APPEAR" box on the citation. If the citing officer checks the "MAY FORFEIT BOND IN LIEU OF APPEARANCE" box on the citation the offense may be dealt with as follows:

(1) A person may satisfy a promise to appear in court by paying to the court, or to another authorized by that court to accept bond for misdemeanor offenses, on or before the appearance date the amount of the fine and court costs as listed on the Uniform Bail and Forfeiture Schedules adopted and published by the Wyoming Supreme Court and set forth in Appendix I to this rule;

(2) By paying fines and costs into court (by mail or otherwise) or, when permitted, by posting bond and failing to appear as promised, a person elects:

(A) To waive appearance before the court;

(B) To waive a trial; and

(C) Not to contest the offense charged (nolo contendere).

(e) *Warrant for failure to appear.* — The court may issue a warrant for the arrest of any person who fails to appear as ordered by the court. The court may also issue a warrant for any person who fails to appear as promised:

(1) When "MUST APPEAR" is checked on the citation; or

(2) When the person fails to pay the fine and costs to the court (or post bond in lieu thereof) prior to the promised appearance date when "MAY FORFEIT BOND IN LIEU OF APPEARANCE" is checked on the citation.

(f) *Disposition of citations.* — Every citation filed or deposited with the court must be accounted for and disposed of by that court. Disposition may include forfeiture of bail.

(g) *Definitions.* —

(1) "Forfeit offenses" are those misdemeanor offenses listed as forfeit offenses on the Uniform Bail and Forfeiture Schedules adopted and promulgated by the Wyoming Supreme Court and set forth in Appendix I to this rule. A citing officer may not check the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation for any offense other than a forfeit offense; and

(2) "Must appear offenses" are those misdemeanor offenses for which a citation has issued and the citing officer has checked the "MUST APPEAR" box on the citation.

(Amended June 23, 1992, effective August 1, 1992; amended July 22, 1993, effective October 19, 1993; amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003; amended May 18, 2011, effective July 18, 2011.)

Compare. — Rule 46, Fed. Rules Cr. Proc.

The primary purpose of a bond is to insure the defendant's presence to answer the charges without excessively restricting his liberty pending trial. Miller v. State, 560 P.2d 739 (Wyo. 1977).

The sole function of bail is to exact assurance from the accused that he will stand trial and submit to sentence if found guilty. Vigil v. State, 563 P.2d 1344 (Wyo. 1977).

Incarceration for inability to make bail is a lawful process. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

Applied in Roberts v. State, 711 P.2d 1131 (Wyo. 1985).

Cited in Williams v. Stafford, 589 P.2d 322 (Wyo. 1979).

Law reviews. — For comment, "Bail in Wyoming Under the Wyoming Rules of Criminal Procedure," see V Land & Water L. Rev. 621 (1970).

For case note, "Criminal Procedure — Wyoming Recognizes a Substantive Right to Bail Pending Appeal of Conviction. State v. District Court of Second Judicial Dist., 715 P.2d 191 (Wyo. 1986)," see XXII Land & Water L. Rev. 605 (1987).

Am. Jur. 2d, ALR and C.J.S. references. — 8A Am. Jur. 2d Bail and Recognizance § 1 et seq.

Validity of statute abolishing commercial bail bond business, 19 ALR4th 355.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as a condition of pretrial release, 29 ALR4th 240.

Bail: duration of surety's liability on pretrial bond, 32 ALR4th 504.

Bail: duration of surety's liability on posttrial bail bond, 32 ALR4th 575.

Bail: effect on surety's liability under bail bond of principal's incarceration in other jurisdiction, 33 ALR4th 663.

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction, 35 ALR4th 1192.

Forfeiture of bail for breach of conditions of release other than that of appearance, 68 ALR4th 1082.

Propriety of applying cash bail to payment of fine, 42 ALR5th 547.

Propriety, after obligors on appearance bond have been exonerated pursuant to Rule 46(f) of the Federal Rules of Criminal Procedure, of applying cash or other security to fine imposed on accused, 58 ALR Fed 676.

Propriety of denial of pretrial bail under Bail Reform Act (18 USC §§ 3141 et seq.), 75 ALR Fed 806.

What is "a substantial question of law or fact likely to result in reversal or an order for a new trial" pursuant to 18 USC § 3143(b)(2) [18 USC § 3143(b)(1)(B)] respecting bail pending appeal, 79 ALR Fed 573.

8 C.J.S. Bail § 1 et seq.

Rule 4. Warrant or summons upon information.

(a) *Issuance.* — If it appears from a verified information, or from an affidavit or affidavits filed with the information, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue requiring the defendant to appear and answer to the information. Upon the request of the attorney for the state the court shall issue a warrant, rather than a summons. More than one warrant or summons may issue on the same information. The warrant or summons shall be delivered to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) *Form.* —

(1) Warrant. — The warrant shall be signed by a judicial officer and it shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the information and command that the defendant be arrested and brought before the court from which it was issued.

(2) Summons. — The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court from which it issued at a stated time and place.

(c) *Execution or service; return.* —

(1) By Whom. — A warrant shall be executed by a sheriff or by some other officer authorized by law. A summons shall be served by any peace officer or by any person over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last address within the state or at its principal place of business elsewhere in the United States. The officer executing a warrant shall bring the arrested person promptly before the court, or for the purpose of admission to bail, before a commissioner.

(2) Territorial Limits. — A warrant may be executed or a summons may be served at any place as permitted by law.

(3) Manner. — The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but shall provide a copy of the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person over the age of 14 years then residing therein or by mailing it to the defendant's last known address.

(4) Return. — The officer executing the warrant shall forthwith make return thereof to the court from which it issued. At the request of the attorney for the state, any unexecuted warrant shall be returned to the judicial officer by whom it was issued and shall be canceled. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the court to which the summons is returnable. At the request of the attorney for the state made at any time while the information is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be

delivered by the judicial officer to the sheriff or other authorized person for execution of service.

Cross References. — As to issuance of warrants by circuit courts, see § 5-9-133.

Compare. — Rule 4, Fed. Rules Cr. Proc.

Delay in use or execution of arrest warrant does not make it invalid. There are no constitutional or rule requirements dictating that an arrest warrant be executed at the earliest opportunity. Auclair v. State, 660 P.2d 1156 (Wyo.), appeal dismissed and cert. denied, 464 U.S. 909, 104 S. Ct. 265, 78 L. Ed. 2d 249 (1983); Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

Execution. — Suppression was also not required, as there was no evidence of intentional and deliberate disregard of this rule, as the officer testified he did not realize it was after 10 p.m. State v. Deen, 340 P.3d 1036 (Wyo. 2015).

Probable cause affidavit need not include exculpatory facts. — Exculpatory facts need not be presented to the justice of the peace in the affidavit of probable cause. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

Failure to inform appellant of a homicide charge until well into the interview because the investigator wanted to learn why and how the shooting occurred before informing appellant of the charge did not support a finding that the investigator deliberately, and in bad faith, violated the rule. Murray v. State, 855 P.2d 350 (Wyo. 1993), cert. denied, 510 U.S. 1045, 114 S. Ct. 693, 126 L. Ed. 2d 660 (1994).

Due process standard for probationers. — Since a person can be arrested upon a judicial ex parte determination of probable cause, there is no reason to believe that the legislature intended to afford a probationer any more due process than that which is guaranteed to any other citizen. Weisser v. State, 600 P.2d 1320 (Wyo. 1979).

Issuance of warrant, valid on its face, provides law enforcement officers qualified immunity from liability for tortious conduct as a matter of public policy in the interests of an effective system of law enforcement. There are exceptions caused by a lack of good faith and unreasonable action by officers. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

That an individual is innocent, or that there is doubt about his guilt and the state dismisses, does not invalidate the protection from civil suit given by the obtaining of an arrest warrant. It makes no difference whether there is a dismissal or an acquittal. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

Officer may rely on procedure behind warrant. — It is not the duty of a law enforcement officer to investigate the procedure which led to the issuance of a warrant. He can rely on the warrant; his duty is to make the arrest. He need not pass judgment on the judicial act or reflect on the legal effect of the adjudications. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

When officer makes arrest without explanation, or presentation of warrant, resistance valid. — When an officer makes an arrest without presenting a warrant to the arrestee and without telling the arrestee the reasons for the arrest, the arrestee's resistance is far more understandable than it would be if the only flaw were in the issuance of the warrant. Under these circumstances, the arrest might be invalid. Moreover, when executing an arrest that is invalid for this reason, an officer might be outside the ambit of his official duties and the arrestee could not be prosecuted under the resisting arrest statute (§ 6-5-204(a)). Roberts v. State, 711 P.2d 1131 (Wyo. 1985).

Remedies should vary according to violations. When a violation compromises a substantial or constitutional right, the exclusionary rule is an appropriate remedy, especially when the right is related to fourth amendment protections. Murray v. State, 855 P.2d 350 (Wyo. 1993), cert. denied, 510 U.S. 1045, 114 S. Ct. 693, 126 L. Ed. 2d 660 (1994).

Applied in Cheatham v. State, 719 P.2d 612 (Wyo. 1986); Roose v. State, 759 P.2d 478 (Wyo. 1988).

Rule 5. Initial appearance.

(a) *Initial appearance before a judicial officer.* — A person arrested and in custody shall be taken without unnecessary delay before a judicial officer of the court from which the warrant issued or if no warrant has issued before a judicial officer of the court where the charging document will be filed with the initial appearance to be in person or by real-time electronic means, at the discretion of the judicial officer. A person arrested without a warrant shall be released from custody unless probable cause for the arrest is established to the satisfaction of a judicial officer without unnecessary delay, but in no more than 72 hours. When a person arrested without a warrant is brought before a judicial officer an information or citation shall be filed at or before the initial appearance and, unless a judicial officer has previously found probable cause for the arrest, probable cause shall be established by affidavit or sworn testimony. When a

person, arrested with or without a warrant or given a summons, appears initially before the judicial officer, the judicial officer shall proceed in accordance with the applicable subdivision of this rule.

(b) *Offenses not required to be tried in district court.* — If the charge against the defendant is not one which is required to be tried in district court no preliminary examination shall be held. The defendant may be arraigned at the initial appearance or at a later time. Arraignment shall be conducted in open court and shall consist of reading the information or citation to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the information or citation and any supporting affidavits before being called upon to plead. In addition, the judicial officer shall inform the defendant of the following:

(1) The defendant's right to retain counsel and, unless the defendant is charged with an offense for which appointment of counsel is not required, of the right to appointed counsel;

(2) That the defendant is not required to make a statement and that any statement made may be used against the defendant;

(3) Of the defendant's right to a trial by jury; and

(4) If the defendant is in custody, of the general circumstances under which pretrial release may be secured.

(c) *Offenses charged by information or citation and required to be tried in district court.* — If the charge against the defendant is required to be tried in district court, the defendant shall not be called upon to plead until arraignment in district court.

At the initial appearance, the defendant shall be given a copy of the information or citation and any supporting affidavits. The judicial officer shall read the information or citation to the defendant or state to the defendant the substance of the charge, and shall explain the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The judicial officer shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The judicial officer shall also inform the defendant of the right to a preliminary examination. The judicial officer shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant as authorized by statute or these rules.

A defendant is entitled to a preliminary examination, unless waived, when charged by information or citation with any offense required to be tried in the district court. If the defendant waives preliminary examination, the case shall be transferred to the district court. If the defendant does not waive the preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and not later than 20 days if the defendant is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a judicial officer. In the absence of such consent by the defendant, time limits may be extended by a judicial officer only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

Rule 5(c) does not apply to offenses for which a grand jury has issued an indictment. (Amended July 22, 1993, effective October 19, 1993; amended July 24, 2001, effective November 1, 2001; amended and effective April 22, 2008.)

Compare. — Rule 5, Fed. Rules Cr. Proc.

Purpose of rule is to prevent officers from illegally obtaining statements during a defendant's initial confinement prior to appearance before a magistrate (now judicial officer). Cherniwchan v. State, 594 P.2d 464 (Wyo. 1979).

Rule does not cover probation revocation proceedings. Schepp v. Fremont County, 685 F. Supp. 1200 (D. Wyo. 1988), aff'd, 900 F.2d 1448 (10th Cir. 1990).

Investigative reports need not be delivered prior to plea. — Delivery of law enforcement investigative reports to a defendant before entry of a plea is not required under W.R.Cr.P. 5(b). Ingalls v. State, 46 P.3d 856 (Wyo. 2002).

Burden to prove violation of rule. — The burden is on the defendant to prove a violation of this rule. Richmond v. State, 554 P.2d 1217 (Wyo. 1976); Raigosa v. State, 562 P.2d 1009 (Wyo. 1977).

Confession as waiver of rule. — A confession given under a full Miranda warning operates as a waiver of this rule. Richmond v. State, 554 P.2d 1217 (Wyo. 1976).

Miranda requirements have decreased the importance and softened the impact of subdivision (a). — Raigosa v. State, 562 P.2d 1009 (Wyo. 1977)

Reduction of oral admission to writing. — This rule is not automatically violated by the reduction to writing of an oral admission. Richmond v. State, 554 P.2d 1217 (Wyo. 1976).

Dismissal of charges. — Failure to provide timely preliminary hearing did not mandate dismissal of charges with prejudice, where defendant entered unconditional guilty pleas to those charges. Blankinship v. State, 974 P.2d 377 (Wyo. 1999).

Applied in Roberts v. State, 711 P.2d 1131 (Wyo. 1985).

Quoted in Yellowbear v. State, 174 P.3d 1270 (Wyo. 2008).

Cited in Dryden v. State, 535 P.2d 483 (Wyo. 1975); Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983); Schmidt v. State, 668 P.2d 656 (Wyo. 1983); Doney v. State, 59 P.3d 730 (Wyo. 2002).

Am. Jur. 2d, ALR and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 550 to 599.

Accused's right to assistance of counsel at or prior to arraignment, 5 ALR3d 1269.

22 C.J.S. Criminal Law §§ 340 to 364.

Rule 5.1. Preliminary examination.

(a) *Right.* — In all cases required to be tried in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination in the circuit court. The defendant may waive preliminary examination but the waiver must be written or on the record. If the preliminary examination is waived, the case shall be transferred to district court for further proceedings.

(b) *Probable cause finding.* — If from the evidence it appears that there is probable cause to believe that the charged offense or lesser included offense has been committed and that the defendant committed it, the judicial officer shall enter an order so finding and the case shall be transferred to the district court for further proceedings. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rules 12 and 41(g).

(c) *Discharge of defendant.* — If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the judicial officer shall dismiss the information and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(d) *Record of proceedings.* — On timely application to the court, counsel for the parties shall be given an opportunity to have the recording of the hearing made available for their information in connection with any further proceedings or in connection with their preparation for trial. The court may appoint the time, place and conditions under which such opportunity is afforded counsel.

(Amended July 22, 1993, effective October 19, 1993; amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003.)

Compare. — Rule 5.1, Fed. Rules Cr. Proc.

Fundamental part of preliminary hear-

ing, as well as trial, is the presence of the defendant. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Purpose of preliminary hearing. — The right of the accused to subpoena and call witnesses must be viewed in light of the true constitutional purpose of the preliminary hearing, which is to obtain a determination by a neutral, detached factfinder that there is probable cause to believe a crime has been committed and that the defendant committed it. Madrid v. State, 910 P.2d 1340 (Wyo. 1996).

Only purpose of a preliminary hearing is to determine whether there is a sound basis for continuing to hold an accused in custody: To make sure that he is not being held on some capricious or nebulous charge. Wilson v. State, 655 P.2d 1246 (Wyo. 1982).

The purpose of a preliminary hearing is to establish the existence of probable cause to hold the accused for prosecution. Haight v. State, 654 P.2d 1232 (Wyo. 1982).

There is no common-law right. — In Wyoming, an accused is not entitled to a preliminary hearing unless one is authorized by statute. No common-law right to a preliminary hearing exists. Montez v. State, 670 P.2d 694 (Wyo. 1983).

And defendant is not entitled to hearing on habitual criminal allegations. — As the habitual criminal statute is a vehicle for enhancing a sentence upon a conviction for crime and is not a separate crime, a defendant is not entitled to a preliminary hearing on habitual criminal allegations. Montez v. State, 670 P.2d 694 (Wyo. 1983).

County court not to determine, at preliminary hearing, whether counts in complaint merge. — It was not within the county court's authority at a preliminary hearing to dismiss a count of a complaint on the ground that it merged with another count. The sole purpose of the preliminary hearing was to determine whether there was probable cause for detaining the accused pending further proceedings. State v. Carter, 714 P.2d 1217 (Wyo. 1986).

Probable cause exists if the proof is sufficient to cause a person of ordinary caution or prudence to conscientiously entertain a reasonable belief that a public offense has been committed in which the accused participated. Wilson v. State, 655 P.2d 1246 (Wyo. 1982).

Jurisdiction lacking where no probable cause found. — Because the judicial officer found no probable cause existed for the charged offense or a lesser included offense, and the state did not attempt to amend the charge, and even though no objection was lodged by the defendant, the judicial officer had no authority to transfer the two reduced charges to the district court and the district court lacked jurisdiction to consider the reduced charges. Jackson v. State, 891 P.2d 70 (Wyo. 1995).

Hearsay is admissible in grand jury proceedings without limitation, and the determination of probable cause may rest exclusively on such evidence. Hennigan v. State, 746 P.2d 360 (Wyo. 1987).

Defendant's right to subpoena and call witnesses not absolute. — Subdivision (b) provides a defendant the right to subpoena and call witnesses during his preliminary hearing. This right, however, is not absolute. Garcia v. State, 667 P.2d 1148 (Wyo. 1983); Madrid v. State, 910 P.2d 1340 (Wyo. 1996).

Not for purposes of discovery. — Although some discovery may result as a by-product of a preliminary hearing, it is not a purpose of the hearing. Haight v. State, 654 P.2d 1232 (Wyo. 1982).

Introduction of testimony from defendant witness is within court's discretion. — Discretion is left to the court to determine whether or not the purpose for which a defendant seeks to introduce testimony from a witness whom he has subpoenaed fits within the realm of discovery rather than the determination of probable cause, and it is incumbent upon counsel to explain the relevance to the issue of probable cause of the testimony he seeks to introduce at the preliminary hearing. Almada v. State, 994 P.2d 299 (Wyo. 1999).

Discovery is not the purpose of the hearing; thus, discretion is left to the court to determine whether or not the purpose for which a defendant seeks to introduce testimony from a witness whom defendant subpoenaed fits within the realm of discovery rather than the determination of probable cause. Madrid v. State, 910 P.2d 1340 (Wyo. 1996).

Reasons for defendant's attorney to be present at preliminary hearing. — See Haight v. State, 654 P.2d 1232 (Wyo. 1982).

Timing of objections to preliminary hearing. — The time to object to defects in the preliminary hearing is before arraignment and trial, and unless some reason is shown why counsel could have discovered and challenged the defect before trial, it will generally be assumed that any objections to the preliminary proceedings were considered and waived, and no post-conviction remedies will be available. Thus, defendant waived his objection to any defects in the preliminary hearing when he permitted the arraignment and trial to proceed without objection. Trujillo v. State, 880 P.2d 575 (Wyo. 1994).

Denial of defendant's motion to remand for a second preliminary hearing because a complete recording of the original hearing was not available did not violate paragraph (d) of this rule where there was five-month delay between defendant's discovery of the incomplete recording and his motion for remand. Sidwell v. State, 964 P.2d 416 (Wyo. 1998).

Delay warrants inquiry into speedy trial. — Where the record shows that there was an interval of 95 days from the date of defendant's arrest and the date of the preliminary hearing, during which period of time he

was in jail, the delay was sufficient to justify further inquiry into whether or not he was given a speedy trial. Phillips v. State, 597 P.2d 456 (Wyo. 1979).

Counsel must explain relevance of testimony sought to be introduced. — It is incumbent upon counsel to explain the relevance to the issue of probable cause of the testimony counsel seeks to introduce at the preliminary hearing, pursuant to a sufficient offer of proof. Madrid v. State, 910 P.2d 1340 (Wyo. 1996).

Cross-examination limited to scope of direct examination. — Although the Wyoming Rules of Evidence are not applicable to a preliminary examination in criminal cases (Rule 1101(b)(3), W.R.E.), cross-examination is properly to be limited at a preliminary hearing to the scope of direct examination. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Where the defendant's pretrial motion is directed at a claimed improper restriction of cross-examination at the preliminary hearing, and the restriction is the refusal of the justice conducting the hearing to allow a question to the victim concerning sexual intercourse had by her previous to the sexual assault alleged in the complaint, the motion is properly rejected where the question is beyond the scope of direct examination. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Inference of location proper. — Where the record of the preliminary hearing is peppered with references to well-known landmarks and streets and the only thing lacking is the full-blown statement that the events took place in a certain county, there was sufficient evidence from which the justice of the peace could reasonably infer that the alleged crime took place in that county. Snyder v. State, 599 P.2d 1338 (Wyo. 1979).

When continuance allowed for absence of witness. — Where a party seeks a continuance in a preliminary hearing, due to the absence of a witness, there must be a showing that the witness' testimony would be material were he allowed to testify, and that the moving party has used due diligence to procure the attendance of the witness. Haight v. State, 654 P.2d 1232 (Wyo. 1982).

Granting continuance within court's discretion. — The matter of granting a continuance is within the discretion of the court. Haight v. State, 654 P.2d 1232 (Wyo. 1982).

Refiling of charge not barred after prior dismissal. — Neither the doctrine of res judicata nor the doctrine of collateral estoppel barred the refiling of an attempted kidnapping charge and subsequent preliminary hearing after the charge was dismissed under Wyo. R. Crim. P. 5.1(c) following a preliminary hearing where a lack of probable cause was found. Rathbun v. State, 257 P.3d 29 (Wyo. 2011).

Applied in Thomas v. Justice Court, 538 P.2d 42 (Wyo. 1975); Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983); Rodriguez v. State, 711 P.2d 410 (Wyo. 1985).

Quoted in Alcala v. State, 487 P.2d 448 (Wyo. 1971); Yellowbear v. State, 174 P.3d 1270 (Wyo. 2008).

Stated in Ryan v. State, 988 P.2d 46 (Wyo. 1999).

Am. Jur. 2d, ALR and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 563 to 588.

Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial, 3 ALR4th 601.

Right of accused in criminal prosecution to presence of counsel at court-appointed or -approved psychiatric examination, 3 ALR4th 910.

Power of court to change counsel appointed for indigent, against objections of accused and original counsel, 3 ALR4th 1227.

22 C.J.S. Criminal Law §§ 321 to 364.

Rule 6. Grand juries.

(a) *County grand jury.* —

(1) Summoning Grand Juries. — A county grand jury shall be summoned only when ordered by a district judge.

(2) Manner of Summoning. — A grand jury shall be drawn, summoned and impaneled in the same manner as trial juries in civil actions.

(3) Term; Discharge and Excuse. — A grand jury shall serve until discharged by the court, but no grand jury may serve more than 12 months unless the court extends the service of the grand jury. Extensions shall be for periods of six months or less, for good cause only, and upon a determination that such extension is in the public interest. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(4) Composition; Qualification; Alternates.

(A) Number and Qualifications. — A grand jury shall consist of 12 persons who shall possess the qualifications of trial jurors.

(B) Quorum. — Not less than nine jurors may act as the grand jury.

(C) Alternate Jurors. — The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled as provided in subdivision (a)(3). Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(5) Objections to Grand Jury and to Grand Jurors.

(A) Challenges. — The attorney for the state may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(B) Motion to Dismiss. — A motion to dismiss an indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to this rule that nine or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(6) Indictment.

(A) Finding to Indict. — No indictment shall be found unless the finding is concurred in by at least nine members of the grand jury.

(B) A True Bill. — If an indictment is found as provided by this subdivision, the presiding juror of the grand jury shall endorse upon the indictment the words "A True Bill" and shall sign the indictment.

(C) Sealed Indictments. — The district judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. If so directed the clerk shall seal the indictment and no person shall disclose the return of the indictment except as necessary for the issuance and execution of a warrant or summons.

(7) Presiding Juror; Oath of Jurors; Charge.

(A) Presiding Juror. — The district judge shall appoint one of the jurors to be presiding juror and another to be deputy presiding juror. The presiding juror shall have power to administer oaths and affirmations and shall sign all indictments. The presiding juror or another juror designated by the presiding juror shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the presiding juror, the deputy presiding juror shall act as presiding juror.

(B) Oath. — Before entering upon their duties, jurors shall swear or affirm that each of them shall:

(i) Diligently inquire into all matters coming before them;

(ii) Find and present indictments truthfully and without malice, fear of reprisal or hope of reward; and

(iii) Keep secret matters occurring before the grand jury unless disclosure is directed or permitted by the court.

(C) Charge. — After the grand jury is impaneled and sworn, the district judge shall charge the jurors as to their duties, including their obligation of secrecy, and give them any information the court deems proper concerning any offenses known to the court and likely to come before the grand jury.

(8) Powers. — The grand jury may:

(A) Inquire into any crimes committed or triable within the county and present them to the court by indictment; or

(B) Investigate and report to the court concerning the condition of the county jail and the treatment of prisoners.

(9) Appearance before Jury.

(A) Attorneys for State. — Attorneys for the state may appear before the grand jury for the purpose of:

(i) Giving information relative to any matter under inquiry;

(ii) Giving requested advice upon any legal matter; and

(iii) Interrogating witnesses.

(B) Who May Be Present. — Attorneys for the state, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(10) Recording and Disclosure of Proceedings. — All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the state unless otherwise ordered by the court in a particular case.

(11) Process for Witnesses. — If requested by the grand jury or the attorney for the state, the clerk of the court in which the jury is impaneled shall issue subpoenas for the attendance of witnesses to testify before the grand jury.

(12) Administration of Oath or Affirmation to Witnesses. — Before any witness is examined by the grand jury, an oath or affirmation shall be administered to the witness by the presiding juror.

(13) Refusal of Witness to Testify. — If a witness appearing before a grand jury refuses, without just cause shown, to testify or provide other information, the attorney for the state may take the witness before the court for an order directing the witness to show cause why the witness should not be held in contempt. If after the hearing, the court finds that the refusal was without just cause, and if the witness continues to refuse to testify or produce evidence, the court may hold the witness in contempt subject to punishment provided by statute or these rules. The witness has the right to be represented by counsel at such hearing. Nothing in this rule shall be construed to require or permit the court to compel testimony under a grant of immunity unless such a procedure is expressly authorized by statute.

(14) Confidentiality.

(A) Disclosure by Attorney for State. — Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the attorney for the state for use in the performance of the duties of the attorney for the state. The attorney for the state may disclose so much of the grand jury's proceeding to law enforcement agencies as the attorney for the state deems essential to the public interest and effective law enforcement.

(B) Disclosure by Others. — Except as provided in subparagraph (A), a juror, attorney, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to, or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the

grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. A knowing violation of this provision may be punishable as contempt of court.

(C) Closed Hearing. — Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(D) Sealed Records. — Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

(15) Presentation and Filing of Indictment. — Indictments found by the grand jury shall be presented by the presiding juror to the district judge in open court in the presence of the grand jury and filed with the clerk.

(b) *State grand jury.* —

(1) Petition for Impaneling; Determination by District Judge. — If the governor or the attorney general deems it to be in the public interest to convene a grand jury which shall have jurisdiction extending beyond the boundaries of any single county, the governor or attorney general may petition a judge of any district court for an order in accordance with the provisions of Rule 6(b). The district judge may, for good cause shown, order the impaneling of a state grand jury which shall have statewide jurisdiction. In making a determination as to the need for impaneling a state grand jury, the judge shall require a showing that the matter cannot be effectively handled by a county grand jury impaneled pursuant to subdivision (a).

(2) Powers and Duties; Applicable Law; Procedural Rules. — A state grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury, except for the provisions of this subdivision, and except that its jurisdiction shall extend throughout the state. The procedural rules applicable to county grand juries shall apply to state grand juries except when inconsistent with the provisions of this subdivision.

(3) Selection and Term of Members. — The clerk of the district court in each county of the state, upon receipt of an order of the district judge of the court granting a petition to impanel a state grand jury, shall prepare a list of 15 prospective state grand jurors drawn from existing jury lists of the county. The list so prepared shall be immediately sent to the clerk of the court granting the petition to impanel the state grand jury. The district judge granting the order shall impanel the state grand jury from the lists compiled by the clerk of court. The judge preparing the final list from which the grand jurors will be chosen need not include the names of the jurors from every county within the state having due regard for the expense and inconvenience of travel. A state grand jury shall be composed of 12 persons, but not more than one-half (½) of the members of the state grand jury shall be residents of any one county. The members of the state grand jury shall be selected by the court in the same manner as jurors of county grand juries and shall serve for one year following selection unless discharged sooner by the district judge.

(4) Summoning of Jurors. — Jurors shall be summoned and selected in the same manner as jurors of county grand juries.

(5) Judicial Supervision. — Judicial supervision of the state grand jury shall be maintained by the district judge who issued the order impaneling the grand jury, and all indictments, reports and other formal returns of any kind made by the grand jury shall be returned to that judge.

(6) Presentation of Evidence. — The presentation of the evidence shall be made to the state grand jury by the attorney general or the attorney general's designee. In the event the office of the attorney general is under investigation, the presentation of evidence shall be made to the state grand jury by an attorney appointed by the Wyoming Supreme Court.

(7) Return of Indictment; Designation of Venue; Consolidation of Indictments. — Any indictment by the state grand jury shall be returned to the district judge without any designation of venue. Thereupon, the judge shall, by order, designate the county of venue for the purpose of the trial. The judge may order the consolidation of an indictment returned by a county grand jury with an indictment returned by a state grand jury and fix venue for the trial.

(8) Investigative Powers; Secrecy of Proceedings.

(A) Report to Attorney General. — In addition to its powers of indictment, a statewide grand jury impaneled under this subdivision may, at the request of the attorney general, cause an investigation to be made into the extent of organized criminal activity within the state and return a report to the attorney general.

(B) Disclosure by Attorney General and District Attorney. — Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the attorney general and to any district attorney for use in the performance of their duties. Those officials may disclose so much of the grand jury's proceedings to law enforcement agencies as they deem essential to the public interest and effective law enforcement.

(C) Disclosure by Others. — Except as provided in subparagraph (B), a juror, attorney, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to, or in connection with, a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the grand jury.

(D) Other Obligations of Secrecy. — No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons. A knowing violation of this provision may be punishable as contempt of court.

(9) Costs and Expenses. — The costs and expenses incurred in impaneling a state grand jury and in the performance of its functions and duties shall be paid by the state out of funds appropriated to the attorney general for that purpose.

Compare. — Rule 6, Fed. Rules Cr. Proc.

Am. Jur. 2d, ALR and C.J.S. references. — Duty of prosecutor to present exculpatory evidence to state grand jury, 49 ALR5th 639.

What are "matters occurring before grand jury" within prohibition of Rule 6(e) of Federal Rules of Criminal Procedure, 154 ALR Fed 385.

Disclosure of grand jury matters outside exception to secrecy contained in Rule 6(e)(3) of Federal Rules of Criminal Procedure, 154 ALR Fed 657.

Rule 7. [Deleted].

Editor's notes. — This rule, pertaining to indictments, was deleted by order of the court dated May 8, 2001, effective September 1, 2001. For present similar provisions, see W.R.Cr.P.3.

Rule 8. Joinder of offenses and defendants.

(a) *Joinder of offenses.* — Two or more offenses may be charged in the same citation, indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, are

based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) *Joinder of defendants.* — Two or more defendants may be charged in the same citation, indictment or information if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together, or separately, and all of the defendants need not be charged in each count.

Compare. — Rule 8, Fed. Rules Cr. Proc.

Prosecutorial discretion in charging offenses. — When the defendant's conduct violates more than one criminal statute, it is the prosecutor who decides how many offenses to charge. Jerskey v. State, 546 P.2d 173 (Wyo. 1976).

Joinder of indictments is matter for court's discretion. — Joinder of two or more indictments, pending against defendant for same criminal act, is a matter for court's discretion. Dycus v. State, 529 P.2d 979 (Wyo. 1974).

Joinder found proper. — In a prosecution for delivery of crack cocaine, the district court did not abuse its discretion in denying defendant's motion to sever, where defendant failed to meet his burden of showing that he was subjected to significant prejudice by his joint trial. Hernandez v. State, 28 P.3d 17 (Wyo. 2001).

Court properly joined two sexual assault offenses because the offenses were similar in character and so related as to constitute parts of a common scheme or plan. Defendant knew both victims, and in each instance, defendant entered the home of the victim under the cover of darkness, told the victim he was there to rape her, subdued her by force and demanded that she perform oral sex upon him. Lessard v. State, 158 P.3d 698 (Wyo. 2007).

Similar offenses may be joined. — Where the offenses charged were of the same or similar character, such as narcotic transactions closely related in time, place and manner of execution, they properly could have been joined in one indictment in separate counts. Dobbins v. State, 483 P.2d 255 (Wyo. 1971).

But care should be taken to avoid prejudice from joinder. — There is always a possibility of prejudice resulting from a joinder of similar offenses and care must be taken at the initial stage of the proceedings to guard against such a possibility. Dobbins v. State, 483 P.2d 255 (Wyo. 1971); Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

Considerations in guarding against such prejudice. — In guarding against prejudice resulting from a joinder of similar offenses, one of the prime considerations is whether or not evidence relating to the similar offenses charged would be admissible in the separate trial of each offense. Dobbins v. State, 483 P.2d 255 (Wyo. 1971); Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

And fact establishing lack of prejudice. — The fact that the evidence presented at a joint trial could be separately introduced at trials for the separate offenses establishes the lack of prejudice. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

Facts under which joinder proper. — See Lee v. State, 653 P.2d 1388 (Wyo. 1982).

Joinder of several offenses — concealing stolen goods, burglary, murder, assault — was proper because of their interrelation (i. e., concealed guns played a prominent part in the murder and assault, the concealment of a car and the burglary were connected with the flight from the scene of the crime), and the trial court did not abuse its discretion in denying a motion to sever, the facts of the case being uncomplicated and the jury being specifically instructed that each charge had to be considered separately. Pote v. State, 695 P.2d 617 (Wyo. 1985).

Defendant's plan, scheme, or course of conduct. — Where defendant was engaged in a sexual relationship with the victim and helped the victim run away from home and then obstructed her safe return, defendant's plan, scheme, or course of conduct was obviously to continue his relationship with the victim, and the fact that the separate charges spanned a few days was of no concern. Bell v. State, 994 P.2d 947 (Wyo. 2000).

Joinder of three criminal actions to show common scheme or plan. — Defendant was not prejudiced by joinder of trials of three criminal actions against him for child sexual abuse where testimony concerning other victims would have been admissible in separate trials under Wyo. R. Evid. 404(b) as evidence to show motive or a common scheme or plan and defendant failed to show jury was confused by joinder of the charges. Simmers v. State, 943 P.2d 1189 (Wyo. 1997).

Joinder found proper. — Joinder of murder and attempted murder charges was proper, where evidence would have been admissible at a separate trial on each offense; evidence of defendant's attempted murder of police officers would have been admissible as circumstantial evidence to prove his involvement in murder earlier reported to officers, and evidence of murder would have been admissible to prove motive in attempted murder of officers. Mitchell v. State, 982 P.2d 717 (Wyo. 1999).

Misjoinder as error of law. — Misjoinder of an embezzlement related offense, and the offense of submitting a false voucher for a battery, occurred as an error of law. Howard v. State, 762 P.2d 28 (Wyo. 1988).

Court did not err in refusing to sever counts alleging delivery of drugs, where the evidence of separate offenses was not shown to be so complicated that the jury could not separate and evaluate them. Dorador v. State, 768 P.2d 1049 (Wyo. 1989).

Joinder permitted unless separate trials compelled. — As a general rule, defendants can be indicted or informed against together unless there are compelling reasons for separate trials. Linn v. State, 505 P.2d 1270 (Wyo.), cert. denied, 411 U.S. 983, 93 S. Ct. 2277, 36 L. Ed. 2d 959, rehearing denied, 412 U.S. 944, 93 S. Ct. 2780, 37 L. Ed. 2d 405 (1973).

Concern whether defendant prejudiced from joint trial. — A concern is whether or not the defendant is prejudiced as a result of a joint trial. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

Information sufficient to apprise defendants. — Where the record clearly demonstrates that appellants were jointly charged in the same information of committing grand larceny, where the allegations in the information were sufficient to reasonably apprise them of the theory that they were being charged with having participated in a series of acts constituting an offense and that they aided and abetted one another in the accomplishment and success of the venture, where the information alleged that the coins found in "their" car were later counted and totaled $196.30, where appellants neither sought relief from prejudicial joinder nor filed a request to be furnished with a bill of particulars setting forth the precise theory under which the state would prosecute the charge against them, appellants were sufficiently apprised to permit a defense on all aspects of the crime charged, including that of aiding and abetting. Neilson v. State, 599 P.2d 1326 (Wyo. 1979), cert. denied, 444 U.S. 1079, 100 S. Ct. 1031, 62 L. Ed. 2d 763 (1980).

Joint trials are expeditious. — Joint trials of persons charged together with committing the same offense or with being accessory to its commission are the rule, rather than the exception. There is a substantial public interest in this procedure. It expedites the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries, and avoids the necessity of recalling witnesses who would otherwise be called upon to testify only once. Linn v. State, 505 P.2d 1270 (Wyo.), cert. denied, 411 U.S. 983, 93 S. Ct. 2277, 36 L. Ed. 2d 959, rehearing denied, 412 U.S. 944, 93 S. Ct. 2780, 37 L. Ed. 2d 405 (1973); Lee v. State, 653 P.2d 1388 (Wyo. 1982).

Waiver. — By failing to object to prejudicial joinder of charges before trial, defendant waived any objection to the joinder and did not properly preserve issue for appeal. Cox v. State, 964 P.2d 1235 (Wyo. 1998).

Applied in Vigil v. State, 563 P.2d 1344 (Wyo. 1977); Ostrowski v. State, 665 P.2d 471 (Wyo. 1983); Bishop v. State, 687 P.2d 242 (Wyo. 1984), overruled in part, Vigil v. State, 926 P.2d 351 (1996); Amin v. State, 695 P.2d 1021 (Wyo. 1985); McArtor v. State, 699 P.2d 288 (Wyo. 1985); Seeley v. State, 715 P.2d 232 (Wyo. 1986); Eatherton v. State, 761 P.2d 91 (Wyo. 1988); Keene v. State, 835 P.2d 341 (Wyo. 1992).

Quoted in Hopkinson v. State, 632 P.2d 79 (Wyo. 1981); Hopkinson v. Shillinger, 645 F. Supp. 374 (D. Wyo. 1986); Hopkinson v. Shillinger, 866 F.2d 1185 (10th Cir. 1989).

Cited in Osborn v. Schillinger, 639 F. Supp. 610 (D. Wyo. 1986).

Am. Jur. 2d, ALR and C.J.S. references. — 1 Am. Jur. 2d Actions §§ 81 to 109.

Prosecution or conviction of one conspirator as affected by disposition of case against coconspirators, 19 ALR4th 192.

Propriety of use of multiple juries at joint trial of multiple defendants in state criminal prosecution, 41 ALR4th 1189.

What constitutes "series of acts or transactions" for purposes of Rule 8(b) of Federal Rules of Criminal Procedure, providing for joinder of defendants who are alleged to have participated in same series of acts or transactions, 62 ALR Fed 106.

Propriety of use of multiple juries at joint trial of multiple defendants in federal criminal case, 72 ALR Fed 875.

Rule 9. Warrant or summons upon indictment.

(a) *Issuance and deliverance.* — The court shall issue or direct the clerk to issue a summons for each defendant named in the indictment unless a warrant is requested by the attorney for the state. Upon the request of the attorney for the state, the court shall order a warrant, rather than a summons, to be issued. More than one warrant or summons may issue for the same defendant. The warrant or summons shall be delivered to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) *Form.* —

(1) Warrant. — The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty and shall be signed by a judicial officer except that, upon the court's direction, it may be signed by the clerk. The warrant

shall describe the offense charged in the indictment and command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. — The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) *Execution or service; return.* —

(1) Execution or Service. — A warrant shall be executed by a peace officer or by some other officer authorized by law. A summons shall be served by the sheriff or by any person over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last address within the state or at its principal place of business elsewhere in the United States. The officer executing a warrant shall bring the arrested person promptly before the court, or for the purpose of admission to bail, before a commissioner.

(2) Territorial Limits. — A warrant may be executed or a summons may be served at any place within the State of Wyoming and the jurisdiction of the court.

(3) Manner. — The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but provide a copy of the warrant to the defendant as soon as possible. If the officer does not have the warrant in possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person over the age of 14 years then residing therein or by mailing it to the defendant's last known address.

(4) Return. — The officer executing a warrant shall make return thereof to the court. At the request of the attorney for the state, any unexecuted warrant shall be returned and canceled. On or before the return day, the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the indictment is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a duplicate thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

Rule 10. Arraignment.

Arraignments shall be conducted in open court and shall consist of reading the indictment, information or citation to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment, information or citation before being called upon to plead.

Compare. — Rule 10, Fed. Rules Cr. Proc.

Stated in State v. Steele, 620 P.2d 1026 (Wyo. 1980).

Am. Jur. 2d, ALR and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 589 to 599.

Accused's right to assistance of counsel at or prior to arraignment, 5 ALR3d 1269.

Admissibility of confession or other statement made by defendant as affected by delay in arraignment — modern state cases, 28 ALR4th 1121.

22 C.J.S. Criminal Law §§ 355 to 418.

Rule 11. Pleas.

(a) *Alternatives.* —

(1) In General. — A defendant may plead not guilty, not guilty by reason of mental illness or deficiency, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(A) Nolo Contendere. — A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(B) Mental Illness or Deficiency. — A plea of "not guilty by reason of mental illness or deficiency" may be pleaded orally or in writing by the defendant or the defendant's counsel at the time of the defendant's arraignment or at such later time as the court may for good cause permit. Such a plea does not deprive the defendant of other defenses and may be coupled with a plea of not guilty.

(2) Conditional Pleas. — With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) *Advice to Defendant.* — Except for forfeitures on citations (Rule 3.1) and pleas entered under Rule 43(c)(2), before accepting a plea of guilty or nolo contendere to a felony or to a misdemeanor when the defendant is not represented by counsel, the court must address the defendant personally in open court and, unless the defendant has been previously advised by the court on the record and in the presence of counsel, inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law and other sanctions which could attend a conviction including, when applicable, the general nature of any mandatory assessments (such as the surcharge for the Crime Victim Compensation Account), discretionary assessments (costs, attorney fees, restitution, *etc.*) and, in controlled substance offenses, the potential loss of entitlement to federal benefits. However:

(A) Disclosure of specific dollar amounts is not required;

(B) Failure to advise of assessments or possible entitlement forfeitures shall not invalidate a guilty plea, but assessments, the general nature of which were not disclosed to the defendant, may not be imposed upon the defendant unless the defendant is afforded an opportunity to withdraw the guilty plea; and

(C) If assessments or forfeitures are imposed without proper disclosure a request for relief shall be addressed to the trial court under Rule 35 before an appeal may be taken on that issue.

(2) The defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant;

(3) The defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, the right to court process to obtain the testimony of other witnesses, and the right against compelled self-incrimination;

(4) If a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(5) If the court intends to question the defendant under oath, on the record, and in the presence of counsel, about the offense to which the defendant has pleaded

guilty, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(c) *Waiver of advisements.* — A misdemeanor defendant represented by counsel may waive the advisements required in subdivision (b).

(d) *Insuring that plea is voluntary.* — The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(e) *Plea agreement procedure.* —

(1) In General. — The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser related offense, the attorney for the state will do any of the following:

(A) Agree not to prosecute other crimes or move for dismissal of other charges;

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) Agree that a specific sentence is the appropriate disposition of this case. The court shall not participate in any such discussions.

(2) Disclosure of Agreement; Decision of Court. — If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, *in camera,* at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (e)(1)(C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) Acceptance of Agreement. — If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of Agreement. — If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, *in camera,* that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Notification to Court. — Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

(A) Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding against the defendant, admissible against the defendant who made the plea or was a participant in the plea discussions:

(i) A plea of guilty, which was later withdrawn;

(ii) A plea of nolo contendere;

(iii) Any statements made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(iv) Any statement made in the course of plea discussions with an attorney for the state which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(B) However, such a statement, is admissible

(i) In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(ii) In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(7) Presentence Investigation. — A presentence investigation may not be waived by plea agreement for any felony.

(f) *Determining accuracy of plea.* — Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) *Record of proceedings.* — A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(h) *Harmless error.* — Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

(Amended July 22, 1993, effective October 19, 1993.)

Cross References. — As to when motion to withdraw plea of guilty or nolo contendere must be made, see Rule 32(d).

Compare. — Rule 11, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.

Rule defines district court's authority to accept guilty and nolo contendere pleas. — Before accepting a nolo contendere plea, the court must inform the defendant of the charges against him, determine that he understands the consequences of his plea and find that the plea is voluntary. If a plea agreement is involved, the court may defer its decision to accept or reject the agreement until it has considered the presentence report. Zanetti v. State, 783 P.2d 134 (Wyo. 1989).

And post-conviction relief precluded absent jurisdictional claim. — A defendant who pleaded nolo contendere to charges of obtaining money by false pretenses and with intent to defraud, and who failed to present any claims for post-conviction relief which raised any jurisdictional defects, had no viable claim for relief in post-conviction proceedings. Martin v. State, 780 P.2d 1354 (Wyo. 1989).

When defendant, after pleading nolo contendere, appealed the denial of his motion for a continuance, the issue was not considered because the plea waived all appellate issues except jurisdiction and the voluntariness of the plea. Van Haele v. State, 90 P.3d 708 (Wyo. 2004).

Purpose of plea in criminal proceedings is to bring about the joining of the issues for trial, and there can be no trial on a charge of a felony without a plea of not guilty. Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

In a criminal case, the defendant's plea formulates the issues for trial. State v. Steele, 620 P.2d 1026 (Wyo. 1980).

Factual basis for plea. — Factual basis for defendant's guilty plea was sufficient where defendant admitted to engaging in oral sex with the victim, and because the victim was under 16 years old, she could not have legally consented under Wyo. Stat. Ann. § 6-2-304(a)(i). Hirsch v. State, 135 P.3d 586 (Wyo. 2006).

Finding of competence. — Where defendant was charged with attempted murder and reckless endangerment after firing shots at his former lover after their relationship ended but pled guilty to attempted manslaughter, the district court did not err in finding that defendant was competent to proceed to trial and in denying defendant's motion to withdraw his guilty plea and to plead not guilty by reason of mental illness or deficiency because, although one expert witness found defendant not to be competent, a second expert found that defen-

dant not to suffer from any mental disease or defect; although both experts were qualified to render an opinion on defendant's competency, the district court was justified in finding the second expert's opinion more credible because her evaluations of defendant included a series of clinical interviews and objective psychological tests occurring on three separate occasions and lasting six hours each, which were notably lengthier than the first expert's one-time, three-hour evaluation that did not include any psychological testing. Further, the second expert's findings were more extensive, considered a broader array of factors, and utilized more resources in forming an opinion than did the first expert. Fletcher v. State, 245 P.3d 327 (Wyo. 2010).

Conditional pleas after motions denied. — Where defendant entered a conditional plea of guilty to two counts of possession of marijuana, he reserved his right to appeal the order of the district court denying his motion to suppress the evidence seized during, and as the result of, the search of his disabled vehicle. The motion was properly denied, because a drug dog sniff of the exterior of defendant's vehicle was not a search within the meaning of the Fourth Amendment. Morgan v. State, 95 P.3d 802 (Wyo. 2004).

Court consent required for nolo contendere plea. — A defendant may plead nolo contendere only with the consent of the court, and such a plea may be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Johnson v. State, 6 P.3d 1261 (Wyo. 2000).

Delay due to failure to accept a plea was contrary to law. Defendant's right to a speedy trial was violated by a delay of more than 500 days caused by the district court's erroneous refusal to accept his plea of nolo contendere to two counts of aggravated assault with a deadly weapon, because defendant was unwilling to concede that he committed the crime without provocation. Defendant was not required to make this concession under Wyoming law in order to have his plea accepted. Berry v. State, 93 P.3d 222 (Wyo. 2004).

Effect of "nolo contendere" plea. — A plea of "nolo contendere" has the same effect as a plea of guilty for the purposes of a criminal case, but it cannot be used as an admission in a civil case for the same act. State v. Steele, 620 P.2d 1026 (Wyo. 1980).

Withdrawal of nolo contendere plea not allowed given totality of the circumstances. — Defendant was not allowed to withdraw his nolo contendere plea to aggravated assault because (1) he originally pled not guilty; (2) a plea withdrawal would prejudice the government, as the crime occurred almost a year and a half earlier; (3) defendant delayed moving to withdraw the plea for nearly two months after entering it; (4) the delay caused by withdrawing the plea would substantially inconvenience the court; (5) nothing showed defense counsel provided ineffective assistance; (6) the plea was knowing and voluntary; and (7) withdrawing the plea would squander judicial resources, as well as the prosecutor's and defense attorney's time. Van Haele v. State, 90 P.3d 708 (Wyo. 2004).

Court did not err by denying defendant's pre-sentence motion to withdraw his no contest plea because defendant admitted that at the hearing when he pleaded no contest, he could recall the court having again advised him of his rights, of the prosecutor having put the plea agreement on the record, having had his own counsel confirm the plea agreement, and the prosecutor then providing the factual basis for the charge. Dobbins v. State, 298 P.3d 807 (Wyo. 2012).

Withdrawal of guilty plea. — Where defendant was charged with attempted murder and reckless endangerment after firing shots at his former lover after their relationship ended but pled guilty to attempted manslaughter, the district court did not err in finding that defendant was competent to proceed to trial and in denying defendant's motion to withdraw his guilty plea and to plead not guilty by reason of mental illness or deficiency because, although one expert witness found defendant not to be competent, a second expert found that defendant not to suffer from any mental disease or defect; although both experts were qualified to render an opinion on defendant's competency, the district court was justified in finding the second expert's opinion more credible because her evaluations of defendant included a series of clinical interviews and objective psychological tests occurring on three separate occasions and lasting six hours each, which were notably lengthier than the first expert's one-time, three-hour evaluation that did not include any psychological testing. Further, the second expert's findings were more extensive, considered a broader array of factors, and utilized more resources in forming an opinion than did the first expert. Fletcher v. State, 245 P.3d 327 (Wyo. 2010).

Preservation for review. — Where defendant pled guilty to one count of possession of marijuana and one count of possession of methamphetamine while reserving the right to appeal, and his motion to suppress in the district court only cited to Wyo. Const. art. 1, § 4 and his argument at the suppression hearing focused exclusively on the Fourth Amendment, defendant did not properly raise the state constitutional argument in the district court and, consequently, the Supreme Court of Wyoming declined to consider his argument on appeal. Custer v. State, 135 P.3d 620 (Wyo. 2006).

When defendant was charged with multiple counts of third degree sexual assault based on inappropriate contact with his chiropractic patients, the requirements of this rule were not

precisely followed in the conditional plea proceedings because the plea agreement was not in writing. However, the record was clear that the issue to be preserved for appeal was whether or not a chiropractor held a position of authority over his patient for purposes of the applicable sexual assault statutes; the Supreme Court of Wyoming exercised its discretion to address the substantive issue. Faubion v. State, 233 P.3d 926 (Wyo. 2010).

Premeditation may be inferred. — When a conviction for first-degree murder is reviewed on appeal, deliberation and premeditation as the basis for conviction of murder may be inferred from the facts and circumstances surrounding the killing; this rule applies to both a jury's finding of deliberation and premeditation and a judge's determination of the factual basis for a plea of guilty to first-degree murder. Rude v. State, 851 P.2d 15 (Wyo. 1993).

Defenses of unconsciousness and not guilty by reason of mental illness separate. — The defense of unconsciousness resulting from a concussion with no permanent brain damage is an affirmative defense and is a defense separate from the defense of not guilty by reason of mental illness or deficiency. Fulcher v. State, 633 P.2d 142 (Wyo. 1981).

Failure to prove plea conditional. — For case in which defendant failed to prove his guilty plea was made conditionally, see Smith v. State, 871 P.2d 186 (Wyo. 1994).

Disclosure requirement. — Full disclosure of the details of plea agreements is imperative to reliably guarantee that guilty pleas are knowing and voluntary and fully understood by the court and the parties themselves. Browning v. State, 32 P.3d 1061 (Wyo. 2001).

Applicability of advisement requirement. — Where defendant challenged that portion of the original sentencing order relating to the imposition of assessments for the court automation fee, public defender fees and the Wyoming Victims' Compensation Fund, arguing that he was not informed of the possibility or specific amounts of such, his argument was misguided as none of the challenged assessments fell within the definition of restitution. Whitten v. State, 110 P.3d 892 (Wyo. 2005).

Restitution is part of the "maximum possible penalty provided by law" for the purposes of this rule, and, therefore, the trial judge must inform the defendant of the court's power to order restitution, although the exact amount or upper limit of restitution need not be specified at the time of the plea. Keller v. State, 723 P.2d 1244 (Wyo. 1986).

There is no requirement that court advise defendant of possibility of consecutive sentences. — The rule only requires that the defendant be informed of the maximum sentence for each offense. Duffy v. State, 789 P.2d 821 (Wyo. 1990).

Requirements of rule held followed. — Where the record clearly showed that the trial court personally addressed the defendant and made sufficient inquiry of him to support a finding that the plea was voluntary, and that the defendant clearly understood the nature of the charge against him and the consequences of the plea, the requirements of this rule were followed. McGiff v. State, 514 P.2d 199 (Wyo. 1973), cert. denied, 415 U.S. 992, 94 S. Ct. 1592, 39 L. Ed. 2d 889 (1974); Matlack v. State, 695 P.2d 635 (Wyo.), cert. denied, 472 U.S. 1030, 105 S. Ct. 3508, 87 L. Ed. 2d 638 (1985).

Because defendant's no contest plea agreement did not contain an agreement on sentencing and was not of the type specified in this section, the trial court was not required to advise defendant about whether or not his plea could be withdrawn. Sena v. State, 233 P.3d 993 (Wyo. 2010).

Appellate court rejected defendant's argument that his plea to sex offenses with minors was not knowing or voluntary, or that the trial court improperly failed to inform him that he could withdraw from the plea, when defendant failed to comply with a condition precedent for the State's probationary plea recommendation. Schade v. State, 53 P.3d 551 (Wyo. 2002).

Appeal from conditional plea. — Defendant did not waive the right to appeal when a conditional guilty plea was entered in a drug case; however, defendant did not have a right to appeal state constitutional issues that were not raised before the district court. Lindsay v. State, 108 P.3d 852 (Wyo. 2005).

Withdrawal of pleas generally. — A defendant does not enjoy an absolute right to withdraw a plea of guilty prior to imposition of sentence. Nixon v. State, 4 P.3d 864 (Wyo. 2000).

In a kidnapping case, a court did not err by denying defendant's motion to withdraw his plea where defendant entered into the plea intelligently, knowingly, and voluntarily, he failed to supply the district court with any fair and just reason for withdrawing the plea, and the record manifestly demonstrated the district court's compliance with the rule in accepting the plea. Major v. State, 83 P.3d 468 (Wyo. 2004).

Even when the defendant provides a plausible or just and fair reason for withdrawal of the plea of guilty, the denial of the defendant's motion does not amount to an abuse of discretion if the trial court conducts a careful hearing pursuant to the statute at which the defendant enters a plea or pleas of guilty that is knowing, voluntary, and intelligent. Stout v. State, 35 P.3d 1198 (Wyo. 2001).

Trial court did not abuse its discretion in denying the defendant's request to withdraw his guilty plea even if defendant was confused by what his counsel had told him as colloquy between the court and the defendant during the plea hearing indicated that the defendant understood he was waiving certain rights, including the right to a trial, and wanted to proceed

with entering the guilty plea. Stout v. State, 35 P.3d 1198 (Wyo. 2001).

Defendant's extreme nervousness after traffic stop did not suffice for defendant's illegal detention, subsequent impermissible seizure, and pat-down search; suppression of the evidence of marijuana found in defendant's trunk was required, and defendant was allowed to withdraw his conditional plea of guilty. Damato v. State, 64 P.3d 700 (Wyo. 2003).

Trial court's conclusion that defendant did not come forward with any fair and just reason for the withdrawal of his nolo contendere plea to sexual assault was not clearly erroneous as defendant did not assert his innocence or make a credible argument that the State would not be prejudiced by a grant of the withdrawal, his motion was not promptly filed, the record supported a conclusion that defendant was represented by a series of very competent public defenders, his plea was knowing and voluntary, and the withdrawal of the plea would have wasted judicial resources. McCard v. State, 78 P.3d 1040 (Wyo. 2003).

There was no violation of Wyo. R. Crim. P. 11 based on an alleged failure to advise defendant of the immigration consequences of pleading to a lesser drug charge; therefore, no evidentiary hearing was required on a motion to withdraw the plea since there was no relief available, and no ineffective assistance of counsel claim was alleged. Valle v. State, 132 P.3d 181 (Wyo. 2006).

Defendant's motion to withdraw his guilty plea based on claim of ineffective counsel was properly denied by the district court ;at the motion hearing, defendant did not testify and did not call his counsel as a witness, defendant acknowledged that Wyo. R. Crim. P. 11 was complied with, and the court's independent review of the transcript confirmed that the plea was voluntarily and knowingly given. Hirsch v. State, 135 P.3d 586 (Wyo. 2006).

Trial court did not err in denying defendant's motion to withdraw a guilty plea to felony child abuse because the trial court had conducted a thorough and careful hearing in accordance with the rule, wherein defendant entered a knowing, voluntary, and intelligent guilty plea. Kruger v. State, 268 P.3d 248 (Wyo. 2012).

Juvenile delinquency disposition. — In a proceeding to revoke appellant juvenile's probation and change her disposition to placement at Wyoming Girls' School, the juvenile court's consideration of appellant's statement to the multi-disciplinary team that she would not follow the rules at the juvenile home did not violate appellant's right to due process. The juvenile court was not required to advise her of the maximum penalty she might face if she admitted violating the terms of her probation, because this rule of criminal procedure was inapplicable in the juvenile delinquency setting. K.C. v. State, 257 P.3d 23 (Wyo. 2011).

Applied in Cox v. State, 494 P.2d 541 (Wyo. 1972); Hurst v. Meacham, 502 P.2d 997 (Wyo. 1972); King v. State, 720 P.2d 465 (Wyo. 1986); Reynoldson v. State, 737 P.2d 1331 (Wyo. 1987); Dichard v. State, 844 P.2d 484 (Wyo. 1992); Lovato v. State, 901 P.2d 408 (Wyo. 1995); Kaldwell v. State, 908 P.2d 987 (Wyo. 1995); Haddock v. State, 909 P.2d 974 (Wyo. 1996); Bird v. State, 939 P.2d 735 (Wyo. 1997); McChesney v. State, 988 P.2d 1071 (Wyo. 1999).

Quoted in Osborn v. State, 806 P.2d 259 (Wyo. 1991); Bailey v. State, 12 P.3d 173 (Wyo. 2000); Heilig v. Wyo. Game & Fish Comm'n, 64 P.3d 734 (Wyo. 2003); Keats v. State, 115 P.3d 1110 (Wyo. 2005).

Cited in Haley v. Dreesen, 532 P.2d 399 (Wyo. 1975); Schmidt v. State, 738 P.2d 1105 (Wyo. 1987); Boyd v. State, 747 P.2d 1143 (Wyo. 1987); Sword v. Shillinger, 782 P.2d 1117 (Wyo. 1989); Coleman v. State, 843 P.2d 558 (Wyo. 1992); Solis v. State, 851 P.2d 1296 (Wyo. 1993); Mehring v. State, 860 P.2d 1101 (Wyo. 1993); Westmark v. State, 864 P.2d 1031 (Wyo. 1993); Vernier v. State, 909 P.2d 1344 (Wyo. 1996); Gronski v. State, 910 P.2d 561 (Wyo. 1996); Callaway v. State, 954 P.2d 1365 (Wyo. 1998); Burdine v. State, 974 P.2d 927 (Wyo. 1999); Almada v. State, 994 P.2d 299 (Wyo. 1999); Nixon v. State, 18 P.3d 631 (Wyo. 2001); Misenheimer v. State, 27 P.3d 273 (Wyo. 2001), cert. denied, 534 U.S. 1092, 122 S. Ct. 836, 151 L. Ed. 2d 716 (2002); Lee v. State, 36 P.3d 1133 (Wyo. 2001), cert. denied, 535 U.S. 1103, 122 S. Ct. 2307, 152 L. Ed. 2d 1062 (2002); Anderson v. State, 43 P.3d 108 (Wyo. 2002); Goulart v. State, 76 P.3d 1230 (Wyo. 2003); Bush v. State, 79 P.3d 1178 (Wyo. 2003); Wilkins v. State, 104 P.3d 85 (Wyo. 2005); Jelle v. State, 119 P.3d 403 (Wyo. 2005); Bouch v. State, 143 P.3d 643 (Wyo. 2006); Floyd v. State, 144 P.3d 1233 (Wyo. 2006); Moulton v. State, 148 P.3d 38 (Wyo. 2006); Bowser v. State, 205 P.3d 1018 (Wyo. 2009); Royball v. State, 210 P.3d 1073 (Wyo. 2009); Sutton v. State, 220 P.3d 784 (Wyo. 2009).

Law reviews. — For comment discussing the constitutional requirements for guilty pleas, see VI Land & Water L. Rev. 753 (1971).

For comment, "Competency to Stand Trial and the Insanity Defense in Wyoming — Some Problems," see X Land & Water L. Rev. 229 (1975).

For comment on Cardenas v. Meacham, 545 P.2d 632 (Wyo. 1976), and procedure requisite to accepting a guilty plea in Wyoming, see XI Land & Water L. Rev. 607 (1976).

Am. Jur. 2d, ALR and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 600 to 769.

Modern status of rules as to burden and sufficiency of proof of mental irresponsibility in criminal case, 17 ALR3d 146.

Mental or emotional condition as diminishing responsibility for crime, 22 ALR3d 1228.

Defendant's appeal from plea conviction as affected by prosecutor's failure or refusal to dismiss other pending charges, pursuant to plea agreement, until expiration of time for

appeal, 86 ALR3d 1262.

Validity and effect of criminal defendant's express waiver of right to appeal as part of negotiated plea agreement, 89 ALR3d 864.

Accused's right to sentencing by same judge who accepted guilty plea entered pursuant to plea bargain, 3 ALR4th 1181.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged, 5 ALR4th 1128.

Adequacy of defense counsel's representation of criminal client regarding plea bargaining, 8 ALR4th 660.

Waiver, after not guilty plea, of jury trial in felony case, 9 ALR4th 695.

Right of prosecutor to withdraw from plea bargain prior to entry of plea, 16 ALR4th 1089.

Guilty plea safeguards as applicable to stipulation allegedly amounting to guilty plea in state criminal trial, 17 ALR4th 61.

Sufficiency of court's statement, before accepting plea of guilty, as to waiver of right to jury trial being a consequence of such plea, 23 ALR4th 251.

Power or duty of state court, which has accepted guilty plea, to set aside such plea on its own initiative prior to sentencing or entry of judgment, 31 ALR4th 504.

Competency to stand trial of criminal defendant diagnosed as "schizophrenic" — modern state cases, 33 ALR4th 1062.

Admissibility of results of computer analysis of defendant's mental state, 37 ALR4th 510.

Admissibility, in prosecution in another state's jurisdiction, of confession or admission made pursuant to plea bargain with state authorities, 90 ALR4th 1133.

Presentence withdrawal of plea of nolo contendere or non vult contendere under state law-Awareness of collateral consequences of plea, and competency to enter plea, 10 A.L.R.6th 265.

Propriety of sentencing judge's imposition of harsher sentence than offered in connection with plea bargain rejected or withdrawn plea by defendant-State cases, 11 A.L.R.6th 237.

Presentence withdrawal of plea of nolo contendere or non vult contendere under state law-Assertion or finding of innocence and defendant's knowledge or waiver of other particular rights at time of plea, 12 A.L.R.6th 389.

Presentence withdrawal of plea of nolo contendere or non vult contendere under state law-Newly discovered or available evidence, and possible defense, 14 A.L.R.6th 517.

Presentence withdrawal of plea of nolo contendere or non vult contendere under state law-Sentencing and punishment issues; ineffective assistance of counsel, 15 A.L.R.6th 173.

Effect, under Rule 11(e) of Federal Rules of Criminal Procedure, of plea bargain based on offer of leniency toward person other than accused, 50 ALR Fed 829.

Standards of Rule 11 of Federal Rules of Criminal Procedure, requiring personal advice to accused from court before acceptance of guilty plea, as applicable where accused's stipulation or testimony allegedly amounts to guilty plea, 53 ALR Fed 919.

Prohibition of federal trial judge's participation in plea bargaining negotiations under Rule 11(e)(1) of the Federal Rules of Criminal Procedure, 56 ALR Fed 529.

What constitutes "rejection" of plea agreement under Rule 11(e)(4) of the Federal Rules of Criminal Procedure, allowing withdrawal of plea if court rejects agreement, 60 ALR Fed 621.

When is statement of accused made in connection with plea bargain negotiations so as to render statement inadmissible under Rule 11(e)(6) of the Federal Rules of Criminal Procedure, 60 ALR Fed 854.

Use of plea bargain or grant of immunity as improper vouching for credibility of witness in federal cases, 76 ALR Fed 409.

Pathological gambling as basis of defense of insanity in federal criminal case, 76 ALR Fed 749.

Right of access to federal district court guilty plea proceeding or records pertaining to entry or acceptance of guilty plea in criminal prosecution., 118 ALR Fed 621.

Choice of remedies where federal prosecutor has breached plea bargain—post-Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) cases., 120 ALR Fed 501.

Prohibition of Federal Judge's Participation in Plea Bargaining Negotiations under Rule 11(e) of Federal Rules of Criminal Procedure, 161 ALR Fed 537.

II. PURPOSE AND NATURE.

A. Voluntariness.

The purpose of this rule is to fix a guideline for the court to follow in determining whether a plea is voluntary. Britain v. State, 497 P.2d 543 (Wyo. 1972); Cardenas v. Meacham, 545 P.2d 632 (Wyo. 1976).

The purpose of this rule is to establish a guideline for the determination of the voluntariness of a plea of guilty. State v. Rosachi, 549 P.2d 318 (Wyo. 1976).

The frequently reiterated purpose of this rule is to allow the judge to determine whether the defendant entered the plea voluntarily and with an understanding of the consequences of the plea. Smallwood v. State, 748 P.2d 1141 (Wyo. 1988).

This rule is intended to insure that a plea by a defendant is intelligent, knowing, and voluntary. Bird v. State, 901 P.2d 1123 (Wyo. 1995), aff'd, 939 P.2d 735 (Wyo. 1997).

Validity of guilty plea. — A guilty plea is valid when it is a voluntary and intelligent choice from a defendant's alternative courses of action; a voluntary guilty plea is entered with full awareness of the direct consequences, and

it must stand unless induced by threats, misrepresentation, or improper promises. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

Prior conviction was properly used for felony enhancement purposes, as the trial judge's plea colloquy for the prior conviction met the plea advisement requirements of W. Va. R. Crim. P. 11(b), including defendant's acknowledgement that he was not promised anything or coerced into pleading guilty, and defendant signed a statement of his constitutional rights, which, among other things, advised him of the right to counsel. Derrera v. State, 327 P.3d 107 (Wyo. 2014).

Failure to establish voluntariness unconstitutional. — The failure on the part of the court to establish the voluntariness of a guilty plea deprives the defendant of his constitutional right of due process. Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

Where defendant does not speak English, trial judge has special burden to determine that the guilty plea is voluntary. Sanchez v. State, 592 P.2d 1130 (Wyo. 1979).

Factual basis and understanding of law required. — In the absence of a showing of a factual basis for the plea it would be wrong to accept a guilty plea coupled with a protestation of innocence in the absence of sufficient inquiry by the court. The court must also be satisfied that the defendant possesses an understanding of the law in relation to the facts. Sanchez v. State, 592 P.2d 1130 (Wyo. 1979).

Guilty plea was supported by an adequate factual basis proving voluntariness where defendant was given appropriate admonitions regarding, inter alia, maximum terms and fines, court costs, and restitution, and was advised that defendant would lose certain civil rights and waived any defenses and the presumption of innocence. Jones v. State, 203 P.3d 1091 (Wyo. 2009).

One way to establish factual basis for plea is to have the accused describe the conduct that gave rise to the charge. Where this does not yield the desired result, something more obviously needs to be done. Sanchez v. State, 592 P.2d 1130 (Wyo. 1979).

Reading indictment, information, may discharge court's obligations. — The court complies with the intent of this rule if a defendant is not misled into the waiver of substantial rights which attends a guilty plea. In some circumstances the court may discharge this obligation by simply reading the indictment or information to the defendant and permitting him the opportunity to ask questions. Peper v. State, 768 P.2d 26 (Wyo. 1989).

Inquiry by court adequate. — Where the court made a sufficient inquiry and was satisfied with the factual basis for the plea, there was no abuse of discretion in denying defendant's motion to withdraw the guilty pleas based on the fact that defendant did not understand the nature of the charges. Barnes v. State, 951 P.2d 386 (Wyo. 1997).

In a no contest plea, defendant was adequately informed of the nature of and understood the charge of third offense of battery against a household member, and the trial court was not required to read to him the text of this section because defendant had a lengthy criminal history, including several previous convictions on charges of battery against household members; he was represented by an experienced defense attorney, who informed the trial court that he had gone over the affidavit of probable cause with defendant, who did not contest it; the uncontested probable cause affidavit alleged that defendant had two prior convictions for domestic violence; and defendant explicitly confirmed that he understood the charge. Sena v. State, 233 P.3d 993 (Wyo. 2010).

Guilty plea adequately scrutinized. — Where the prosecuting attorney recited a summary of the charges and the facts that established a crime, and the defendant, upon being addressed by the court, stated that he understood the charges and that the facts recited by the prosecuting attorney were correct, the district court adequately scrutinized the guilty plea and determined that there was a factual basis for the plea. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

A defendant's plea hearing was adequate where (1) the defendant was thoroughly advised by the court of his rights and the ramifications of his decision to plead nolo contendere to the charge, (2) was assisted by competent counsel, (3) indicated that he understood the court's advisements, and (4) answered all questions directed by the court with clarity. Johnson v. State, 922 P.2d 1384 (Wyo. 1996).

Pleas coerced by third party. — Due process is generally offended only when a plea is coerced by conduct fairly attributable to the state, such as from the judge or prosecutor; coercion by third parties not representing the state or the defendant has generally not been found to invalidate a plea. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

Defendant sufficiently informed of right to persist in not guilty plea. — Where, at his initial arraignment, the district court advised defendant that he had a right to plead not guilty, the district court informed defendant that if he persisted in that plea, a trial would be held where the state would be required to prove his guilt beyond a reasonable doubt and during the change of plea proceeding, when defendant began to equivocate about the factual basis for the charge, the district court reiterated to defendant that he did not have to enter a guilty plea at that time but defendant affirmed that he wanted to enter the guilty plea defendant was sufficiently informed of his right to persist in a not guilty plea. McCarty v. State, 883 P.2d 367 (Wyo. 1994).

Totality of the circumstances. — When

the totality of the circumstances was considered, there was no doubt that defendant made a voluntary and intelligent choice to enter a guilty plea; his guilty plea was the result of a carefully bargained for plea agreement which included promises from the state not to pursue other charges and to request that pending federal prosecution be held in abeyance and defendant admitted that his counsel had explained this agreement to him in detail and that they had discussed possible defenses at length. Faced with overwhelming evidence of guilt, defendant made a carefully considered decision to plead guilty to aggravated assault and battery and gain the benefit of a treatment as a first offender. McCarty v. State, 883 P.2d 367 (Wyo. 1994).

Plea knowing and voluntary. — Plea to kidnapping was knowing and voluntary where, although defendant's attitude was hostile, he was advised of the nature of the plea, the penalties, and the consequences, and he repeatedly affirmed that he understood the proceedings. Major v. State, 83 P.3d 468 (Wyo. 2004).

Defendant's guilty plea was voluntary, even though it may have been motivated in part by his desire to obtain the state's agreement not to prosecute his wife, because the record suggested that he was fully aware of the direct consequences of his plea, there was no indication from the record that defendant's plea was induced by threats, misrepresentation, or improper promises, and there was no indication that the state manufactured the potential charges against defendant's wife in order to pressure defendant into pleading guilty. Maes v. State, 114 P.3d 708 (Wyo. 2005).

District court properly denied motion to withdraw guilty plea based on claim that plea was not voluntary, where court provided the appropriate advisements to defendant, including a comprehensive summary of the charge and explanation of the penalties associated with the charge. Follett v. State, 132 P.3d 1155 (Wyo. 2006).

Court properly denied defendant's motion to withdraw his guilty plea because defendant's guilty plea to sexual assault was voluntarily entered; the court engaged in the required colloquy, defendant indicated that he understood his rights, defendant stated that he both discussed the agreement with his attorney and understood it, and after pleading guilty, defendant answered questions by his attorney to establish the factual basis. Palmer v. State, 174 P.3d 1298 (Wyo. 2008).

Restitution obligation. — District court properly advised defendant, prior to acceptance of his guilty plea, of his potential restitution obligation where the court specifically advised defendant that there were money losses, and that he might well be required to pay those as restitution and he confirmed that he had understood the advisement and had no questions. Whitten v. State, 110 P.3d 892 (Wyo. 2005).

B. Strict Adherence.

Rule inapplicable to post-conviction proceedings. — A petition for post-conviction relief was properly dismissed, where, although the trial court did not comply with subdivision (b) at a change-of-plea proceeding, the court discharged its constitutional obligations and duties to the accused. Gist v. State, 768 P.2d 1054 (Wyo. 1989).

Compliance with rule condition precedent to acceptance of guilty plea. — A condition precedent to the court's acceptance of the proposition that an accused has effectively changed his plea from not guilty to guilty, and thus made up an issue upon which judgment could be entered and sentence pronounced, is a showing on the record that this rule has been complied with. Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

And failure to comply unconstitutional. — Strict compliance with this rule is required in order that the accused's due process rights be satisfied, because failure to strictly adhere to this rule will inevitably result in reversal. Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

Compliance by installments insufficient. — The failure to advise the defendant of his rights at the time the guilty plea was accepted, and the failure to disclose the plea agreement on the record, required reversal of the case. An attempted compliance with subdivision (b) by installments was insufficient. Crawford v. State, 701 P.2d 1150 (Wyo. 1985).

Record must affirmatively show that the judge, at the time the plea is received, has informed the defendant of the maximum limits of the penalty as a prerequisite to the discharge of the court's obligation imposed by this rule. Cardenas v. Meacham, 545 P.2d 632 (Wyo. 1976).

The record must affirmatively show that the judge personally informed the defendant of the maximum possible penalty in order to comply with subdivision (b). Smallwood v. State, 748 P.2d 1141 (Wyo. 1988).

Effect of careful and complete compliance. — If record demonstrates careful and complete compliance with this rule, trial court does not abuse its discretion in refusing to permit withdrawal of a guilty plea. Brock v. State, 981 P.2d 465 (Wyo. 1999).

Sufficient factual basis. — There was sufficient factual basis for the court to accept a plea to the charge of felonious restraint under Rule 11(f), W.R.Cr.P., where the victim had been exposed to a risk of serious bodily injury as the victim of a restrained, forcible nonconsensual sexual act. Sami v. State, 85 P.3d 1014 (Wyo. 2004).

Sufficiency of allocution. — Complete descriptions of the elements are not mandatory in accepting a plea. Reyna v. State, 33 P.3d 1129 (Wyo. 2001).

Defendant must know maximum penalty for charge. — While the trial court erred

by failing to ask a defendant personally about his understanding of the maximum penalty for the charge to which he was pleading guilty, the error was harmless beyond a reasonable doubt inasmuch as the defendant himself correctly advised the court that he knew the maximum penalty for manslaughter to be 20 years. Stice v. State, 799 P.2d 1204 (Wyo. 1990).

Defendant was informed, and understood, that the maximum possible penalty for the crime of third offense domestic battery was five years imprisonment; because probation under Wyo. Stat. Ann. § 7-13-1303(a) of the Wyoming Addicted Offender Accountability Act was not the maximum possible penalty provided by law, the trial court was not required to inform defendant of the possibility of probation. Sena v. State, 233 P.3d 993 (Wyo. 2010).

Overstatement of maximum sentence harmless error. — Even though the trial court did furnish erroneous advice as to the maximum sentence, that advice overstated rather than understated the sentence; thus, the defendant's substantial rights were not affected and he was not prejudiced by the overstatement of sentence. Bird v. State, 901 P.2d 1123 (Wyo. 1995), aff'd, 939 P.2d 735 (Wyo. 1997).

Overstatement of sentence error. — The district court violated paragraph (b)(1) requirements by failing to correctly inform the defendant of the maximum penalties which could be imposed if defendant plead guilty. Had the defendant been correctly informed, defendant may have elected to go to trial since the incorrect maximum penalties led defendant to believe that more lenient sentences were being received in exchange for the guilty pleas; imposing new sentences within the statutory guidelines cannot correct this defect. Rodriguez v. State, 917 P.2d 172 (Wyo. 1996).

Failure to advise defendant on restitution required reversal despite defendant's being aware of the possibility that restitution would be a part of the sentence. Keller v. State, 723 P.2d 1244 (Wyo. 1986).

Failure to advise on regulatory measures. — Because § 7-19-302, requiring convicted sex offenders to register with the county sheriff, is a regulatory measure rather than part of a sex offender's penalty or punishment, a court does not commit error by failing to advise a defendant about the registration requirement and consequences of failing to so register prior to accepting the defendant's plea under this rule. Johnson v. State, 922 P.2d 1384 (Wyo. 1996).

Harmless error in advice concerning minimum sentence. — Although trial court erred in alluding to possibility of probation for first degree murder, error was harmless beyond any reasonable doubt where court stated that defendant could realistically expect a life sentence at the very least, and defendant responded that he understood, and record did not support any claim that defendant relied upon erroneous advice in changing his pleas to guilty. Nixon v. State, 4 P.3d 864 (Wyo. 2000).

III. PLEA AGREEMENT.

Discretionary application. — The discretionary means by which the trial court informed defendant of the nature of the charges and determined that he understood was sufficient to result in voluntary pleas of guilty. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

Conditional guilty plea was not entered in a driving under the influence of alcohol case because there was no reservation of the right to appeal in writing under Wyo. R. Crim. P. 11(a)(2), there was no mention of the issues that defendant intended to appeal, the court approval and State consent requirements might not have been met, and, even though an issue alleging a violation of Fourth Amendment, U.S. Const. amend. IV, and Wyo. Const. art. 1, § 4 at an initial stop was dispositive, two other issues raised were not; there was no unconditional guilty plea entered because defendant did not voluntarily waive the right to appeal. Case law dealing with Fed. R. Crim. P. 11 was relied upon in deciding the case because it was nearly identical to Wyo. R. Crim. P. 11(a)(2). Walters v. State, 197 P.3d 1273 (Wyo. 2008).

Procedure for accepting bargained plea. — See Cardenas v. Meacham, 545 P.2d 632 (Wyo. 1976); Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

Presence of defendant. — When accepting a guilty plea in defendant's absence, a court must read subsection (b) of this rule in conjunction with Rule 43(c)(2), W.R.Cr.P., and adapt the procedure of subsection (b) so that defendants are afforded the fundamental protections outlined therein. State v. McDermott, 962 P.2d 136 (Wyo. 1998).

Prosecutor must follow plea agreement. — Prosecutor must explicitly stand by the terms agreed upon in the guilty plea and may not play "fast and loose" with the established terms reached between the parties in a plea agreement. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

Plea agreement not breached. — Prosecutor did not breach the terms of the plea agreement where the record showed that the attorney for the State followed the explicit terms of the agreement, in conjunction with Wyo. R. Crim. P. 11(e)(1)(B), and made the required recommendation; the probation agent preparing the presentence investigation report acted as an agent of the sentencing court, not of the prosecution, and was not bound by the plea agreement, and there was no evidence to suggest that the prosecutor improperly influenced the probation agent or otherwise undermined the State's sentencing recommendation. White v. State ex rel. Wyo. DOT, 210 P.3d 1096 (Wyo. 2009).

State responsible for providing informa-

tion. — The fact that this rule allows the State to bargain away its opportunity to argue for a particular sentence does not include avoiding responsibility to provide complete information about the person to be sentenced. Jackson v. State, 902 P.2d 1292 (Wyo. 1995).

No mens rea requirement. — Since no mens rea requirement existed that defendant realize his status as a convicted felon before pleading guilty to being a felon in possession of a firearm, the State adequately supported the findings that defendant knowingly possessed a firearm and that he was a convicted felon who had not been pardoned; therefore a sufficient factual basis existed for his plea of guilty. Poole v. State, 152 P.3d 412 (Wyo. 2007).

Providing information does not violate plea agreement. — Efforts by the state to provide relevant factual information are not tantamount to taking a position on the sentence and will not violate a plea agreement. Jackson v. State, 902 P.2d 1292 (Wyo. 1995).

Although the state promised to "stand silent" at the time of sentencing, that promise did not require the prosecutor to withhold from the district court pertinent information on the defendant's background and character. Jackson v. State, 902 P.2d 1292 (Wyo. 1995).

Conditional guilty plea permissible. — Defendant's plea of guilty, conditioned upon preservation of the right to appeal Interstate Agreement on Detainers Act and speedy trial issues, was permissible because at the time defendant's plea of guilty was formally entered, the new rule was in effect allowing for a conditional plea of guilty. Knox v. State, 848 P.2d 1354 (Wyo. 1993).

Refusal to plead treated as "not guilty" plea. — If an accused neglects to plead or if the court neglects to take his plea, if the accused's answer is evasive or if he stands mute, his refusal or failure, or the court's neglect, will render the status of the plea proceedings to be as though the plea was "not guilty." Hoggatt v. State, 606 P.2d 718 (Wyo. 1980).

Court did not need to inform defendant of specific intent necessary for conviction before accepting his guilty plea since first-degree sexual assault is a general intent crime. Bryan v. State, 745 P.2d 905 (Wyo. 1987).

Court need not advise defendant of collateral consequence of habitual offender status when accepting a plea of guilty. Johnston v. State, 829 P.2d 1179 (Wyo. 1992).

Nor possible deportation or extradition. — Possible deportation, or extradition to another country, is a speculative and collateral consequence of a guilty plea at best, and is not a part of the information which must be conveyed to a defendant under this rule. Carson v. State, 755 P.2d 242 (Wyo. 1988).

Failure to inform of maximum penalty harmless error. — Trial court's failure to comply with subdivision (b) was harmless constitutional error, since the record indicated that murder defendant already had personal knowledge of that maximum penalty. Stice v. Shillinger, 838 F. Supp. 1548 (D. Wyo. 1993).

Court not bound by recommended sentence. — The court is not bound by any part of a plea bargain until such time as it accepts the bargain, thereby agreeing to be bound by it. A recommendation, however, is not binding upon the court even after acceptance of the plea, since it is only a recommendation of a particular sentence or a commitment not to oppose defendant's request. Percival v. State, 745 P.2d 557 (Wyo. 1987).

Plea agreement was a recommendation under Wyo. R. Crim. P. 11(e)(1)(B), rather than a binding agreement under Wyo. R. Crim. P. 11(e)(1)(C), where the district court had unequivocally stated that the agreement was a nonbinding recommendation and that the appellant would not be allowed to withdraw his plea, and the appellant indicated that he understood and offered no objections. Frederick v. State, 151 P.3d 1136 (Wyo. 2007).

Illegal sentence recommendation in plea. — In defendant's attempted second degree murder case, the court's error in failing to properly advise defendant pursuant to Wyo. R. Crim. P. 11 was not harmless because, had the court recited the minimum and maximum penalties at the change of plea hearing, the fact that the state could not recommend a maximum sentence of 20 years would have become obvious. Thus, the court's acceptance of a plea agreement which included an illegal sentence recommendation further undermined the validity of defendant's no contest pleas. Thomas v. State, 170 P.3d 1254 (Wyo. 2007).

Where defendant not questioned, no error in failure to give admonition on perjury. — Where a defendant in a criminal prosecution is not asked any questions under oath, no error results by a failure to give him an admonition that the court can ask him questions which can be used against him in a proceeding for perjury. York v. State, 619 P.2d 391 (Wyo. 1980); Coleman v. State, 827 P.2d 385 (Wyo. 1992).

Attempt to kill supported by factual basis. — Although intoxication may operate as a defense to first-degree murder to the extent that it negates a finding of premeditated malice, where the defendant, at his arraignment, made the statement that he "went drinking and went to kill both of us," and clearly stated that he intended to kill his ex-wife if she did not agree to resume their relationship, the court's finding that the defendant attempted, with premeditated malice, to kill his former wife was supported by a factual basis. Barron v. State, 819 P.2d 412 (Wyo. 1991).

Sufficient factual basis for plea. — There was a sufficient factual basis for the district court to accept defendant's attempted manslaughter guilty plea because defendant conceded that he pulled a gun and pointed it at his

friend, and the state was prepared to offer other testimony at trial showing that defendant also pointed the gun at his wife and that he made statements both to his wife and his friend to the effect that he was going to kill them. Maes v. State, 114 P.3d 708 (Wyo. 2005).

Agreement deemed accepted upon acceptance of guilty plea. — The defendant contended that the judge failed to tell him, during the course of the arraignment, whether a plea agreement had been accepted or rejected. However, when the court accepted the defendant's guilty plea to an escape charge, and entered an order dismissing a charge of receiving stolen property, the plea agreement was accepted and fully complied with at that time. Angerhofer v. State, 758 P.2d 1041 (Wyo. 1988).

Guilty plea when plea bargaining rejected by court. — Where the plea bargain was thoroughly discussed in detail and the appellant was unmistakably informed that the court was not bound by the plea bargain, the guilty plea cannot be said to be based upon incomprehension or misinterpretation. Hanson v. State, 590 P.2d 832 (Wyo. 1979).

Nolo contendere does not require factual basis. — A district court need not obtain a factual basis when accepting a plea of nolo contendere, so long as the charging document, whether it be an information, indictment, or other charging form, contains an accurate and complete statement of all the elements of the crime charged. Peitsmeyer v. State, 21 P.3d 733 (Wyo. 2001).

When defendant pled nolo contendere to aggravated assault and battery, it was unnecessary for the court accepting the plea to establish a factual basis for the plea because the plea was a nolo contendere plea and the information accurately stated the charge's elements. Van Haele v. State, 90 P.3d 708 (Wyo. 2004).

District court adequately described the nature of the abuse of a vulnerable adult charge, and because it accurately and completely recited the elements of the charge, no factual basis was necessary; because defendant pleaded nolo contendere to the abuse of a vulnerable adult charge, the district court was only required to ensure that the Information contained an accurate and complete statement of all the elements of the crime charged. Williams v. State, 354 P.3d 954 (Wyo. 2015).

Nolo contendere plea acceptable without determination of accuracy. — The court may accept a plea of nolo contendere without first satisfying itself that the defendant committed the crime charged, as it must do on a plea of guilty. State v. Steele, 620 P.2d 1026 (Wyo. 1980).

Failure to procure drug treatment not prejudicial. — The petitioner, who claimed that his counsel failed to procure inpatient drug treatment as part of the plea bargain, was not prejudiced, where the trial court detailed the provisions of the plea agreement petitioner had signed, determined that no other promises had been made to him, and clearly told him that it was not bound to accept any plea agreement. Lower v. State, 786 P.2d 346 (Wyo. 1990).

Admissibility of statements made during plea hearing. — The court did not commit plain error when it allowed the prosecution to read statements in the presence of the jury which were previously made by the defendant during his unsuccessful attempt to establish a factual basis for a guilty plea. The facts revealed by the defendant's prior testimony were supported by the testimony of other witnesses at the trial which was not related to the plea hearing. Rands v. State, 818 P.2d 44 (Wyo. 1991).

Notice of withdrawal opportunity not necessary. — This rule only requires that the defendant be given an opportunity to change his plea if the court does not accept the plea bargain. The court goes beyond its duty by informing the defendant that if the court does not accept any part of the plea bargain, he will be given an opportunity to change his plea. Percival v. State, 745 P.2d 557 (Wyo. 1987).

Withdrawal of plea where plea bargain rejected. — Under former Rule 15, the trial court was not required to inform the defendant that if the sentences recommended in the plea bargain were rejected, he would not be permitted to withdraw his plea. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

Entry of a second guilty plea resulted in waiver of right to appeal rejection of earlier plea agreement. — In a prosecution for aggravated vehicular homicide, the entry of a second guilty plea (a "cold plea") acted as a waiver of defendant's right to appeal the district court's rejection of an earlier plea agreement, allowing for a suspended prison sentence and supervised probation, and of defendant's right to appeal the limitation of a reconsideration hearing to 15 minutes. Defendant had made no suggestion that his second plea was anything but voluntary, and he did not contend that the district court's discretionary decisions concerning the plea agreement were jurisdictional in nature. Cohee v. State, 110 P.3d 267 (Wyo. 2005).

Opportunity to withdraw does not extend to sentencing recommendations. — The opportunity to withdraw a plea permitted by former Rule 15(e)(4) does not extend to the trial court's rejection of sentencing recommendations. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

The failure to comply with subdivision (e)(2), which requires that a court advise the defendant that if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea, may require reversal of a conviction and remand for the purpose of permitting the defendant to withdraw his plea if he so chooses, though it may also be treated as harmless error.

Stowe v. State, 10 P.3d 551 (Wyo. 2000).

Defendant wanting full evidentiary hearing should so advise court. — A trial judge does not abuse his discretion in refusing withdrawal of a guilty plea when he carries on a careful and complete hearing under this rule. If the defendant wants a full evidentiary hearing, he should advise the trial court that he wants to introduce evidence to support his motion. Chorniak v. State, 715 P.2d 1162 (Wyo. 1986).

Withdrawal of guilty plea before sentencing is within sound discretion of trial court unless there is presented a plausible reason for withdrawal. Hanson v. State, 590 P.2d 832 (Wyo. 1979).

And is not absolute right. — The withdrawal of a plea of guilty before sentencing is not an absolute right, and a denial by the district court is within its sound discretion. The state need not establish prejudice. Schmidt v. State, 668 P.2d 656 (Wyo. 1983).

Trial judge does not abuse his discretion in refusing withdrawal of guilty plea where he carries on a careful and complete hearing under this rule with the defendant assisted by competent counsel, and the defendant enters a knowing and voluntary plea of guilty. Osborn v. State, 672 P.2d 777 (Wyo. 1983), cert. denied, 465 U.S. 1051, 104 S. Ct. 1331, 79 L. Ed. 2d 726 (1984).

Refused withdrawal allowed if rule's requirements met. — Abuse of discretion is not demonstrated even if a "plausible" or a "just and fair" reason for withdrawal of a guilty plea is presented if the requirements of this rule have been met and the record is clear that the defendant intelligently, knowingly and voluntarily entered into his plea of guilty. If those criteria are satisfied, it is not an abuse of discretion to refuse to allow withdrawal of the plea. Triplett v. State, 802 P.2d 162 (Wyo. 1990).

Where it was evident that defendant, who left the jurisdiction for two years after entering a plea agreement and pleading guilty, failed to supply the district court with any fair and just reason for withdrawing the guilty plea, and the record manifestly demonstrated the trial court's compliance with W. R.Cr.P. 11 in accepting the plea, denying defendant's motion to withdraw his guilty plea was a sound exercise of the court's discretion. Doles v. State, 55 P.3d 29 (Wyo. 2002).

Withdrawal required. — District court abused its discretion in denying defendant's pre-sentence motion for withdrawal of his guilty plea where the defendant had established a "fair and just reason" for withdrawal that related to comments by prosecutor about his agreed-to sentencing. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

Appeal from conditional plea. — In a drug case, defendant was unable to challenge whether a trooper had sufficient cause to perform a stop for speeding or the reasonableness of the initial traffic stop because these issues were not presented to a district court; a conditional guilty plea did not give defendant a carte blanche right to appeal all issues. Kunselman v. State, 188 P.3d 567 (Wyo. 2008).

New plea permitted where guilty plea not properly scrutinized. — Where there has been a failure to properly scrutinize a guilty plea in accordance with this rule, a defendant may be entitled to plead anew without a showing of manifest injustice. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Evidence of mental illness is plausible reason for withdrawing plea. — A presentation by the defendant, in connection with his motion for leave to withdraw his plea of guilty, of documentation that he has developed reliable evidence sustaining the defense of mental illness or deficiency presents a plausible reason and a fair and just reason for withdrawing the plea. Schmidt v. State, 668 P.2d 656 (Wyo. 1983).

Unsupported contention that defendant pled guilty to protect friend unsatisfactory. — The defendant had the burden of establishing a plausible reason for the withdrawal of his guilty plea, and his unsupported contention that he pled guilty to protect a friend did not satisfy this burden. Chorniak v. State, 715 P.2d 1162 (Wyo. 1986).

Rule violation need not be explicitly presented. — Although not explicitly presented to the trial court, in view of the policy that strict adherence to this rule is mandatory, an alleged violation of this rule will be viewed as having been sufficiently presented in the trial court to invoke review in the context of the motion to withdraw the guilty plea. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Determination not disturbed absent abuse of discretion. — Sentencing judges are vested with wide discretion in the determination of punishment, and their determination, if within statutory limits, is not disturbed absent a clear abuse of discretion. Hanson v. State, 590 P.2d 832 (Wyo. 1979).

Resort to extended record should not be necessary. — There is a responsibility on the part of the attorneys for the defendant and for the state to make sure that the court does not omit any legitimate avenue of inquiry which will assure that the record made at the time of the plea of guilty satisfies all the requirements and that resort to the extended record will not have to be made either by the trial court or by the court on appeal. Sanchez v. State, 592 P.2d 1130 (Wyo. 1979).

Standard of review for acceptance of plea. — The procedure utilized to accept a guilty plea is reviewed by an appellate court as a whole: the inquiry determines if the district court (1) sufficiently described the nature of the charges, including the possible penalties; (2) informed the defendant of the right to representation; (3) informed the defendant of the

rights waived by a guilty plea; and (4) obtained a factual basis for the plea. Reyna v. State, 33 P.3d 1129 (Wyo. 2001).

In an action in which a defendant appealed from his convictions of two counts of felony conversion of grain in violation of Wyo. Stat. Ann. § 11-11-117(b) and one count of felony check fraud in violation of Wyo. Stat. Ann. § 6-3-702(a)(b)(iii), defendant failed to meet his burden of showing the district court abused its discretion when it denied his motion to withdraw his guilty plea where (1) the district court fully informed defendant concerning the maximum penalties for the charged offenses and advised him no one could make him plead a certain way and if anyone tried to do so he should inform the court; (2) defendant was further specifically advised there were no guarantees about sentencing; and (3) the district court's imposition of a more severe penalty than defense counsel believed was appropriate and advised defendant was likely did not constitute manifest injustice. Reichert v. State, 134 P.3d 268 (Wyo. 2006).

Delay in appeal bars review. — Where the appellant-defendant pled guilty to a charge of grand larceny and no appeal was then taken, but later a judgment and sentence was entered by the district court revoking probation and activating the original sentence, and on appeal defendant asserts that the trial judge erred in the prior guilty plea proceeding in failing to ascertain a factual basis for such a plea, the Supreme Court does not have jurisdiction to consider the judgment and sentence originally entered by the district court. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Withdrawal of guilty plea where state did not keep agreement. — As defendant entered a guilty plea on the basis the state would recommend alternative sentencing, and the state did not make that recommendation at the sentencing hearing, the trial court erred in not granting defendant's motion to withdraw his plea. Ford v. State, 69 P.3d 407 (Wyo. 2003).

Compliance with the rule. — Trial court properly denied defendant's motion to dismiss a charge of felony possession of a controlled substance pursuant to the enhancement provisions of Wyo. Stat. Ann. § 35-7-1031(c)(i) because defendant's waiver of the right to counsel in a prior misdemeanor proceeding was knowing and intelligent; the advisements given in the prior proceeding complied with Wyo. R. Crim. P. 11(b). Craft v. State, 262 P.3d 1253 (Wyo. Oct. 14, 2011).

Cited in Jelle v. State, 119 P.3d 403 (Wyo. 2005).

Rule 12. Pleadings and motions before trial; defenses and objections.

(a) *Pleadings and motions.* — Pleadings in criminal proceedings shall be the indictment, the information or the citation, and the pleas entered pursuant to Rule 11. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) *Pretrial motions.* — Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

(3) Motions to suppress evidence;

(4) Requests for discovery under Rule 16; or

(5) Request for a severance of charges or defendants under Rule 14.

(c) *Mental illness or deficiency.* — If it appears at any stage of a criminal proceeding by motion or upon the court's own motion, that there is reasonable cause to believe that the defendant has a mental illness or deficiency making the defendant unfit to proceed, all further proceedings shall be suspended and an examination ordered as required by W.S. 7-11-301 *et seq*.

(d) *Motion date.* — Unless otherwise provided by local rule, the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(e) *Notice by state of intention to use evidence.* —

(1) At Discretion of State. — At the arraignment or as soon thereafter as is practicable, the state may give notice to the defendant of its intention to use specific evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3).

(2) At Request of Defendant. — At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3), request notice of the state's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16, subject to any relevant limitations prescribed in Rule 16.

(f) *Ruling on motion.* — A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(g) *Effect of failure to raise defenses or objections, or to make requests.* — Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (d), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(h) *Records.* — A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(i) *Effect of determination.* — If the court grants the motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that bail be continued for a specified time not to exceed 48 hours pending the filing of a new indictment or information.

(j) *Production of statements at suppression hearing.* — Except as herein provided, Rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3). For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the state, and upon a claim of privilege the court shall excise the portion of the statement containing privileged matter.

Compare. — Rule 12, Fed. Rules Cr. Proc.

County court not to determine, at preliminary hearing, whether counts in complaint merge. — It was not within the county court's authority at a preliminary hearing to dismiss a count of a complaint on the ground that it merged with another count. The sole purpose of the preliminary hearing was to determine whether there was probable cause for detaining the accused pending further proceedings. Thereafter, pursuant to subdivision (b)(2), the defendant could have raised his motion to dismiss before the district court. State v. Carter, 714 P.2d 1217 (Wyo. 1986).

Application of subdivision (b)(2). — By its terms, subdivision (b)(2) applies to both procedural and constitutional defects in the institution of prosecutions which do not affect the jurisdiction of the trial court. Fuller v. State, 568 P.2d 900 (Wyo. 1977).

Validity of amended indictment waived if not presented by motion under subdivision (b)(2) of this rule. Fuller v. State, 568 P.2d 900 (Wyo. 1977).

Failure to object. — By failing to object to prejudicial joinder of charges before trial, defendant waived any objection to the joinder and did not properly preserve issue for appeal. Cox v. State, 964 P.2d 1235 (Wyo. 1998).

Defense of double jeopardy waived if not raised before trial court. — A claimed defense of double jeopardy, if it was to be interposed, should have been raised by motion pursuant to this rule. Since it was not raised before the trial court, it was waived. Hutchins v. State, 483 P.2d 519 (Wyo. 1971); Peterson v. State, 586 P.2d 144 (Wyo. 1978).

Motions calling for pretrial determination of evidence admissibility. — A motion in limine, a motion to suppress or a motion to exclude call for a pretrial determination that certain potential evidentiary matters or items are inadmissible at the trial. The modification or rescission of such orders is permitted and is subject to the same considerations and results as those made before the trial. Hayes v. State, 599 P.2d 558 (Wyo.), supplemental opinion, 599 P.2d 569 (Wyo. 1979).

Motion to suppress. — Where the police and fire departments responded to a report of a vehicle on fire outside of a mobile home owned by defendant, where no one was present at the

mobile home but defendant's girlfriend arrived and admitted to the police that she had contraband inside of the mobile home, where the girlfriend consented to allow the police to enter to retrieve the small amount of drugs she admitted to possessing, where defendant arrived upon the scene and declined to allow the police to search further, where an officer indicated that hey would apply for a search warrant and that probable cause existed for the warrant based upon the amount of drugs already recovered, and where defendant thereafter consented to a search, which uncovered a significant amount of marijuana, the trial court did not err in denying defendant's suppression motion because defendant's consent to the search was voluntarily given and was not coerced. Johnson v. State, 228 P.3d 1306 (Wyo. 2010).

Motion to suppress must be timely filed. — A motion to suppress must be made prior to the adjudicatory hearing unless good cause is demonstrated as to why the motion was not filed on time. The rule affords discretion to the court to grant relief from the failure to make the motion for good cause shown. LDO v. State, 858 P.2d 553 (Wyo. 1993).

Violation of improper order not error. — Where the order in limine was founded on the faulty premise that certain testimony was statutorily inadmissible, the order was improper and a violation of it was not prejudicial error. Hayes v. State, 599 P.2d 558 (Wyo.), supplemental opinion, 599 P.2d 569 (Wyo. 1979).

Order either modified or rescinded. — In ruling against appellant on his motions for mistrial, for judgment of acquittal and for judgment notwithstanding the verdict, and in allowing certain testimony to stand, the court either modified or rescinded the order in limine which had prohibited such testimony or ruled that the testimony was not violative of the order. Hayes v. State, 599 P.2d 558 (Wyo.), supplemental opinion, 599 P.2d 569 (Wyo. 1979).

Minimal probation revocation notice gives adequate notice. — Where notice to defendant of revocation of probation, as contained in a prosecuting attorney's motion, is minimal, but the defendant had been informed at his original sentencing in no uncertain terms that violations such as those enumerated in the motion would be grounds for revocation and the offenses are clearly described in the motion and it is clear from the motion that the offenses occurred in a certain county between defendant's original sentencing and the date of the motion, the defendant has adequate notice of the charge against him, particularly in view of his failure to move for additional information or to request a continuance. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Defects going to form only waived if not challenged prior to plea. — Defects in the institution of criminal proceedings and in the indictment or information which go to form only and not to substance are waived if they are not challenged by a proper motion or pleading prior to the entry of a plea. Cheatham v. State, 719 P.2d 612 (Wyo. 1986).

Mental illness. — Defendant sentenced to death for kidnapping, rape, torture, and murder was competent to stand trial under Wyo. Stat. Ann. § 7-11-302 and Wyo. R. Crim. P. 12(c) despite his depression, mental illness, and emotional outbursts during trial. Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Applied in Hildebrand v. State, 491 P.2d 741 (Wyo. 1971); Gonzales v. State, 551 P.2d 929 (Wyo. 1976); Schuler v. State, 668 P.2d 1333 (Wyo. 1983); Grubbs v. State, 669 P.2d 929 (Wyo. 1983); Wilson v. State, 874 P.2d 215 (Wyo. 1994); Fales v. State, 908 P.2d 404 (Wyo. 1995); Huff v. State, 992 P.2d 1071 (Wyo. 1999); Heinemann v. State, 12 P.3d 692 (Wyo. 2000), cert denied, 532 U.S. 934, 121 S. Ct. 1386, 149 L. Ed. 2d 310 (2001).

Quoted in Hadden v. State, 42 P.3d 495 (Wyo. 2002), cert. denied, 537 U.S. 868, 123 S. Ct. 272, 154 L. Ed. 2d 114 (2002).

Stated in Lopez v. State, 586 P.2d 157 (Wyo. 1978); Hannon v. State, 84 P.3d 320 (Wyo. 2004).

Cited in Dickeson v. State, 843 P.2d 606 (Wyo. 1992); Starr v. State, 888 P.2d 1262 (Wyo. 1995); Urbigkit v. State, 67 P.3d 1207 (Wyo. 2003).

Am. Jur. 2d, ALR and C.J.S. references. — Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged, 5 ALR4th 1128.

Adequacy of defense counsel's representation of criminal client regarding entrapment defense, 8 ALR4th 1160.

Modern status of rule relating to jurisdiction of state court to try criminal defendant brought within jurisdiction illegally or as result of fraud or mistake, 25 ALR4th 157.

Admissibility of evidence not related to air travel security, disclosed by airport security procedures, 108 ALR Fed 658.

Rule 12.1. Notice of alibi.

(a) *Notice by defendant.* — Upon written demand of the attorney for the state stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within 10 days, or at such different time as the court may direct, upon the attorney for the state a written notice of the defendant's intention to offer a defense of

alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi.

(b) *Disclosure of information by state.* — Within 10 days thereafter, but in no event less than 10 days before trial, unless the court otherwise directs, the attorney for the state shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) *Continuing duty to disclose.* — If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or the attorney for the other party of the existence and identity of such additional witness.

(d) *Failure to comply.* — Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from, or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in the defendant's own behalf.

(e) *Exceptions.* — For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d).

(f) *Inadmissibility of withdrawn alibi.* — Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

Compare. — Rule 12.1, Fed. Rules Cr. Proc.

Rule is applicable only if alibi witness does, in fact, testify at trial. Johnson v. State, 806 P.2d 1282 (Wyo. 1991).

Transcribed statement of absent, but untrustworthy, witness not admitted to establish alibi. — The transcribed statement of a proposed witness, in the absence and unavailability of the witness, should not have been admitted into evidence for purposes of establishing an alibi defense, as it lacked the guarantees of the truthworthiness required to receive such a statement, the individual possibly having left town knowing that he was needed to testify for the defense, and to evade an opportunity to provide testimony. Smith v. State, 715 P.2d 1164 (Wyo. 1986).

Exclusion of alibi testimony was error. — Where the district court did not consider any factor other than the defense's failure to comply with this rule's time requirements, the failure to consider the factors articulated in Taylor v. Illinois, 484 U.S. 400, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988) was an abuse of discretion, and the trial court erred in its exclusion of the alibi testimony as a discovery sanction. Lawson v. State, 994 P.2d 943 (Wyo. 2000).

Exclusion of alibi testimony was harmless error. — Where defendant made inculpatory statements to the police on two occasions indicating that he had been present during the robbery, the error in excluding possible alibi testimony was harmless beyond a reasonable doubt. Lawson v. State, 994 P.2d 943 (Wyo. 2000).

Stated in Carson v. State, 751 P.2d 1315 (Wyo. 1988).

Cited in Grubbs v. State, 669 P.2d 929 (Wyo. 1983).

Am. Jur. 2d, ALR and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 219 to 243.

Validity and construction of statutes requiring defendant in criminal case to disclose matter as to alibi defense, 45 ALR3d 958.

Propriety and prejudicial effect of "on or about" instruction where alibi evidence in federal criminal case purports to cover specific date shown by prosecution evidence, 92 ALR Fed 313.

Rule 12.2. Defense of mental illness or deficiency.

(a) *Plea.* — If a defendant intends to rely upon the defense of mental illness or deficiency at the time of the alleged offense, the defendant shall enter a plea of not guilty by reason of mental illness or deficiency at arraignment. For good cause the court may permit the plea to be entered at a later time. If there is a failure to comply with the

requirements of this subdivision, evidence of mental illness or deficiency may not be introduced.

(b) *Expert testimony of defendant's mental condition.* — If a defendant intends to introduce expert testimony relating to a mental illness or deficiency or any other mental condition of the defendant bearing upon the issue of guilt, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk. The requirement of this subdivision is in addition to the disclosures required by Rule 12.3. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) *Mental examination of defendant.* — Upon the entry of a plea of not guilty by reason of mental illness or deficiency under W.S. 7-11-301 *et seq.,* the court shall order an examination as required by statute. No statement made by the defendant in the course of any examination or treatment and no information received by any person in the course thereof is admissible in evidence in any criminal proceeding on any issue other than that of the mental condition of the defendant except that if the defendant testifies, any statement made by the defendant in the course of examination or treatment pursuant to W.S. 7-11-301 *et seq.,* may be admitted:

(1) For impeachment purposes; or

(2) As evidence in a criminal prosecution for perjury.

(d) *Failure to comply.* — If there is a failure to give notice when required by subdivision (b) or to submit to an examination when ordered under subdivision (c), the court may exclude the testimony of any expert witness offered by the defendant on the issue of the defendant's defense of mental illness or deficiency.

(e) *Inadmissibility of withdrawn plea or notice.* — Evidence of a plea or notice given under subdivision (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the defendant.

(f) *Expansion of rights.* — Nothing in this rule is intended to expand the circumstances where a claim of mental illness or deficiency or any other mental condition may be raised.

Compare. — Rule 12.2, Fed. Rules Cr. Proc.

Cited in Duran v. State, 990 P.2d 1005 (Wyo. 1999).

Law reviews. — For article, "The Wyoming Criminal Code Revisited: Reflections after Fifteen Years," see XXXIII Land and Water L. Rev. 523 (1998).

Am. Jur. 2d, ALR and C.J.S. references. — Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement, 43 ALR5th 777.

Rule 12.3. Notice of defense of unconsciousness, automatism, or traumatic automatism.

(a) *Notice by defendant.* — Upon written demand of the attorney for the state, stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within 10 days, or at such different time as the court may direct, upon the attorney for the state, a written notice of the defendant's intention to offer a defense of unconsciousness, automatism, or traumatic automatism. Such notice by the defendant shall state with particularity the facts upon which the defendant relies to justify the defense of unconsciousness, automatism, or traumatic automatism and the name and addresses of the witnesses upon whom the defendant intends to rely to establish such defense.

(b) *Examination of defendant.* — Upon the filing of such notice by the defendant, the court shall order an examination of the defendant by a designated examiner. A written report of such examination shall be filed with the clerk of court, and the report shall

include detailed findings and an opinion of the examiner as to whether the defendant did suffer from unconsciousness, automatism, or traumatic automatism at the time of the alleged offense. The clerk of court shall furnish copies of the report to the attorney for the state and the defendant or the defendant's counsel.

(c) *Disclosure of information by state.* — Within 10 days after the examiner's report is served upon the attorney for the state, but in no event not less than 10 days before trial unless the court otherwise directs, the attorney for the state shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish that the defendant did not, at the time of the alleged offense, suffer from unconsciousness, automatism, or traumatic automatism and any other witnesses, to be relied upon to rebut testimony of any of the defendant's witnesses relating to such a defense.

(d) *Continuing duty to disclose.* — If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b) the party shall promptly notify the other party or the attorney for the other party of the existence and identity of such additional witness.

(e) *Failure to comply.* — Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defense of unconsciousness, automatism, or traumatic automatism. This rule shall not limit the right of the defendant to testify on the defendant's own behalf.

(f) *Exceptions.* — For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (e).

(g) *Inadmissibility of withdrawn defense.* — Evidence of an intention to rely upon the defense of unconsciousness, automatism, or traumatic automatism later withdrawn, or of statements made in connection with such intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Exclusion of witnesses as a sanction. — Where defendant was charged with aggravated homicide by vehicle, the district court was permitted to exclude three witnesses offered by the defense to testify that defendant suffered from a seizure disorder because the notice did not state with particularity the facts upon which the defendant relied to justify the defense of unconsciousness as required by this rule. Defendant's right to present a defense was not violated. Breazeale v. State, 245 P.3d 834 (Wyo. 2011).

Law reviews. — For article, "The Wyoming Criminal Code Revisited: Reflections after Fifteen Years," see XXXIII Land and Water L. Rev. 523 (1998).

Am. Jur. 2d, ALR and C.J.S. references. — Admissibility of results of computer analysis of defendant's mental state, 37 ALR4th 510.

Rule 13. Trial together of indictments, informations or citations.

The court may order two or more indictments, informations, citations or a combination thereof to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment, information or citation. The procedure shall be the same as if the prosecution were under such single indictment, information or citation.

Compare. — Rule 13, Fed. Rules Cr. Proc.

Prosecutorial discretion in charging offenses. — When the defendant's conduct violates more than one criminal statute, it is the prosecutor who decides how many offenses to charge. Jerskey v. State, 546 P.2d 173 (Wyo. 1976).

Discretion of court. — Trial together of two or more indictments is a matter for the court's discretion. Dycus v. State, 529 P.2d 979 (Wyo. 1974).

Joint trials of defendants charged with committing same offense are the rule rather than the exception. Joint trials serve the public interest by expediting the administration of justice, reducing docket congestion, conserving judicial time as well as that of jurors along with avoiding the recall of witnesses to

duplicate their performances. Jasch v. State, 563 P.2d 1327 (Wyo. 1977); Lee v. State, 653 P.2d 1388 (Wyo. 1982).

The strongest case for ordering a joint trial is where the evidence to support the charges against the several defendants is virtually identical. Jasch v. State, 563 P.2d 1327 (Wyo. 1977).

There is always possibility of prejudice resulting from joinder of similar offenses and care must be taken at the initial stage of the proceedings to guard against such a possibility. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

And fact establishing lack of prejudice. — The fact that the evidence presented at a joint trial could be separately introduced at trials for the separate offenses establishes the lack of prejudice. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

Defendant was not prejudiced by joinder of trials of three criminal actions against him for child sexual abuse where testimony concerning other victims would have been admissible in separate trials under Wyo. R. Evid. 404(b) as evidence to show motive or a common scheme or plan and defendant failed to show jury was confused by joinder of the charges. Simmers v. State, 943 P.2d 1189 (Wyo. 1997).

And consideration in guarding against prejudice. — In guarding against the prejudice resulting from a joinder of similar offenses, one of the prime considerations is whether or not evidence relating to the similar offenses charged would be admissible in the separate trial of each offense. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

No prejudice where same information and same evidence. — There was no prejudice in trying two counts of burglary jointly where the charges were joined in the same information and the evidence would have been the same had the charges been tried separately. Bishop v. State, 684 P.2d 799 (Wyo. 1984).

Consolidation proper where separate crimes constitute single transaction or related acts. — The fact that the defendants were charged with and convicted of two separate crimes did not foreclose consolidation in an instance in which the crimes essentially constituted a single transaction or involved a related series of acts. Seeley v. State, 715 P.2d 232 (Wyo. 1986).

Facts under which joinder proper. — See Lee v. State, 653 P.2d 1388 (Wyo. 1982).

The trial court did not abuse its discretion in ordering a joint trial of a husband and wife charged in separate informations with participating in the same acts or series of acts constituting aggravated robbery. Amin v. State, 695 P.2d 1021 (Wyo. 1985).

Joinder of murder and attempted murder charges was proper, where evidence would have been admissible at a separate trial on each offense; evidence of defendant's attempted murder of police officers would have been admissible as circumstantial evidence to prove his involvement in murder earlier reported to officers, and evidence of murder would have been admissible to prove motive in attempted murder of officers. Mitchell v. State, 982 P.2d 717 (Wyo. 1999).

Applied in Vigil v. State, 563 P.2d 1344 (Wyo. 1977); Ostrowski v. State, 665 P.2d 471 (Wyo. 1983); McArtor v. State, 699 P.2d 288 (Wyo. 1985).

Quoted in Bishop v. State, 687 P.2d 242 (Wyo. 1984), overruled in part, Vigil v. State, 926 P.2d 351 (1996).

Cited in Howard v. State, 762 P.2d 28 (Wyo. 1988).

Am. Jur. 2d, ALR and C.J.S. references. — Prosecution or conviction of one conspirator as affected by disposition of case against coconspirators, 19 ALR4th 192.

Rule 14. Relief from prejudicial joinder.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information or citation, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the attorney for the state to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

Compare. — Rule 14, Fed. Rules Cr. Proc.

Joinder generally permitted. — As a general rule, defendants can be indicted or informed against together unless there are compelling reasons for separate trials. Linn v. State, 505 P.2d 1270 (Wyo.), cert. denied, 411 U.S. 983, 93 S. Ct. 2277, 36 L. Ed. 2d 959, rehearing denied, 412 U.S. 944, 93 S. Ct. 2780, 37 L. Ed. 2d 405 (1973).

Joint trials of persons charged together with committing the same offense or with being accessory to its commission are the rule, rather than the exception. There is a substantial public interest in this procedure. It expedites the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries, and avoids the necessity of recalling witnesses who would otherwise be called upon

to testify only once. Linn v. State, 505 P.2d 1270 (Wyo.), cert. denied, 411 U.S. 983, 93 S. Ct. 2277, 36 L. Ed. 2d 959, rehearing denied, 412 U.S. 944, 93 S. Ct. 2780, 37 L. Ed. 2d 405 (1973).

Joint trials of defendants charged with committing same offense are the rule rather than the exception. Joint trials serve the public interest by expediting the administration of justice, reducing docket congestion, conserving judicial time as well as that of jurors along with avoiding the recall of witnesses to duplicate their performances. Jasch v. State, 563 P.2d 1327 (Wyo. 1977); Lee v. State, 653 P.2d 1388 (Wyo. 1982).

There is always possibility of prejudice resulting from joinder of similar offenses and care must be taken at the initial stage of the proceedings to guard against such a possibility. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

Prejudice weighed against judicial economy. — In determining whether or not to grant a severance, the trial court must weigh the prejudice caused by joinder against the economy and expedition in judicial administration provided by joinder. Lee v. State, 653 P.2d 1388 (Wyo. 1982).

And consideration in guarding against prejudice. — In guarding against the prejudice resulting from a joinder of similar offenses, one of the prime considerations is whether or not evidence relating to the similar offenses charged would be admissible in the separate trial of each offense. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

In order to determine whether a defendant is prejudiced by the joinder, the trial judge must ascertain whether all of the evidence admissible in a joint trial would be admissible in separate trials on each of the charges; if it would be, then there is no prejudice. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

Severance becomes necessary where the proof is such that a jury could not be expected to compartmentalize the evidence as it relates to separate defendants. Lee v. State, 653 P.2d 1388 (Wyo. 1982).

And facts establishing lack of prejudice. — The fact that the evidence presented at a joint trial could be separately introduced at trials for the separate offenses establishes the lack of prejudice. Tabor v. State, 616 P.2d 1282 (Wyo. 1980).

A defendant is not entitled to severance merely because the evidence against a codefendant is more damaging than the evidence against him. Lee v. State, 653 P.2d 1388 (Wyo. 1982).

There must be compelling reasons for separate trials. Jasch v. State, 563 P.2d 1327 (Wyo. 1977).

The grant or denial of severance is a matter of discretion with the trial court and will not be reversed except for clear abuse of such discretion. Dobbins v. State, 483 P.2d 255 (Wyo. 1971); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983); Lee v. State, 653 P.2d 1388 (Wyo. 1982).

In determining whether a defendant is prejudiced by a joinder, deference is given to a trial judge's rulings as to the admissibility of evidence; as long as there is some reasonable basis for his conclusions, the Supreme Court will not second-guess him on appeal. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

The language in this rule is permissive; thus, refusal to grant relief is discretionary and will be reviewed under the court's traditional abuse-of-discretion standards. Black v. State, 869 P.2d 1137 (Wyo. 1994).

And only reversed if clearly abused. — Severance is a matter of discretion with the trial judge and its denial is not subject to reversal unless clear abuse is shown. Jasch v. State, 563 P.2d 1327 (Wyo. 1977).

On a motion for severance the burden is on the movant to present facts demonstrating that prejudice will result from a joint trial, which in effect would be a denial of a fair trial. Dobbins v. State, 483 P.2d 255 (Wyo. 1971).

Once the state on its motion makes a prima facie case warranting consolidation of the separate informations it is incumbent upon the defendant to come forward with facts and circumstances establishing wherein he will be prejudiced by a joint trial. Dobbins v. State, 483 P.2d 255 (Wyo. 1971); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

The burden is on the movant to present facts demonstrating that there is no reasonable basis for the trial judge to deny the motion. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

To find an abuse of discretion, the reviewing court must find that the joinder caused either actual or threatened deprivation of one's right to a fair trial. A defendant bears a heavy burden of showing real prejudice to his case and must show more than that he would have had a better chance of acquittal with separate trials. Hopkinson v. Shillinger, 645 F. Supp. 374 (D. Wyo. 1986), aff'd in part, remanded in part on other grounds, 866 F.2d 1185 (10th Cir. 1989).

Facts under which joinder proper. — See Lee v. State, 653 P.2d 1388 (Wyo. 1982).

Court properly joined two sexual assault offenses because the offenses were similar in character and so related as to constitute parts

of a common scheme or plan. Defendant knew both victims, and in each instance, defendant entered the home of the victim under the cover of darkness, told the victim he was there to rape her, subdued her by force and demanded that she perform oral sex upon him. Lessard v. State, 158 P.3d 698 (Wyo. 2007).

Severance denied where evidence would have been same had charges been tried separately. — A motion for severance of two burglary counts was properly denied where the evidence would have been the same had the charges been tried separately and, therefore, there was no prejudice in trying them jointly. Bishop v. State, 687 P.2d 242 (Wyo. 1984), cert. denied, 469 U.S. 1219, 105 S. Ct. 1203, 84 L. Ed. 2d 345 (1985); overruled in part, Vigil v. State, 926 P.2d 351 (1996).

Denial of defendant's motion to sever was not an abuse of discretion where the court had properly instructed the jury on the need to keep evidence on each count separate and where the defendant failed to make a showing of actual prejudice. Vargas v. State, 963 P.2d 984 (Wyo. 1998).

Joinder of several offenses concealing stolen goods — burglary, murder, assault — was proper because of their inter-relation (i. e., concealed guns played a prominent part in the murder and assault, the concealment of a car and the burglary were connected with the flight from the scene of the crime), and the trial court did not abuse its discretion in denying a motion to sever, the facts of the case being uncomplicated and the jury being specifically instructed that each charge had to be considered separately. Pote v. State, 695 P.2d 617 (Wyo. 1985).

Court did not err in refusing to sever counts alleging delivery of drugs, where the evidence of separate offenses was not shown to be so complicated that the jury could not separate and evaluate them. Dorador v. State, 768 P.2d 1049 (Wyo. 1989).

Separate trials were not necessary where the case was simple and uncomplicated and the jury could reasonably be expected to separate the charges and evaluate the evidence properly and individually on each separate charge. Bell v. State, 994 P.2d 947 (Wyo. 2000).

Severance refused, despite evidence of codefendant's prior bad acts, where defendant not involved. — There did not occur prejudicial error in refusing to grant the defendant a mistrial or a severance of his case for trial when the evidence of the prior bad acts on the part of his codefendant was offered at the trial. It was clear from the record that the jury could not have confused the two defendants or in any way concluded that the defendant had been involved in the prior bad acts. Seeley v. State, 715 P.2d 232 (Wyo. 1986).

Ordinarily an acquittal on a misjoined count cures the misjoinder. Dobbins v. State, 483 P.2d 255 (Wyo. 1971).

Applied in Ostrowski v. State, 665 P.2d 471 (Wyo. 1983); Bishop v. State, 684 P.2d 799 (Wyo. 1984); Eatherton v. State, 761 P.2d 91 (Wyo. 1988).

Stated in Hopkinson v. Shillinger, 866 F.2d 1185 (10th Cir. 1989); Simmers v. State, 943 P.2d 1189 (Wyo. 1997).

Cited in Howard v. State, 762 P.2d 28 (Wyo. 1988); Keene v. State, 835 P.2d 341 (Wyo. 1992); Cox v. State, 964 P.2d 1235 (Wyo. 1998).

Am. Jur. 2d, ALR and C.J.S. references. — Antagonistic defenses as ground for separate trials of codefendants in criminal case, 82 ALR3d 245.

Right of defendants in prosecution for criminal conspiracy to separate trials, 82 ALR3d 366.

Prosecution or conviction of one conspirator as affected by disposition of case against coconspirators, 19 ALR4th 192.

Antagonistic defenses as ground for separate trials of codefendants in state homicide offenses-Factual applications, 16 A.L.R.6th 329.

Antagonistic defenses as ground for separate trials of codefendants in criminal case-Federal homicide offenses, 7 A.L.R. Fed. 2d 415.

Antagonistic defenses as ground for separate trials of codefendants in criminal case-Federal cocaine offenses, 7 A.L.R. Fed. 2d 491.

Propriety of use of multiple juries at joint trial of multiple defendants in federal criminal case, 72 ALR Fed 875.

Rule 15. Depositions.

(a) *When taken.* — Whenever due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness of a party be taken the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is detained pursuant to statute or rule the court on written motion and upon notice to the parties may direct that the witness's deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(b) *Notice, place and process.* —

(1) Notice of Taking. — The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking

the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause the defendant's removal from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify exclusion from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but a failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(2) Subpoena. — An order to take a deposition authorizes the clerk of court to issue subpoenas for the persons named or described therein.

(3) Place. — The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(c) *Payment of expenses.* — Whenever a deposition is taken at the instance of the state, or whenever a deposition is taken at the instance of a defendant who is indigent, the court may direct that the expense of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination, and the cost of the transcript of the deposition, be paid by the public defender's office.

(d) *How taken.* — Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that:

(1) In no event shall a deposition be taken of a party defendant without that defendant's consent; and

(2) The scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or the defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the state and to which the defendant would be entitled at the trial.

(e) *Use.* — At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a), W.R.E, or the witness gives testimony at the trial or hearing inconsistent with that witness's deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts.

(f) *Objections to testimony.* — Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) *Deposition by agreement.* — Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 15, Fed. Rules Cr. Proc. See Rule 502, D. Ct.

Assertion of injuries shows inability to attend trial. — An assertion that a witness received a skull fracture and other injuries and that her doctor advised that she not be brought

to court for at least six weeks is sufficient to satisfy the requirement of subdivision (a) relative to a showing that the witness may be unable to attend the trial, when no objection or counter-recitation to the taking of the deposition is made by the accused. Martinez v. State, 611 P.2d 831 (Wyo. 1980).

Unavailability due to vacation plans not unavailability under rule. — Unavailability due to vacation plans does not satisfy the unavailability requirement under W.R.E. 804(a)(5). Bloomquist v. State, 914 P.2d 812 (Wyo. 1996).

Video deposition. — Use of a video deposition of a child victim at defendant's trial for indecent liberties, as well as the seating arrangement at the deposition that obscured defendant's and victim's view of each other, violated defendant's right to confront witnesses against him as guaranteed by U.S. Const. amend. VI and the statutory requirements of Wyo. Stat. Ann. § 7-11-408. Bowser v. State, 205 P.3d 1018 (Wyo. 2009).

Cited in Brown v. Green, 618 P.2d 140 (Wyo. 1980); Johnston v. State, 829 P.2d 1179 (Wyo. 1992); Swazo v. Shillinger, 932 F. Supp. 1350 (D. Wyo. 1996); Lafond v. State, 89 P.3d 324 (Wyo. 2004).

Law reviews. — For article, "The Greatest Lawyer in the World (The Maturing of Janice Walker)," see XIV Land & Water L. Rev. 135 (1979).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 1253 to 1292; 23 Am. Jur. 2d Depositions and Discovery §§ 108 to 117.

Admissibility in evidence of deposition as against one not a party at time of its taking, 4 ALR3d 1075.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Pretrial testimony or disclosure on discovery by party to personal injury action as to nature of injuries or treatment as waiver of physician-patient privilege, 25 ALR3d 1401.

Accused's right to depose prospective witnesses before trial in state court, 2 ALR4th 704.

Propriety of state court's grant or denial of application for pre-action production or inspection of documents, persons, or other evidence, 12 ALR5th 577.

Right to perpetuation of testimony under Rule 27 of Federal Rules of Civil Procedure, 60 ALR Fed 924.

Use, in federal criminal prosecution, of deposition of absent witness taken in foreign country, as affected by Federal Rule of Criminal Procedure 15(b) and (d), requiring presence of accused and that deposition be taken in manner provided in civil actions, 105 ALR Fed 537.

Rule 16. Discovery and inspection.

(a) *Disclosure of evidence by state.* —

(1) Information Subject to Disclosure.

(A) Statement of Defendant.

(i) Upon written demand of a defendant the state shall permit the defendant to inspect and copy or photograph:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state;

2. The substance of any oral statement which the state intends to offer in evidence at the trial made by the defendant whether before or after arrest; and

3. Recorded testimony of the defendant before a grand jury which relates to the offense charged.

(ii) Where the defendant is a corporation, partnership, association or any other entity, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who:

1. Was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense; or

2. Was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which the witness was involved.

(B) Defendant's Prior Record. — Upon written demand of the defendant, the state shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state.

(C) Documents and Tangible Objects. — Upon written demand of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of Examinations and Tests. — Upon written demand of a defendant, the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state, and which are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial.

(2) Information Not Subject to Disclosure. — Except as provided in subparagraphs (1)(A), (1)(B) and (1)(D), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the attorney for the state or other state agents in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses except as provided in Rule 26.2.

(3) Grand Jury Transcripts. — Except as provided in Rules 6, 12(j) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

(b) *Disclosure of evidence by defendant.* —

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. — If the defendant demands disclosure under subdivision (a)(1)(C) or (a)(1)(D), upon compliance with such demand by the state, the defendant, on demand of the state, shall permit the state to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which the defendant intends to introduce as evidence in chief at the trial and which are within the possession, custody, or control of the defendant or which the defendant can reasonably obtain.

(B) Reports of Examinations and Tests. — If the defendant demands disclosure under subdivision (a)(1)(C) or (a)(1)(D), upon compliance with such demand by the state, the defendant, on demand of the state, shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness's testimony.

(2) Information Not Subject to Disclosure. — Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by state or defense witnesses,

or by prospective state or defense witnesses, to the defendant, the defendant's agents or attorneys.

(c) *Continuing duty to disclose.* — If, prior to or during trial, a party discovers additional evidence or material previously demanded or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the court of the existence of the additional evidence or material.

(d) *Regulation by court.* —

(1) Protective and Modifying Orders. — Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply. — If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) *Alibi witnesses.* — Discovery of alibi witnesses is governed by Rule 12.1.

Compare. — Rule 16, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.
II. AVAILABILITY.
III. SCOPE.

I. GENERAL CONSIDERATION.

Without discovery order, prosecutor without general obligation to permit discovery. — The defendant's claim of prosecutorial misconduct relating to discovery of the jurors' arrest records was without foundation because an order was never entered providing for discovery. Without such an order, the prosecutor had no general obligation to permit discovery and could not have abused a nonexistent obligation. Moreover, the defendant received the records in time for use during voir dire, and without a showing of prejudice, what occurred was harmless. Capshaw v. State, 714 P.2d 349 (Wyo. 1986).

Where breach of order is claimed, burden is upon defendant to specify the evidence that might have been available to him to rebut the undisclosed information if more time had been available. Lindsey v. State, 725 P.2d 649 (Wyo. 1986).

Abuse of discretion with respect to materials as to which discovery may be required. — See Nimmo v. State, 607 P.2d 344 (Wyo. 1980).

Grand jury testimony need not be recorded in the absence of a procedural rule or statute which requires recording, and the failure to do so does not violate due process. This rule, which permits the inspection and copying of the transcript of grand jury testimony of the defendant or the testimony of a witness after he has testified, if the testimony was recorded, satisfies any due process requirements. Hennigan v. State, 746 P.2d 360 (Wyo. 1987).

Demand for mistrial instead of relief under subdivision (c) not permitted. — It is impermissible to bypass the relief afforded under subdivision (c) of asking for inspection of materials not previously disclosed and for the granting of a continuance but instead to demand a mistrial. Simms v. State, 492 P.2d 516 (Wyo.), cert. denied, 409 U.S. 886, 93 S. Ct. 104, 34 L. Ed. 2d 142 (1972); Nimmo v. State, 607 P.2d 344 (Wyo. 1980).

Failure to disclose unfiled statement harmless error. — Where no order for discovery and inspection was ever issued by the court because the state agreed to permit free inspection of its police file and to provide the defense with an exhaustive list of proposed and potential witnesses, and allegedly incriminating statements made by the defendant were not in the file and would have been discoverable only upon colloquy with the investigating officer, admission of the statements by the state without prior disclosure to the defendant was, at worst, harmless error. Pearson v. State, 818 P.2d 1144 (Wyo. 1991).

This rule does not bar a trial court from ordering a defendant to make a pretrial disclosure of witness statements. Kovach v. State, 299 P.3d 97 (Wyo. 2013).

Statute not to be circumvented by rule. — Defendant could not circumvent the statutory privilege of § 7-13-409 by demanding that the information be given to him pursuant to this rule. Roach v. State, 901 P.2d 1135 (Wyo. 1995); Vena v. State, 941 P.2d 33 (Wyo. 1997).

Applied in Todd v. State, 566 P.2d 597 (Wyo. 1977); Spencer v. State, 925 P.2d 994 (Wyo. 1996); Hayes v. State, 935 P.2d 700 (Wyo. 1997); Ryan v. State, 988 P.2d 46 (Wyo. 1999).

Quoted in Osborne v. State, 806 P.2d 272 (Wyo. 1991).

Cited in Burns v. State, 574 P.2d 422 (Wyo. 1978); Brown v. State, 581 P.2d 189 (Wyo. 1978); Weddle v. State, 621 P.2d 231 (Wyo. 1980); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981); Siegert v. State, 634 P.2d 323 (Wyo. 1981); Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983); Jones v. State, 813 P.2d 629 (Wyo. 1991); Trusky v. State, 7 P.3d 5 (Wyo. 2000).

Law reviews. — For comment on Jackson v. State, 522 P.2d 1286 (Wyo. 1974), cited in the notes below, see X Land & Water L. Rev. 293 (1975).

For article, "The Greatest Lawyer in the World (The Maturing of Janice Walker)," see XIV Land & Water L. Rev. 135 (1979).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 998 to 1006, 1253 to 1284.

Right of accused in state courts to inspections or disclosure of evidence in possession of prosecution, 7 ALR3d 8.

Right of defendant in criminal case to inspection of statement of prosecution's witness for purposes of cross-examination or impeachment, 7 ALR3d 181.

Accused's right to discovery or inspection of "rap sheets" or similar police records about prosecution witnesses, 95 ALR3d 820.

Accused's right to depose prospective witnesses before trial in state court, 2 ALR4th 704.

Accused's right to production of composite drawing of suspect, 13 ALR4th 1360.

Court's witnesses (other than expert) in state criminal prosecution, 16 ALR4th 352.

Appealability of state criminal court order requiring witness other than accused to undergo psychiatric examination, 17 ALR4th 867.

Right of prosecution to discovery of case-related notes, statements, and reports, 23 ALR4th 799.

Propriety of requiring suspect or accused to alter, or to refrain from altering, physical or bodily appearance, 24 ALR4th 592.

Exclusion of evidence in state criminal action for failure of prosecution to comply with discovery requirements as to physical or documentary evidence or the like — modern cases, 27 ALR4th 105.

Right of accused in state courts to have expert inspect, examine, or test physical evidence in possession of prosecution — modern cases, 27 ALR4th 1188.

Exclusion of evidence in state criminal action for failure of prosecution to comply with discovery requirements as to statements made by defendants or other nonexpert witnesses — modern cases, 33 ALR4th 301.

What is accused's "statement" subject to state court criminal discovery, 57 ALR4th 827.

Duty of prosecutor to present exculpatory evidence to state grand jury, 49 ALR5th 639.

What is "judicial proceeding" within Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure permitting disclosure of matters occurring before grand jury when so directed by court preliminarily to or in connection with such proceeding, 52 ALR Fed 411.

Use of Freedom of Information Act (5 USC § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 ALR Fed 903.

Right of immune jury witness to obtain access to government affidavits and other supporting materials in order to challenge legality of court-ordered wiretap or electronic surveillance which provided basis for questions asked in grand jury proceedings, 60 ALR Fed 706.

Right of party in civil action to obtain disclosure, under Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure, of matters occurring before grand jury, 71 ALR Fed 10.

Illegal drugs or narcotics involved in alleged offense as subject to discovery by defendant under Rule 16 of Federal Rules of Criminal Procedure, 109 ALR Fed 363.

22A C.J.S. Criminal Law §§ 486 to 540.

II. AVAILABILITY.

There is no general constitutional right to discovery in a criminal case. Dodge v. State, 562 P.2d 303 (Wyo. 1977).

There is no general constitutional right to discovery; such right must result from a statute, rule or trial court discretion. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

This does not mean that the prosecution can suppress evidence favorable to the defendant. Dodge v. State, 562 P.2d 303 (Wyo. 1977).

When suppression violates due process. — Suppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt. Dodge v. State, 562 P.2d 303 (Wyo. 1977).

Documents and tangible objects must be within possession, custody or control of state. — Victim's tax records were not subject to discovery in prosecution for forgery and obtaining property by false pretenses, where there was nothing in record to suggest that prosecution ever had possession of those records. Helm v. State, 1 P.3d 635 (Wyo. 2000).

Excusable delay in producing evidence. — When the state, in a burglary prosecution, did not gain possession of the padlock allegedly broken during the burglary until the Friday

before trial and promptly produced the padlock, there was no violation of the district court's discovery order. Emerson v. State, 988 P.2d 518 (Wyo. 1999).

A motion under this rule is available only at the trial and not thereafter. DeLuna v. State, 501 P.2d 1021 (Wyo. 1972).

The defendant's waiting until the last moment before trial before making a motion for discovery was unreasonable where the facts had been available since defendant's arraignment, at which time he had been represented by counsel. Dorador v. State, 573 P.2d 839 (Wyo. 1978).

Rule's requirements not met by statement that discovery needed for "further judicial proceedings". — A prisoner who was collaterally attacking his conviction and who filed a motion to order the court reporter to release photographs of exhibits and transcripts, stating only that he needed them for "further judicial proceedings" and to aid in the proper preparation of a defense, failed to satisfy the requirements of this rule. Cutbirth v. State, 695 P.2d 156 (Wyo. 1985).

Application for relief under discovery rules is a matter within the sound discretion of the district court and its ruling would not be disturbed except for an abuse of discretion. Simms v. State, 492 P.2d 516 (Wyo.), cert. denied, 409 U.S. 886, 93 S. Ct. 104, 34 L. Ed. 2d 142 (1972).

Failure of the trial court to order production of discoverable statements is reversible error. Jones v. State, 568 P.2d 837 (Wyo. 1977).

But there must be abuse of discretion. — There must be some abuse of discretion by the trial judge in refusing discovery, before the denial can be held error. Dodge v. State, 562 P.2d 303 (Wyo. 1977).

The necessity that the matter be relevant or relate to the subject is well recognized. DeLuna v. State, 501 P.2d 1021 (Wyo. 1972).

The burden rests on the defendant to invoke this rule at the proper time and in the proper manner so that it is possible for the trial court to make an appropriate inquiry into his request. Jones v. State, 568 P.2d 837 (Wyo. 1977).

Other than bald statement of wrongdoing, no showing that material exculpatory evidence suppressed. — See State ex rel. Hopkinson v. District Court, 696 P.2d 54 (Wyo.), cert. denied, 474 U.S. 865, 106 S. Ct. 187, 88 L. Ed. 2d 155 (1985).

Am. Jur. 2d, ALR and C.J.S. references. — Availability of discovery at probation revocation hearings, 52 ALR5th 559.

III. SCOPE.

Dismissal of charge with prejudice. — Even though district court had the authority, under Wyo. R. Crim. P. 16(d)(2), to dismiss a criminal charge against defendant with prejudice for the State's failure to produce a police report containing defendant's statement, it abused its discretion by doing so without conducting the appropriate inquiry to determine whether the sanction was justified. The district court made no findings as to the reasons why the State did not produce the report, it made no findings about the prejudice that would be suffered by defendant if the charge was not dismissed with prejudice, and the it did not discuss whether prejudice could be cured by a less severe sanction such as a continuance. State v. Naple, 143 P.3d 358 (Wyo. 2006).

Right to discovery limited to probable cause. — In a felony case the right of discovery attaches under this rule only after the defendant has been bound over for trial in the district court, and the justice court abused its discretion when it ordered the state to permit discovery of material which did not pertain to probable cause. Almada v. State, 994 P.2d 299 (Wyo. 1999).

Identity of witness may not be withheld from defense. — While usually the identity of an informer need not be revealed, the identity of a witness may not be withheld from the defense. Jackson v. State, 522 P.2d 1286 (Wyo. 1974).

Defendant entitled to statements helpful in cross-examining government witnesses. — A defendant on trial should be entitled to statements helpful in the cross-examination of government witnesses who testify against him. DeLuna v. State, 501 P.2d 1021 (Wyo. 1972).

No right to summaries of witnesses' testimony. — Where the defendant was charged with taking indecent liberties with a minor, he was not denied a fair trial nor did the trial court abuse its discretion when it denied the defendant's motion to compel the production of summaries of the testimony potential state expert witnesses might give at trial. Gale v. State, 792 P.2d 570 (Wyo. 1990).

Or to psychiatric evaluation of codefendant. — The trial court did not err in denying the defendant access to a codefendant's psychiatric evaluation. Vena v. State, 941 P.2d 33 (Wyo. 1997).

Defendant's statement. — District court did not abuse its discretion when it denied defendant's motion in limine to exclude a detective's testimony about defendant's admissions, because the State gave notice of the substance of defendant's oral statements prior to trial and such disclosures did not vary in any material fashion from the testimony provided at trial. Defendant was not entitled to have that information provided in a specific form or manner or to receive a copy of the officer's notes in pretrial discovery. Ceja v. State, 208 P.3d 66 (Wyo. 2009).

Trial court did not err by denying defendant's motion for a new trial based upon the admis-

sion of testimony that defendant threatened to kill a witness if he ever talked to the police again in violation of Wyo. R. Crim. P. 16(a)(1)(A)(i)(2) because the trial court instructed the jury immediately after defendant's objection and, in the context of defendant's the overwhelming evidence of defendant's guilt, defendant failed to show that he was prejudiced. Willoughby v. State, 253 P.3d 157 (Wyo. 2011).

Scientific tests or experiments. — Although a police officer (1) inspected the scene of a traffic accident, (2) was provided with a copy of the accident report, (3) reviewed the report, photographs, and measurements taken at the scene, and (4) applied established principles of physics and mathematics to those measurements, there was no evidence in the record to support the defense's claim that the officer conducted scientific tests or experiments subject to disclosure under subdivision (a)(1)(D) of this rule. Fortner v. State, 932 P.2d 1283 (Wyo. 1997).

Omission of word. — Where a report to defense counsel of an officer's notes of defendant's statement to the police omitted a word that was later referred to by the prosecution, there was no violation of this rule because the word was not a vital or integral part of the substance of defendant's statement. Dennis v. State, 963 P.2d 972 (Wyo. 1998).

Personnel records of arresting officer. — District court did not err in refusing to compel the State to disclose any information relating to disciplinary actions taken against the arresting officer because personnel records were outside the ambit of Wyo. R. Crim. P. 16(a)(1)(C). Nelson v. State, 202 P.3d 1072 (Wyo. 2009).

No discovery of informant's prior drug buys. — When defendant was charged with unlawful delivery of a controlled substance after a transaction with a confidential informant (CI), the district court denied his motion under this rule in which he sought to compel the State to produce detailed information as to other drug buys in which the CI had participated. Downing v. State, 259 P.3d 365 (Wyo. 2011).

Rule 17. Subpoena.

(a) *For attendance of witnesses; form; issuance.* — Upon the filing of a precipe therefor, a subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) *Applicability of other provisions.* — Except as otherwise provided, the provisions of the Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence and the Wyoming Statutes, relative to or compelling the attendance and testimony of witnesses, their examination and the administering of oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of the parties, shall extend to criminal cases, so far as they are in their nature applicable.

(c) *Allowable fees and expenses.* —

(1) Non-expert Fees. — In addition to actual costs of travel, meals and lodging each non-expert witness shall be paid a witness fee of $30.00 for each full day and $15.00 for each half day necessarily spent traveling to and from the proceeding and in attendance at the proceeding.

(2) Expert Fees. — In addition to actual costs of travel, meals and lodging each expert witness employed by appointed counsel other than the public defender shall be allowed a fee approved by the court before the subpoena is issued.

(d) *For production of documentary evidence and of objects.* — A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, objects, and portions thereof, to be inspected by the parties and their attorneys.

(e) *Service.* — A subpoena may be served by the sheriff, or by any other person, over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. Service of a subpoena shall be made by delivering a copy thereof to the person named

and by tendering to that person the fee for one-day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the state or an indigent defendant.

(f) *Place of service.* — A subpoena requiring the appearance of a witness at a hearing or trial may be served at any place within the jurisdiction of the State of Wyoming.

(g) *Contempt.* — Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(h) *Information not subject to subpoena.* — Statements made by witnesses or prospective witnesses may not be subpoenaed from the state or the defendant under this rule, but shall be subject to production only in accordance with the provision of Rule 26.2.

(i) *Inability to pay fees and expenses.* — Upon an *ex parte* application of a defendant and a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense, the court shall order that a subpoena be issued for service on a named witness and that the fees and expenses incurred therefor be paid by the public defender's office. If the court orders the subpoena to be issued at public expense for the actual costs incurred by the witness for travel, meals and lodging shall be paid by the public defender's office, but such costs may not exceed the amounts authorized for state employees in W.S. 9-3-103 and 9-3-104.

(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 17, Fed. Rules Cr. Proc.

Compliance. — Subpoenas were quashed where they did not have precipe or court seal, in violation of subdivision (a), and the subpoenas directed the recipients to submit evidence directly to defendant's attorney, rather than to the trial court, in violation of subdivision (d). Wolfe v. State, 998 P.2d 385 (Wyo. 2000).

Defendant's responsibility for producing informant. — The state's failure to subpoena and produce an informant at the defendant's trial does not deprive him of his right to confront the witnesses against him, nor does it violate U.S. Const., amend. 6, and art. 1, § 10, Wyo. Const., where the defendant is furnished with the name and address of the informant well in advance of trial, he does not apply ex parte, under this rule, for a subpoena to be issued at state expense, and he makes no other effort to secure the informer's attendance at trial. A defendant cannot avoid the consequences of his failure to produce a witness for trial, when he knows the name and address of such a witness and has had ample opportunity to subpoena the witness. Montez v. State, 670 P.2d 694 (Wyo. 1983).

Physician-patient privilege must be claimed and evidence objected to or privilege is waived. Frias v. State, 722 P.2d 135 (Wyo. 1986).

Cited in Siegert v. State, 634 P.2d 323 (Wyo. 1981).

Am. Jur. 2d, ALR and C.J.S. references. — Privilege of newsgatherer against disclosure of confidential sources or information, 99 ALR3d 37.

Requirements under Rule 45(c) of the Federal Rules of Civil Procedure and Rule 17(d) of Federal Rules of Criminal Procedure, relating to service of subpoena and tender of witness fees and mileage allowance, 77 ALR Fed 863.

Appealability by client of denial of motion to quash subpoena directed to attorney or order compelling attorney to testify or produce documents—federal criminal cases, 109 ALR Fed 564.

Rule 17.1. Pretrial conference.

At any time after the filing of the indictment, information or citation the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

Compare. — Rule 17.1, Fed. Rules Cr. Proc.

Evidence admissible though not discussed at conference. — The use of a pretrial conference is not a limitation in itself for preventing the introduction of evidence at trial; thus, the fact that a piece of evidence was not discussed at the pretrial conference does not make it inadmissible. Phillips v. State, 835 P.2d 1062 (Wyo. 1992).

Law reviews. — For discussion of Rule 410, Fed. R. Evid., relating to inadmissibility of pleas, offers of pleas and related statements, see XII Land & Water L. Rev. 601 (1977).

Am. Jur. 2d, ALR and C.J.S. references. — Mental subnormality of accused as affecting voluntariness of confession, 8 ALR4th 16.

Coercive conduct by private person as affecting admissibility of confession under state statutes or constitutional provisions — post-Connelly cases, 48 ALR5th 555.

22 C.J.S. Criminal Law §§ 340 to 354.

Rule 18. Place of prosecution and trial.

Except as otherwise permitted by statute or by these rules, the prosecution shall take place in the county in which the offense is alleged to have been committed, or in the municipality whose ordinance is alleged to have been violated. The court shall fix the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 18, Fed. Rules Cr. Proc.

Pretrial publicity. — Although there was extensive media coverage, change of venue was not warranted for trial of a defendant accused of murdering a victim who intended to testify against the defendant concerning sexual abuse offenses; the pretrial publicity was largely factual in nature rather than inflammatory nor judgmental, and a complex jury selection process and extensive questioning of potential jurors resulted in the seating of an unbiased jury despite the adverse pretrial publicity. Proffit v. State, 193 P.3d 228 (Wyo. 2008).

Applied in Wilcox v. State, 670 P.2d 1116 (Wyo. 1983); Murray v. State, 671 P.2d 320 (Wyo. 1983); Murry v. State, 713 P.2d 202 (Wyo. 1986).

Stated in Pote v. State, 695 P.2d 617 (Wyo. 1985).

Cited in Collins v. State, 589 P.2d 1283 (Wyo. 1979); Bernard v. State, 652 P.2d 982 (Wyo. 1982); Haight v. State, 654 P.2d 1232 (Wyo. 1982).

Am. Jur. 2d, ALR and C.J.S. references. — What is proper venue under Rule 18 of the Federal Rules of Criminal Procedure for offense of bail jumping, 52 ALR Fed 901.

Proper venue in prosecution under 21 USC § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970, 74 ALR Fed 669.

Rule 19. [Reserved].

Rule 20. Transfer from county for plea and sentence.

(a) *Indictment, information or citation pending.* — A defendant arrested, held or present in a county other than that in which the indictment, information or citation is pending against that defendant may state in writing a wish to plead guilty or nolo contendere, to waive examination and/or trial in the county in which the indictment, information or citation is pending and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the attorney for the state in each county. Upon receipt of the defendant's statement and the written approval of the attorney for the state in each county, the clerk of the court in which the indictment, information or citation is pending shall transmit the court file in the proceeding or certify copies thereof to the clerk of the court for the county in which the defendant is arrested, held, or present and the prosecution shall continue in that county.

(b) *Indictment, information or citation not pending.* — A defendant arrested, held or present in a county other than the county in which the indictment, information or citation will be filed may state in writing a wish to plead guilty or nolo contendere, to waive venue, preliminary examination and/or trial in the county in which prosecution

is contemplated and to consent to disposition of the case in the county in which that defendant was arrested, held or present, subject to the approval of the attorney for the state in each county. Upon receipt of the defendant's statement and of the written approval of the attorney for the state for each county and upon the filing of an information or a citation or the return of an indictment, the clerk of the court for the county in which the prosecution has initiated shall transmit the papers in the proceedings, or certified copies thereof, to the clerk of the court for the county in which the defendant is present and the prosecution shall continue in that county.

(c) *Effect of not guilty plea or mental illness.* — If after the proceeding has been transferred pursuant to subdivision (a) or (b), the defendant pleads not guilty; or not guilty by reason of mental illness or deficiency; or if suggestion is made that the defendant is not triable because of a mental illness or deficiency, the clerk shall return the papers to the court in which the prosecution was commenced and the proceedings shall be restored to the docket of that court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere shall not be used against that defendant.

(d) *Appearance in response to summons.* — For the purpose of initiating a transfer under this rule, a person who appears in response to a summons issued under Rule 4 shall be treated as if arrested on a warrant in the county of such appearance.

Compare. — Rule 20, Fed. Rules Cr. Proc.

Applied in Rudolph v. State, 829 P.2d 269 (Wyo. 1992).

Law reviews. — For discussion of Rule 410, Fed. R. Evid., relating to inadmissibility of pleas, offers of pleas and related statements, see XII Land & Water L. Rev. 601 (1977).

Rule 21. Transfer from county for trial.

(a) *Prejudice within county.* — Upon timely motion of the defendant, the court shall transfer the proceeding as to that defendant to another county, but only if the court is satisfied that there exists within the county where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county.

(b) *Other cases.* — For the convenience of parties and witnesses, and in the interest of justice, the court upon consent of the parties may transfer the proceeding as to that defendant or any one or more of the counts thereof to another county.

(c) *Proceedings on transfer.* — When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred the court file in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county.

Compare. — Rule 21, Fed. Rules Cr. Proc.

Constitutional standard for fairness requires that defendant have panel of impartial jurors. Collins v. State, 589 P.2d 1283 (Wyo. 1979).

Change of venue ordinarily within sound discretion of trial court. — Whether a change of venue should be granted is ordinarily within the sound discretion of the trial court. Moss v. State, 492 P.2d 1329 (Wyo. 1972).

It is ordinarily within the discretion of the trial court to decide when a change should be granted. Mares v. State, 500 P.2d 530 (Wyo. 1972).

Allowance of a change of venue is ordinarily within the sound discretion of the trial court. Jackson v. State, 522 P.2d 1356 (Wyo.), cert. denied, 419 U.S. 1055, 95 S. Ct. 637, 42 L. Ed. 2d 652 (1974).

Denial of venue change stands unless clearly erroneous. — The trial judge's decision to deny a change of venue will stand unless it is clearly against the logic or reasonable deduction to be reached on the evidence; stated otherwise, the decision will stand unless it is clearly erroneous. Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S. Ct. 2967, 64 L. Ed. 2d 841 (1980).

Prejudice must be such as to prevent fair trial. — Prejudice against the defendant must be shown which is so great or general as to prevent him from receiving a fair and impartial trial. Mares v. State, 500 P.2d 530 (Wyo. 1972); Jackson v. State, 522 P.2d 1356 (Wyo.),

cert. denied, 419 U.S. 1055, 95 S. Ct. 637, 42 L. Ed. 2d 652 (1974).

It is not sufficient merely to show prejudice against the accused; it must appear the prejudice is so great or general as to prevent him from receiving a fair and impartial trial. Moss v. State, 492 P.2d 1329 (Wyo. 1972).

The evidence to support a transfer of trial to another county must show prejudice so great and general in the community that a fair and impartial trial could not there be obtained. Valerio v. State, 542 P.2d 875 (Wyo. 1975).

Venue changed where fair, impartial, jury questioned. — If the right to a fair and impartial jury is questioned, a motion for a change of venue is the proper recourse under this rule. Johnson v. State, 806 P.2d 1282 (Wyo. 1991).

Standard of impartiality. — To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Collins v. State, 589 P.2d 1283 (Wyo. 1979).

Standard for demonstration of partiality. — While a juror's claim that he is impartial and can decide the case fairly does not finally take away any further claim of the defendant that he did not have a fair and impartial jury, he must demonstrate the actual existence of an opinion of guilt in the mind of the juror as will raise a presumption of partiality. There must be a showing of corrupting inflammatory publicity. Collins v. State, 589 P.2d 1283 (Wyo. 1979).

Burden upon defendant. — Under this rule, in order for a change of venue to be granted, the burden is upon the defendant to show prejudice so great or general as to prevent his receiving a fair and impartial trial and the decision is within the sound discretion of the trial judge. Collins v. State, 589 P.2d 1283 (Wyo. 1979).

In order for a change of venue to be granted, the burden is upon the defendant to show prejudice so great or general as to prevent his receiving a fair and impartial trial, and the decision is within the sound discretion of the trial judge. Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S. Ct. 2967, 64 L. Ed. 2d 841 (1980).

Affidavits of opinions or conclusions are not in and of themselves sufficient to require a change of venue. Mares v. State, 500 P.2d 530 (Wyo. 1972).

When affidavits of opinions or conclusions are alone relied on, they furnish no basis for granting a change of venue. Moss v. State, 492 P.2d 1329 (Wyo. 1972).

Affidavits submitted to the district court to prove prejudice are not, in and of themselves, sufficient to require a change in venue. A defendant must actually demonstrate existing prejudice in the minds of the jurors at the time of voir dire. Wilcox v. State, 670 P.2d 1116 (Wyo. 1983).

Extent of prejudice determined upon voir dire. — A motion for a change of venue on account of claimed prejudicial publicity cannot be passed upon logically until the extent of the prejudice, if any, is determined upon voir dire examination of the jurors. Moss v. State, 492 P.2d 1329 (Wyo. 1972).

Interest and indignation of the people are the natural result of shocking crimes and do not of themselves require a change of venue. Moss v. State, 492 P.2d 1329 (Wyo. 1972); Mares v. State, 500 P.2d 530 (Wyo. 1972).

Pretrial publicity is not of itself inherently prejudicial. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Two-pronged test determines whether change of venue should be granted because of publicity. — First, the nature and extent of the publicity must be considered; second, the difficulty or ease in selecting a jury must be considered, along with the amount of prejudice which actually appears during voir dire examination. Murry v. State, 713 P.2d 202 (Wyo. 1986).

In determining whether prejudice exists, consideration should be given, before jury selection, to the nature and extent of the publicity. If not satisfied that there is a showing of prejudice so great as to preclude a fair trial, the court may deny the motion for change of venue or take it under advisement and then, in addition, also consider the difficulty or ease in selecting a jury, and whether the prejudice claimed actually appears during jury selection. Murray v. State, 671 P.2d 320 (Wyo. 1983).

Juror exposure to publicity about a criminal case is to be anticipated, and jurors may even have formed an opinion as to the guilt of the accused, which by itself, is not a ground for requiring a change of venue. The test is whether a juror can lay aside his opinion and render a verdict based on the evidence. Nixon v. State, 994 P.2d 324 (Wyo. 1999).

Extensive news coverage does not automatically require change of venue. Shaffer v. State, 640 P.2d 88 (Wyo. 1982).

Extensive news coverage does not automatically require a change of venue, as pretrial publicity, per se, does not create prejudice sufficient to prevent a fair trial. Wilcox v. State, 670 P.2d 1116 (Wyo. 1983).

The mere fact that potential jurors may have heard of a criminal incident or read about it in news articles is not determinative of the issue of prejudice. That is to be expected with a free press; and where the news articles are largely factual and not inflammatory, they cannot be considered prejudicial. Murray v. State, 671 P.2d 320 (Wyo. 1983).

Juror need not be isolated to be fair. —

One need not be isolated from all the information concerning the incident under consideration to be a fair and impartial juror. Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S. Ct. 2967, 64 L. Ed. 2d 841 (1980).

Record supportive of denial of venue change. — Where the record does not reflect any news articles that are other than objective, nor any difficulty in selecting an impartial jury, and where the defendant has not exercised all of his peremptory challenges and has not objected to the jury selection, there is nothing to indicate an abuse of discretion by the trial judge in denying a motion for a change of venue. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

In defendant's felony murder case, change of venue was properly denied where sixty-five jurors were summoned for the trial, and of those, 12 had heard about the case, and each of those jurors was closely examined; moreover, at the close of voir dire, defendant passed the jury for cause and had no objections to the jury selection process. Lemus v. State, 162 P.3d 497 (Wyo. 2007).

The judge did not abuse his discretion in not granting a change of venue, although 15 jurors were excused for cause, there being no indication that the 15 reflected the opinions and attitudes of the other members of the jury panel or that the 15 influenced the remaining panel members. Pote v. State, 695 P.2d 617 (Wyo. 1985).

Pretrial publicity did not require a change of venue where trial court found newspaper articles which had run prior to trial were not likely to have been read by a sufficient number in jury pool to prevent impaneling an impartial jury. Punches v. State, 944 P.2d 1131 (Wyo. 1997).

Denial of defendant's motion for a change of venue based on pretrial publicity was not an abuse of discretion where, even though many prospective jurors heard of the case, there was nothing to suggest prejudicial publicity and, where, as part of his overall trial strategy, defendant's counsel actually read portions of newspaper articles to the jury. Sides v. State, 963 P.2d 227 (Wyo. 1998).

Trial court properly denied defendant's motion for change of venue due to pretrial publicity about defendant's crimes and a separate investigation in which he was a murder suspect, where (1) although there were 12 articles published about defendant, none were sensational or inflammatory and the last was published 3 months before trial, (2) only five of 48 prospective jurors expressed concern about their ability to be impartial in light of the pretrial publicity, (3) none of the five were seated on the jury, and (4) the record does not indicate that it was difficult to seat an impartial jury. Urbigkit v. State, 67 P.3d 1207 (Wyo. 2003).

Although there was extensive media coverage, change of venue was not warranted for trial of a defendant accused of murdering a victim who intended to testify against the defendant concerning sexual abuse offenses; the pretrial publicity was largely factual in nature rather than inflammatory nor judgmental, and a complex jury selection process and extensive questioning of potential jurors resulted in the seating of an unbiased jury despite the adverse pretrial publicity. Proffit v. State, 193 P.3d 228 (Wyo. 2008).

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Venue change denied where careful voir dire. — The court did not abuse its discretion in denying a change of venue where the effects of inflammatory publicity on potential jurors were mitigated by a carefully controlled voir dire so as to avoid denial of a fair trial to the defendant. Armstrong v. State, 826 P.2d 1106 (Wyo. 1992).

Applied in Smith v. State, 598 P.2d 1389 (Wyo. 1979); Garnett v. State, 769 P.2d 371 (Wyo. 1989); Smallwood v. State, 771 P.2d 798 (Wyo. 1989); Pena v. State, 792 P.2d 1352 (Wyo. 1990).

Quoted in Hopkinson v. State, 632 P.2d 79 (Wyo. 1981).

Cited in State v. Selig, 635 P.2d 786 (Wyo. 1981); Grubbs v. State, 669 P.2d 929 (Wyo. 1983); Little v. Kobos ex rel. Kobos, 877 P.2d 752 (Wyo. 1994).

Am. Jur. 2d, ALR and C.J.S. references. — Power of state trial court in criminal case to change venue on its own motion, 74 ALR4th 1023.

Rule 21.1. Change of judge.

(a) *[Repealed].* —

(b) *Disqualification for cause.* — Promptly after the grounds for such motion become known, the state or the defendant may move for a change of judge on the ground that the presiding judge is biased or prejudiced against the state, the attorney for the state, the defendant or the defendant's attorney. The motion shall be supported by affidavits stating sufficient facts to demonstrate such bias or prejudice. Prior to a hearing on the

motion other affidavits may be filed. The motion shall be referred to another judge, or a court commissioner, who shall rule on the motion, and if granted shall immediately assign the case to a judge other than the disqualified judge. A ruling on a motion for a change of judge is not an appealable order, but the ruling shall be made a part of the record, and may be assigned as error in an appeal of the case or on a bill of exceptions. (Amended July 22, 1993, effective October 19, 1993; amended November 26, 2013, effective November 26, 2013.)

Editor's notes. — This matter came before the Court on its own motion following reconsideration of the rules providing for peremptory disqualification of judges in criminal and juvenile cases. On December 4, 2012, this Court entered its "Order Suspending Rules Providing for Peremptory Disqualification of Judge." That order suspended the rules that permit peremptory disqualifications in criminal and juvenile cases. The Court stated it intended to consult the rules committees and consider the future, if any, of the peremptory disqualification rules in criminal and juvenile cases. The report and recommendation of the Permanent Rules Advisory Committee, Criminal Division, was to reinstate the rule. However, the judges serving on the committee favored elimination of the peremptory disqualification rule for criminal and juvenile matters. Now, having carefully examined the matter, the Court finds it necessary and proper for the reasons set forth below to repeal Rule 21.1(a) of the Wyoming Rules of Criminal Procedure and to amend Rule 40.1 of the Wyoming Rules of Civil Procedure. Because the Court has not identified any similar problems or concerns in the civil arena, the Court has chosen not to curtail, in any manner, the use of peremptory qualifications disqualifications in civil cases.

Wyoming is in the minority of States that permit peremptory challenges of judges. R. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges, 789-822 (2d ed. 2007) (state-by-state review of statutes and court rules). The peremptory disqualification rule dates back to 1975. While no clear statement of intent was provided by the Court when the peremptory disqualification rules were initially adopted, we conclude that its purpose was to allow attorneys to remove judges selectively when they had concerns that a certain judge may have attitudes that, while not sufficient to support a motion to remove a judge for cause, created concerns for that party that the judge may have a predisposition in that particular case. It was never intended to allow wholesale removal of a judge from all cases in which that attorney may be involved. Throughout its history, Rule 21.1(a) (and its predecessor W.R.Cr.P. 23(d)) has been the subject of intermittent misuse by individual attorneys who utilized it to remove a particular judge from many or all of their cases before that judge. That misuse resulted in this Court suspending the rule and reconsidering its efficacy. In the most recent example, a prosecutor invoked Rule 21.1(a) as a means to remove an assigned judge from eight newly filed juvenile actions and another prosecutor requested blanket disqualification of a judge in all criminal matters. When misuse has risen to an unacceptable level, district judges have objected to this Court and sought relief from the burdens that practice created for them.

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This marks at least the third time the rule has been abolished or suspended. The Court previously abolished the rule in 1983, reinstated it and later suspended it in 1998. Each time we ultimately reinstated the rule and admonished attorneys to not use the rule to seek removal of a judge for all cases. In 2010, at the request of the district court judges, the Board of Judicial Policy and Administration established a task force to once again evaluate the apparent misuse of the disqualification rule. Over the objection of the district court judges on the taskforce, it recommended

amendments to the rule which would have required a formal procedure for handling these motions and required the judge to respond, a process perceived by the district judges to be similar to disqualifications for cause with a lesser burden of proof. On March 10, 2011, after careful consideration of the taskforce's recommendation to revise the rule, this Court reluctantly decided to leave the rule intact without limitation, but once again admonished the officers of the bar that lawyers should refrain from improper use of the rule and reminded them the rule was not intended to allow attorneys to replace a judge in all cases. By December, 2012, the practice of blanket disqualification of a local judge returned. While these situations were not widespread, they did cause the predictable disruption of multiple district court dockets and demonstrated that compliance with the intent of the rule could not be assured in the future.

The blanket use of the disqualification rules negatively affects the orderly administration of justice. Judicial dockets are interrupted, replacement judges must be recruited, sometimes including their court reporters, and unnecessary travel expenses are incurred. Peremptory disqualifications of assigned judges affect not only the specific cases at issue, but also the caseload of judges and the cases of other litigants whose cases are pending before the removed judge and the replacement judge at the same time. Where replacement judges are from other judicial districts, the cost and efficient utilization of judicial resources is greatly impacted. These costs cause financial burdens upon district courts budgets. Each district court has a limited budget for outside judges brought in to preside over cases in which challenges have been utilized. Criminal and juvenile cases comprise a significant portion of the cases on a district court's docket and, consequently, multiple disqualifications in those types of cases have a severe impact on the operation of the district court.

In addition, when peremptory challenges are exercised, delays in the timely resolution of juvenile and criminal cases may result. Quick resolution of matters involving children is not only statutorily required, but of paramount concern to this Court. Further, any delay in criminal proceedings resulting from a judge's removal, however slight, can impact a defendant's speedy trial rights, potentially contributing to a dismissal of criminal charges.

Allowing unfettered peremptory challenges of judges encourages judge shopping. In practice, it permits parties to strike a judge who is perceived to be unfavorable because of prior rulings in a particular type of case rather than partiality in the case in question. Disqualifying a judge because of his or her judicial rulings opens the door for manipulation of outcomes. Such undermines the reputation of the judiciary and enhances the public's perception that justice varies according to the judge. It also seriously undercuts the principle of judicial independence and distorts the appearance, if not the reality, of fairness in the delivery of justice.

The inherent power of this Court encompasses the power to enact rules of practice. Included in this power is the authority to suspend or repeal those rules where appropriate. Wyo. Const. Art. V, § 2; Wyo. Stat. Ann. § 5-2-114 (LexisNexis 2013); White v. Fisher, 689 P.2d 102, 106 (Wyo. 1984). In accordance with our inherent authority, and given our duty to ensure the orderly and efficient function of Wyoming's judicial system, we find it advisable to repeal and amend the rules that permit peremptory disqualifications in criminal and juvenile cases.

Cross References. — As to disability of judge, see Rule 25.

No right to disqualify successive judges. — This rule does not confer upon a defendant the right to disqualify successive judges until he finds one that will grant his motions. The rule requires that the defendant state facts that would convince a reasonable person with knowledge of all the facts that the judge harbors a personal bias or prejudice against him. Story v. State, 788 P.2d 617 (Wyo. 1990).

Judge divested of all but residual authority. — A district judge who is disqualified under this rule is divested of all jurisdiction except for residual authority to assign the case to another district judge. Counts v. State, 899 P.2d 1341 (Wyo. 1995).

Mere allegation of judicial bias is insufficient to form basis for disqualification. — Specific facts showing bias must be presented in the affidavit supporting the motion. Pearson v. State, 866 P.2d 1297 (Wyo. 1994).

Judge recuses himself where facts show personal bias. — A trial judge need only recuse himself if he determines that the facts set out in the affidavit, taken as true, are such that they would convince a reasonable man that he harbored a personal as opposed to a judicial bias against the defendant. Hopkinson v. State, 679 P.2d 1008 (Wyo.), cert. denied, 469 U.S. 873, 105 S. Ct. 228, 83 L. Ed. 2d 157 (1984).

Bias not shown. — The defendant did not demonstrate that the trial judge was biased and prejudiced and should have been disqualified from hearing the motion for post-conviction ruling where he merely brought to the Supreme Court's attention a mass of vexatious materials created by him, directed to the trial judge. Pote v. State, 733 P.2d 1018 (Wyo. 1987).

In a case involving a motion for the return of seized property, defendant's motion for recusal of the trial judge was properly denied because another judge found that, other than the fact that rulings in the case were largely adverse to defendant, defendant pointed out no fact, nor did he articulate in argument, that the rulings of the court somehow showed bias or prejudice

against him. Deloge v. State, 156 P.3d 1004 (Wyo. 2007).

In a third degree sexual assault case, the district court did not abuse its discretion when it denied defendant's motion for change of judge under Wyo. R. Crim. P. 21.1(b) as the Rule did not prohibit the judge assigned to decide the motion from considering the lower court's record, and defendant did not meet his burden of proving that the district court judge was personally biased or prejudiced toward him or his attorney. The district court judge's comment that, in light of the allegations contained in the probable cause affidavit, he did not understand how the original charges could be reduced from first to third degree sexual assault, could not be considered in isolation but had to be read in the context of all of his comments during these proceedings. Krafczik v. Morris, 206 P.3d 372 (Wyo. 2009).

Affidavit supporting motion for change of judge did not comply with this rule. — See Pote v. State, 695 P.2d 617 (Wyo. 1985).

Failure to refer motion harmless error. — The presiding judge violated subdivision (b) by not referring a motion for disqualification to another judge for a decision. However, this error was invited and harmless. The parties did not argue that the judge incorrectly ruled on the motion, and neither the motion not the affidavit evinced sufficient grounds for disqualification. Pearson v. State, 866 P.2d 1297 (Wyo. 1994).

Cited in Wayt v. State, 912 P.2d 1106 (Wyo. 1996); Tilley v. State, 912 P.2d 1140 (Wyo. 1996); Vargas v. State, 963 P.2d 984 (Wyo. 1998).

Law reviews. — For comment, "Civil and Criminal Procedure — Disqualification of District Judges for Prejudice in Wyoming," see VI Land & Water L. Rev. 743 (1971).

For comment, "Disqualification of District Judges in Wyoming: An Assessment of the Revised Rules," see XIX Land & Water L. Rev. 655 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — Disqualification of judge because of assault or threat against him by party or person associated with party, 25 ALR4th 923.

Waiver or loss of right to disqualify judge by participation in proceedings — modern state criminal cases, 27 ALR4th 597.

Disqualification of judge because of political association or relation to attorney in case, 65 ALR4th 73.

Disqualification from criminal proceeding of trial judge who earlier presided over disposition of case of co-participant, 72 ALR4th 651.

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 ALR5th 747.

Disqualification of judge for bias against counsel for litigant, 54 ALR5th 575.

Disqualification of federal judge, under 28 USC § 455(b)(5)(ii), on ground that judge's relative is acting as lawyer in proceeding, 73 ALR Fed 879.

Rule 22. [Reserved].

Rule 23. Trial by jury or court.

(a) *Trial by jury.* — Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the state. A waiver of jury shall be made in writing or on the record. There shall be no right to a jury trial, except: (1) when a statute or ordinance so provides, or (2) when the offense charged is driving under the influence of alcoholic beverages or controlled substances, or (3) when the offense charged is one for which the statute or ordinance alleged to have been violated provides for incarceration as a possible punishment.

(b) *Number of jurors.* — Juries shall be of 12 for felonies and six for misdemeanors but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or less than six as the case may be, or that a valid verdict may be returned by a jury of less than 12 or less than six should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

(c) *Trial without jury.* — In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the trial begins, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient that the findings of fact appear therein.

(Amended July 22, 1993, effective October 19, 1993; amended and effective November 1, 1993.)

Compare. — Rule 23, Fed. Rules Cr. Proc.

Criminal defendant has absolute right

to common-law jury trial. Taylor v. State, 612 P.2d 851 (Wyo. 1980).

Defendant's right to waive jury trial has never been questioned. Taylor v. State, 612 P.2d 851 (Wyo. 1980).

Rule confers upon defendant "qualified" right to waive jury trial. — The right is qualified because waiver requires approval of the court and consent of the state. Johnson v. State, 806 P.2d 1282 (Wyo. 1991).

Venue changed where fair, impartial, jury questioned. — If the right to a fair and impartial jury is questioned, a motion for a change of venue is the proper recourse under Rule 23. Johnson v. State, 806 P.2d 1282 (Wyo. 1991).

Requisite inquiry on adequacy of jury waiver is: (1) was the waiver express; and (2) was it knowing, intelligent and voluntary. Robbins v. State, 635 P.2d 781 (Wyo. 1981).

Oral waiver valid if made knowingly and voluntarily. — Although a written waiver of the right to a jury trial is preferred, an oral waiver is valid where it appears from the record to have been made knowingly and voluntarily. Robbins v. State, 635 P.2d 781 (Wyo. 1981).

Only purpose of written waiver is to insure greater probability of a defendant's understanding of what he is doing if and when he waives a right to trial by jury. Robbins v. State, 635 P.2d 781 (Wyo. 1981).

Duty of Supreme Court. — Where the case was tried to the court with a jury waiver and the court made a general finding of guilt, in the absence of a request for special findings, it is the duty of the Supreme Court to examine the record to determine if there was substantial credible evidence sufficient to sustain the general finding. Gonzales v. State, 516 P.2d 592 (Wyo. 1973).

Substitution of alternate juror was error. — The substitution of an alternate juror, after jury deliberations had begun in a defendant's kidnapping trial, constituted prejudicial error, where (1) the reconstituted jury was not instructed to recommence deliberations from the beginning; (2) there was no inquiry as to whether the remaining regular jurors could set aside their previous deliberations and any opinions formed during those deliberations; and (3) the potential for prejudice was evidenced by the fact that the original jury deliberated the previous afternoon without reaching a verdict, but managed to reach a verdict with the participation of the alternate juror in less than an hour. Alcalde v. State, 74 P.3d 1253 (Wyo. 2003).

Trial court committed plain error and violated defendant's right to a fair trial in providing a supplemental jury instruction. The jury indicated by its question that it was unsure of what facts made up the course of conduct necessary to find defendant guilty of the offense of stalking; by directing the jury to particular evidence that it could consider, the trial court provided inappropriate evidentiary guidance and violated defendant's right to have the facts of the case determined solely by the jury. Snow v. State, 216 P.3d 505 (Wyo. 2009).

Applied in Newell v. State, 548 P.2d 8 (Wyo. 1976).

Cited in Van Riper v. State, 882 P.2d 230 (Wyo. 1994).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 1070 to 1084.

Waiver, after not guilty plea, of jury trial in felony case, 9 ALR4th 695.

Right of accused, in state criminal trial, to insist, over prosecutor's or court's objection, on trial by court without jury, 37 ALR4th 304.

Paternity proceedings: right to jury trial, 51 ALR4th 565.

Oral stipulation to proceed in federal criminal trial with less than 12 jurors as satisfying Rule 23(b) of Federal Rules of Criminal Procedure, 57 ALR Fed 367.

50A C.J.S. Juries §§ 7 to 165.

Rule 24. Trial jurors.

(a) *Qualifications.* — All prospective jurors must answer as to their qualifications to be jurors; such answers shall be in writing, signed under penalty of perjury and filed with the clerk of the court. The written responses of the prospective jurors shall be preserved by the clerk of the court for the longer of the following:

(1) One year after the end of the jury term; or

(2) Until all appeals from any trial held during that term of court have been finally resolved.

The judge shall inquire of the jurors in open court on the record to insure that they are qualified.

(b) *Excused jurors.* — For a good cause but within statutory limits a judge may excuse a juror for a trial, for a fixed period of time, or for the term. All excuses shall be written and filed with the clerk or granted in open court on the record.

(c) *Examination of jurors.* — After the jury panel is qualified the attorneys or a *pro se* defendant shall be entitled to conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the judge, and the judge may

conduct such further examination as the judge deems proper. The judge may assume the examination if counsel or a *pro se* defendant fail to follow this rule. If the judge assumes the examination, the judge may permit counsel or a *pro se* defendant to submit questions in writing. The examination shall be on the record.

(1) The only purpose of the examination is to select a panel of jurors who will fairly and impartially hear the evidence and render a just verdict.

(2) The court shall not permit counsel or a *pro se* defendant to attempt to precondition prospective jurors to a particular result, comment on the personal lives and families of the parties or their attorneys, nor question jurors concerning the pleadings, the law, the meaning of words, or the comfort of jurors.

(3) In voir dire examination counsel or a *pro se* defendant shall not:

(A) Ask questions of an individual juror that can be asked of the panel or a group of jurors collectively;

(B) Ask questions answered in a juror questionnaire except to explain an answer;

(C) Repeat a question asked and answered;

(D) Instruct the jury on the law or argue the case; or

(E) Ask a juror what the juror's verdict might be under any hypothetical circumstance.

Notwithstanding the restrictions set forth in subsections 24(c)(3)(A)-(E), counsel or a pro se party shall be permitted during voir dire examination to preview portions of the evidence from the case in a non-argumentative manner when a preview of the evidence would help prospective jurors better understand the context and reasons for certain lines of voir dire questioning.

(d) *Peremptory challenges.* —

(1) Felony Cases. — If the offense charged is punishable by death, each defendant is entitled to 12 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, each defendant is entitled to eight peremptory challenges. If two or more defendants are being tried jointly, each defendant shall be allowed separate peremptory challenges. The state shall be allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

(2) Misdemeanor Cases. — If the offense charged is punishable by imprisonment for not more than one year, each defendant is entitled to four peremptory challenges. In juvenile delinquency cases, each juvenile is entitled to four peremptory challenges. The state shall be allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

(e) *Alternate jurors.* — The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror may be discharged or retained after the jury retires to consider its verdict. When the jury retires to consider the verdict, the court in its discretion may retain the alternate jurors during deliberations. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. The trial court must:

(1) instruct any retained alternate that his oath is still applicable and until a verdict has been rendered and the regular jury discharged, he must refrain from discussing the case with anyone and avoid extrinsic information that may affect his ability to impartially judge the case;

(2) upon recall, inquire on the record whether the alternate juror did, in fact, comply with the court's instructions;

(3) instruct the reconstituted jury to begin deliberations anew; and

(4) inquire on the record whether the remaining members of the original jury can ignore the previous deliberations and set aside any opinions formed during them. If the trial court cannot establish that all of these safeguards are met, then the court may not substitute the alternate, and the matter may proceed pursuant to W.R.Cr.P. 23(b); otherwise, a mistrial may be declared.

Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

(Amended October 30, 1992, effective January 19, 1993; amended October 26, 2000, effective March 1, 2001; amended December 19, 2003, effective March 1, 2004.)

Compare. — Rule 24, Fed. Rules Cr. Proc.

Open voir dire in capital murder case constitutional. — The trial court did not abuse its discretion in a capital murder case by requiring an open voir dire with the entire venire panel present. Such an open voir dire, rather than a sequestered examination, did not create a "presumption of guilt" in the minds of the potential jury members, and thus did not deny the constitutional right of a fair and impartial jury. Engberg v. State, 686 P.2d 541 (Wyo.), cert. denied, 469 U.S. 1077, 105 S. Ct. 577, 83 L. Ed. 2d 516 (1984).

General discussion of constitutional aspects of peremptory challenges. — See Evans v. State, 653 P.2d 308 (Wyo. 1982).

Constitutional for state to use peremptory challenge to remove death-inhibited jurors. — The defendant's constitutional right to a fair and impartial jury was not violated by the state using its peremptory challenge to remove death-inhibited jurors from the jury panel. Engberg v. State, 686 P.2d 541 (Wyo.), cert. denied, 469 U.S. 1077, 105 S. Ct. 577, 83 L. Ed. 2d 516 (1984).

Purpose of voir dire examination is to raise alleged bias "from the realm of speculation to the realm of fact." It is designed to explore the possible grounds for challenges for cause under state statutes. Lopez v. State, 544 P.2d 855 (Wyo. 1976).

The purpose of voir dire is to inquire of the jurors as to their prejudices and biases which would interfere with their ability to decide the case fairly. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

In determining bounds of voir dire examination, deference is afforded to the judgment of the trial court. The burden is upon the party who challenges the ruling of the trial court to establish abuse of the trial court's discretion. Summers v. State, 725 P.2d 1033 (Wyo. 1986), aff'd, 731 P.2d 558 (Wyo. 1987).

Voir dire to be conducted under supervision of trial judge. — Voir dire is to be conducted under the supervision and control of the trial judge, in whose judgment deference is given in determining the permissible bounds. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

Obligation of defendant on voir dire. — It is the obligation of the defendant to examine jurors on voir dire and discover by proper investigation facts affecting their qualifications, and then to seasonably raise that objection with respect to any member of the panel. Lopez v. State, 544 P.2d 855 (Wyo. 1976).

Latitude which should be allowed counsel when interrogating prospective jurors is within the sound discretion of the trial court. Gerard v. State, 511 P.2d 99 (Wyo.), cert. denied, 414 U.S. 1072, 94 S. Ct. 585, 38 L. Ed. 2d 478 (1973); Beartusk v. State, 6 P.3d 138 (Wyo. 2000).

Latitude allowed counsel during voir dire is within sound discretion of trial court. Beartusk v. State, 6 P.3d 138 (Wyo. 2000).

No improper argument during voir dire. — In defendant's indecent liberties case, defendant was not denied a fair trial by the prosecutor's questions during voir dire where, although the trial court might have been more aggressive in managing the voir dire process, it did allow considerable latitude to both sides. The limitations placed on voir dire by the Wyoming Rules of Criminal Procedure are flexible, and purposely so, so as to allow the trial court discretion in that important process. Person v. State, 100 P.3d 1270 (Wyo. 2004).

Form of questioning. — Form of prosecutor's questions during voir dire did not improperly precondition jurors to a particular result.

Metzger v. State, 4 P.3d 901 (Wyo. 2000).

No improper argument during voir dire. — Although there was a fine line between arguing facts of case and exploring possible prejudices among venire, trial court did not abuse its discretion in latitude it gave counsel during voir dire. Beartusk v. State, 6 P.3d 138 (Wyo. 2000).

Waiver of ground for bias or prejudice. — A failure to directly and plainly examine jurors with respect to a particular basis for bias or prejudice, which later is developed, constitutes a waiver of that ground. Lopez v. State, 544 P.2d 855 (Wyo. 1976).

To show prejudice defendant is required to show that he was denied his right to a peremptory challenge because he was forced to exercise it against an unqualified juror. Parks v. State, 600 P.2d 1053 (Wyo. 1979).

Fact that juror has been the victim of a crime not disclosed on voir dire does not require a conclusion of bias or partiality as a matter of law. Lopez v. State, 544 P.2d 855 (Wyo. 1976).

Court may ascertain whether jurors can act only on evidence presented. — The defendant-appellant failed to establish that the trial court could not have reasonably concluded other than his questions on voir dire were proper and were directed only to ascertain whether or not the prospective jurors could act only on the evidence presented in court, or that the trial court acted beyond the bounds of reason in its attempt to explain to the prospective jurors that which was necessary to them to give a fair and impartial consideration to the case. He did not establish the violation of a clear or unequivocal rule of law and, hence, did not establish plain error. Gresham v. State, 708 P.2d 49 (Wyo. 1985).

Judge did not place undue pressure on jury requiring a mistrial when during voir dire, he told the jurors that they would have at least from Thursday night through the following Monday to deliberate (not to "make a decision") on sexual assault charges against defendant. Valdez v. State, 727 P.2d 277 (Wyo. 1986).

Function of alternate jurors. — Alternate jurors are selected so that a trial can continue even if one of the jurors is unable to continue serving for any reason. Parks v. State, 600 P.2d 1053 (Wyo. 1979).

Prejudice from seating of alternate juror not shown. — The defendant does not show he was prejudiced by the seating of the alternate juror where he does not contend that the alternate juror did not listen to the evidence that was presented, that the alternate juror was unqualified to serve, or that the results of the case would have been different had the original juror not been originally seated. Parks v. State, 600 P.2d 1053 (Wyo. 1979).

"Verdict" for purposes of alternate-juror selection. — Reading Wyo. R. Crim. P. 2 and 24(e) together, and in light of the purpose served by alternate jurors, it seems clear that the term "verdict" in Wyo. R. Crim. P. 24(e) must be read in a broad sense to refer to a final jury decision on any matter specifically committed to it. Thus, the term must be read to refer not only to a determination of a defendant's guilt of a crime, but also to a jury's separate determination of a matter of the sort typically involved in bifurcated proceedings, such as a defendant's habitual-criminal status or the propriety of the death penalty. Pursuant to such a view, a capital-case jury may be said to retire to consider its verdict twice, once for the guilt phase and once for the sentencing phase, and alternate jurors are authorized to serve in sentencing-phase deliberations even if they did not serve during the guilt phase, so long as the replacement is made before the jury retires to begin sentencing-phase deliberations. Olsen v. State, 67 P.3d 536 (Wyo. 2003).

Timing of selection of alternate and replacement jurors. — In order to obtain the most attentive panel of jurors, it is prudent to delay the selection of alternates until all of the evidence has been heard. In the capital case at hand, the trial court did not inhibit the defendant's ability to use his peremptory challenges in accordance with Wyo. R. Crim. P. 24, when the trial court selected the alternate jurors just prior to deliberation on the guilt phase of the trial. Moreover, the trial court properly determined that Wyo. R. Crim. P. 24 allowed the trial court to select the replacement juror when an alternate juror was needed, and not before, where the replacement juror sitting on the panel for the sentencing phase was, in fact, the first juror selected from the clerk's drum when the trial court found it necessary to use one of the alternate jurors. Olsen v. State, 67 P.3d 536 (Wyo. 2003).

Substitution of alternate juror was error. — The substitution of an alternate juror, after jury deliberations had begun in a defendant's kidnapping trial, constituted prejudicial error, where (1) the reconstituted jury was not instructed to recommence deliberations from the beginning; (2) there was no inquiry as to whether the remaining regular jurors could set aside their previous deliberations and any opinions formed during those deliberations; and (3) the potential for prejudice was evidenced by the fact that the original jury deliberated the previous afternoon without reaching a verdict, but managed to reach a verdict with the participation of the alternate juror in less than an hour. Alcalde v. State, 74 P.3d 1253 (Wyo. 2003).

Failure to discharge alternate juror when deliberations commenced. — Where an alternate juror was mistakenly allowed into the jury room and remained there for the first hour and a half of deliberations, it was presumed that the juror participated; since the trial court did not instruct the jurors to disregard that juror's input, the reviewing court could only further presume that defendant was

prejudiced. McAdams v. State, 75 P.3d 665 (Wyo. 2003).

Peremptory challenges proper. — In an attempted first-degree murder case, defendant's equal protection rights under Batson were not violated by the prosecutor's exercise of two peremptory challenges against Hispanic jurors because one of the Hispanic jurors knew one of the law enforcement witnesses, knew another witness's mother, and preferred not to miss an upcoming doctor's appointment. The other Hispanic juror knew a witness. Mattern v. State, 151 P.3d 1116 (Wyo. 2007).

Applied in Jahnke v. State, 682 P.2d 991 (Wyo. 1984); Patterson v. State, 691 P.2d 253 (Wyo. 1984); Herdt v. State, 891 P.2d 793 (Wyo. 1995); Williams v. State, 54 P.3d 248 (Wyo. 2002).

Cited in Vit v. State, 909 P.2d 953 (Wyo. 1996); Sorensen v. State, 6 P.3d 657 (Wyo. 2000), cert. denied, 531 U.S. 1093, 121 S. Ct. 818, 148 L. Ed. 2d 702 (2001); Harlow v. State, 105 P.3d 1049 (Wyo. 2005); Fernandez v. State, 172 P.3d 730 (Wyo. 2007); Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Law reviews. — For article, "The Greatest Lawyer in the World (The Maturing of Janice Walker)," see XIV Land & Water L. Rev. 135 (1979).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 1085 to 1097.

Right of defense in criminal prosecution to disclosure of prosecution information regarding prospective jurors, 86 ALR3d 571.

Religious belief, affiliation or prejudice of prospective juror as proper subject of inquiry or ground for challenge on voir dire, 95 ALR3d 172.

Additional peremptory challenges because of multiple criminal charges, 5 ALR4th 533.

Validity and construction of statute or court rule prescribing number of peremptory challenges in criminal cases, 8 ALR4th 149.

Presence of alternate juror in jury room as ground for reversal of state criminal conviction, 15 ALR4th 1127.

Propriety of order forbidding news media from publishing names and addresses of jurors in criminal cases, 36 ALR4th 1126.

Effect of juror's false or erroneous answer on voir dire in personal injury or death action as to previous claims or actions for damages by himself or his family, 38 ALR4th 267.

Propriety of asking prospective female jurors questions on voir dire not asked of prospective male jurors, or vice versa, 39 ALR4th 450.

Necessity for presence of judge during voir dire examination of prospective jurors in state criminal case, 39 ALR4th 465.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt, 50 ALR4th 969.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification, 65 ALR4th 743.

Propriety, under state statute or court rule, of substituting state trial juror with alternate after case has been submitted to jury, 88 ALR4th 711.

Propriety of substituting juror in bifurcated state trial after end of first phase and before second phase is given to jury, 89 ALR4th 423.

Threats of violence against juror in criminal trial as ground for mistrial or dismissal of juror, 3 ALR5th 963.

Exclusion of public and media from voir dire examination of prospective jurors in state criminal case, 16 ALR5th 152.

Examination and challenge of state case jurors on basis of attitudes toward homosexuality, 80 ALR5th 469.

Examination and challenge of federal case jurors on basis of attitudes toward homosexuality, 85 ALR Fed 864.

Selection and impaneling of alternate jurors under Rule 24(c) of federal rules of criminal procedure, 119 ALR Fed 589.

Rule 24.1. Jury trial; jury note taking; juror notebooks.

(a) *Juror note taking.* — At the beginning of criminal trials, the court shall instruct the jurors that they will be permitted to take notes during the trial if they wish to do so. The court shall provide each juror with appropriate materials for this purpose and shall give jurors appropriate instructions about procedures for note taking and restrictions on jurors' use of their notes. The jurors may take their notes with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notes out of the courthouse. The bailiff or clerk shall collect all jurors' notes at the end of each day of trial and shall return jurors' notes when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notes before the jurors are excused. The bailiff or clerk shall promptly destroy these notes.

(b) *Juror notebooks.* — The court may provide all jurors with identical "Juror Notebooks" to assist the jurors in organizing materials the jurors receive at trial. Typical contents of a juror notebook include blank paper for note taking, stipulations of

the parties, lists or seating charts identifying counsel and their respective clients, general instructions for jurors, and pertinent case specific instructions. Notebooks may also include copies of important exhibits (which may be highlighted), glossaries of key technical terms, pictures of witnesses, and a copy of the court's juror handbook, if one is available. During the trial, the materials in the juror notebooks may be supplemented with additional materials as they become relevant and are approved by the court for inclusion. Copies of any additional jury instructions given to jurors during trial or before closing arguments should also be included in juror notebooks before the jurors retire to deliberate. The trial court should generally resolve with counsel at a pretrial conference whether juror notebooks will be used and, if so, what contents will be included. The trial court may require that counsel meet in advance of the pretrial conference to confer and attempt to agree on the contents of the notebooks. The jurors may take their notebooks with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notebooks out of the courthouse. The bailiff or clerk shall collect all jurors' notebooks at the end of each day of trial and shall return jurors' notebooks when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notebooks before the jurors are excused. The bailiff or clerk shall promptly destroy the contents of the notebooks, except that one copy of the contents of the juror notebooks, excluding jurors' personal notes and annotations, shall be preserved and retained as part of the official trial record.
(Added October 26, 2000, effective March 1, 2001.)

Bailiff's duties. — While a trial judge erred in allowing an officer who participated in an investigation of defendant to act as bailiff during defendant's trial, the error was harmless because there was absolutely no evidence in the record that the bailiff did anything as bailiff other than the routine, administrative matters the bailiff was charged with performing under Wyo. R. Crim. P. 24.1(a). Majors v. State, 252 P.3d 435 (Wyo. 2011).

Rule 24.2. Juror questionnaires.

In appropriate cases, the court may use case-specific juror questionnaires to gather information from prospective jurors in advance of jury selection. When case-specific questionnaires will be used, the court should require counsel to confer and attempt to reach agreement on the questions that will be included in the questionnaires. The court shall rule on inclusion or exclusion of any questions the court deems improper. The court shall note on the record the basis on which it overruled any objections to inclusion or exclusion of particular questions. The court shall confer with counsel concerning the timing and procedures to be used for disseminating questionnaires and collecting completed questionnaires from prospective jurors, as well as to permit counsel adequate time and opportunity to review the completed questionnaires thoroughly before jury selection will begin. In its discretion, the court may require that the costs of copying, disseminating and collecting the questionnaires be borne (1) by both parties, (2) by the party requesting use of the questionnaires, or (3) by the court. In the alternative, these expenses may be assessed against the losing party as part of the costs.
(Added October 26, 2000, effective March 1, 2001.)

Rule 24.3. Copies of instructions for jurors.

The trial court shall provide each juror with the juror's own copy of all written instructions that the court reads to the jury before, during or at the conclusion of the trial. The court may include the copies of the instructions in the juror notebook provided to each juror, if juror notebooks will be used at trial. Jurors shall be permitted to take their copies of the instructions with them for reference during recesses and during their

deliberations. Jurors shall not be permitted, however, to take their copies of the jury instructions out of the courthouse.
(Added October 26, 2000, effective March 1, 2001.)

Rule 25. Disability of judge.

(a) *During trial.* — If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.

(b) *After verdict or finding of guilt.* — If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if that judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial.

Cross References. — As to disqualification of judge for cause, see Rule 21.1(b).

Compare. — Rule 25, Fed. Rules Cr. Proc.

No form for certifying familiarity. — There is no prescribed form for making the certification required by subdivision (a), and the remarks in open court by the substitute judge, while they could have been stated in a more formal manner or in a separate document, constitute an adequate certification under the rule. Vit v. State, 909 P.2d 953 (Wyo. 1996).

Cited in Tilley v. State, 912 P.2d 1140 (Wyo. 1996).

Am. Jur. 2d, ALR and C.J.S. references. — 46 Am. Jur. 2d Judges §§ 44 to 53.

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 ALR5th 747.

23A C.J.S. Criminal Law §§ 1178, 1179.

Rule 26. Taking of testimony.

(a) *In general.* — In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, or by these rules, by the Wyoming Rules of Evidence, or by other rules adopted by the Supreme Court of Wyoming.

(b) *Testimony by electronic means.* — The court may permit a witness to testify by electronic means at any hearing or, if substantial rights of the defendant are not prejudiced thereby, at a trial. This section does not apply to previously recorded testimony. The party proposing to have a witness testify by electronic means shall give five days written notice of the request to the opposing party, unless the time is shortened by the court for good cause. An oath or affirmation administered by a judicial officer to a witness who will testify by electronic means shall be done in the same manner and shall have the same effect as an oath or affirmation administered in open court.
(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 26, Fed. Rules Cr. Proc.

Hypnosis raises issue of credibility with respect to the testimony of a witness, but the fact that the witness has been hypnotized does not render the witness incompetent to testify. Haselhuhn v. State, 727 P.2d 280 (Wyo. 1986), cert. denied, 479 U.S. 1098, 107 S. Ct. 1321, 94 L. Ed. 2d 174 (1987).

Testimony of assistant store manager was not enhanced by hypnotic interview where his testimony at the preliminary examination and at the trial was consistent with the statement first given to the police on the night of the robbery, and the only difference was that the assistant store manager was able to identify defendant as the robber when he saw him in person. Haselhuhn v. State, 727 P.2d 280 (Wyo. 1986), cert. denied, 479 U.S. 1098, 107 S. Ct. 1321, 94 L. Ed. 2d 174 (1987).

Law reviews. — For comment, "Article VI of the Wyoming Rules of Evidence: Witnesses," see XIII Land & Water L. Rev. 909 (1978).

Am. Jur. 2d, ALR and C.J.S. references. — Admissibility in criminal case, on issue of defendant's guilt, of evidence that third person has attempted to influence a witness not to testify or to testify falsely, 79 ALR3d 1156.

Witnesses: child competency statutes, 60 ALR4th 369.

Admissibility of hypnotically refreshed or en-

hanced testimony, 77 ALR4th 927.

23A C.J.S. Criminal Law §§ 1191 to 1232.

Rule 26.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of another state or of a foreign country shall give reasonable written notice. The court, in determining the law of another state or foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Wyoming Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Cross References. — For Uniform Judicial Notice of Foreign Law Act, see §§ 1-12-301 through 1-12-306. As to determination of foreign law, see Rule 44.1, W.R.C.P.

Compare. — Rule 26.1, Fed. Rules Cr. Proc.

Rule 26.2. Production of statements of witnesses.

(a) *Order for production.* — Upon order of the court, the attorney for the state or the defendant and the defendant's attorney shall produce for the examination and use of the other party, any written or recorded statement of a witness other than the defendant in their possession or which they may reasonably obtain and which relates to the subject matter about which the witness has testified or will testify and:

(1) Upon demand of the other party, the court shall order the statement to be produced after a witness has testified; and

(2) Upon motion of a party or upon its own motion, the court may require the statement to be produced at any time before trial.

(b) *Production of entire statement.* — If the entire contents of the statement relate to the subject matter of the witness's testimony, the court shall order that the statement be produced.

(c) *Production of excised statement.* — If a party claims that the statement contains matter that does not relate to the subject matter of the witness's testimony, the court shall order that it be delivered to the court *in camera.* Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter of the witness's testimony, and shall order that the statement, with such material excised, be produced. Any portion of the statement that is withheld over objection shall be preserved by the court, and, in the event of an appeal by the defendant or a bill of exceptions by the state, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise portions of the statement.

(d) *Recess for examination of statement.* — After delivery of the statement to the other party, the court, upon application of that party, may recess proceedings in the trial for the examination of the statement and for preparation for its use in the trial.

(e) *Failure to comply with order.* — If a party elects not to comply with an order to deliver a statement, the court shall order:

(1) That the witness not be permitted to testify; or

(2) That the testimony of the witness be stricken from the record and that the trial proceed; or

(3) If it is the attorney for the state who elects not to comply, shall declare a mistrial if required in the interest of justice.

(f) *Definition.* — As used in this rule, a "statement" of a witness means:

(1) A written statement that is signed or otherwise adopted or approved by the witness or an oral statement made by the witness and contained in a stenographic, mechanical, electrical, or other recording, or a transcript thereof; or

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

"Statement" does not include the work product of attorneys.

(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 26.2, Fed. Rules Cr. Proc.

Hypnotism of witness. — The defendant must be advised by the state of the fact that a witness has been previously hypnotized and all statements and proceedings relative thereto must be made available to the defendant on request. This requirement goes beyond those concerning discoverable materials for purposes of impeachment, and discoverable statements of witnesses under this rule. Gee v. State, 662 P.2d 103 (Wyo. 1983).

The trial court's function is limited to the question of whether the requested material is a "statement" under this rule and, if so, whether it relates to the subject matter of the witness' testimony. Jones v. State, 568 P.2d 837 (Wyo. 1977).

Access limited to "statements" of witness. — This rule limits access to the state's files to only those materials which fit in the definition of "statement" of a state's witness which includes, inter alia, a recording of an oral statement. Jones v. State, 568 P.2d 837 (Wyo. 1977).

Defendant entitled to specific "statement". — Although a defendant cannot obtain a review or combing of any or all reports having to do with interviews of witnesses, he is entitled to the production of a specific "statement." Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

As long as statement that of witness. — Since the purpose of obtaining a "statement," as defined in this rule, is to impeach the witness, the statement must be that of the witness and not an understanding or interpretation of such by an investigator or other person. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

And not simply police reports. — Where there is nothing in the record to reflect that police and investigative reports contain "statements," as such are defined in this rule, or that they are other than the product of law enforcement personnel, such are not subject to discovery. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

And in any event, proper foundation must be laid by defendant, consisting of specificity as to the "statement" alleged to exist. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

But, on denial by state, court determines issues. — If the defendant makes a prima facie showing of a probable existence of a specific document, but the state either denies its existence or that it is a "statement" within the definition of this rule, the trial court has the duty to determine such issues by in camera inspection or otherwise. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

Sufficient factual basis not provided. — Defendant's convictions for false imprisonment, felonious restraint and aggravated assault and battery were proper because he did not provide the district court a sufficient factual basis on which to evaluate his constitutional challenge to the court's disclosure order, and the supreme court was likewise left with no record on which it was able to evaluate the alleged infringement. Thus, the district court's rejection of defendant's constitutional challenge to the pretrial disclosure order was affirmed. Kovach v. State, 299 P.3d 97 (Wyo. 2013).

Defendant may meet burden of proof for production of "statements" by examining witnesses. — The defendant may meet his burden of proof to show that certain documents contain "statements," as defined in this rule, by the cross-examination of the witness whose "statement" is sought or by the examination of those present when the "statement" was made. Hubbard v. State, 618 P.2d 553 (Wyo. 1980).

Broad disclosures of state's investigative files not authorized. — Legislative history makes it clear that this rule was not intended to authorize broad disclosures of the state's investigative files, and the fundamental requirements of due process do not compel the premature disclosure prior to trial of statements ultimately subject to discovery under the rule. Jones v. State, 568 P.2d 837 (Wyo. 1977).

Failure to comply with order. — Subdivision (e) of this rule is mandatory in all respects; it does not allow district court any discretion to refuse to act in the face of uncontradicted allegations of discovery violations in a criminal prosecution. Seivewright v. State, 7 P.3d 24 (Wyo. 2000).

No discovery of informant's prior drug buys. — When defendant was charged with unlawful delivery of a controlled substance after a transaction with a confidential informant (CI), the district court denied his motion under this rule in which he sought to compel the State to produce detailed information as to other drug buys in which the CI had participated. Downing v. State, 259 P.3d 365 (Wyo. 2011).

Applied in Spencer v. State, 925 P.2d 994 (Wyo. 1996).

Cited in Trusky v. State, 7 P.3d 5 (Wyo. 2000); White v. State ex rel. Wyo. DOT, 210 P.3d 1096 (Wyo. 2009).

Rule 27. [Abrogated].

Cross References. — As to proof of contents of official records, see Rule 1005, W.R.E.

Editor's notes. — This rule, relating to proof of official record, was abrogated by order of the Supreme Court, effective March 24, 1992.

Rule 28. Interpreters.

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the county, as the court may direct.

Cross References. — As to interpreters generally, see Rule 604, W.R.E.

Compare. — Rule 28, Fed. Rules Cr. Proc.

Rule 29. Motion for judgment of acquittal.

(a) *At close of evidence.* — Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, information or citation after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the state is not granted, the defendant may offer evidence without having reserved the right.

(b) *Reservation of decision.* — If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns the verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) *After discharge of jury.* — If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 10 days after the jury is discharged or within such further time as the court may fix during the 10-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal within 10 days after such motion is filed, and if not so entered shall be deemed denied, unless within such 10 days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the verdict is returned. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(d) *Conditional ruling on motion for new trial.* — If a motion for judgment of acquittal after verdict of guilty under this rule is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed, specifying the grounds for such determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial has been granted conditionally and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. If such motion has been denied conditionally, the appellee on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

Compare. — Rule 29, Fed. Rules Cr. Proc.

Motion for acquittal raises question of sufficiency of the evidence, which matter should have been determined within the sound discretion of the trial court. Montez v. State, 527 P.2d 1330 (Wyo. 1974); Chavez v. State, 601 P.2d 166 (Wyo. 1979).

Prima facie case impregnable against motion for acquittal. — When the state introduces evidence on its case-in-chief from

which the jury may properly infer the essential elements of the crime, the state has then made out a prima facie case, impregnable against a motion for acquittal. Russell v. State, 583 P.2d 690 (Wyo. 1978).

Counsel's failure to renew motion not ineffective where case impregnable against motion for acquittal. — Where an inmate's motion for judgment of acquittal would have been denied even if it had been renewed after presentation of the defense evidence because, based upon all the evidence, it was not unreasonable for the jury to find the inmate guilty of all the charged offenses, trial counsel was not ineffective for failing to renew the motion, and because trial counsel was not ineffective in that regard, neither was appellate counsel for not raising the issue in the direct appeal. Harlow v. State, 105 P.3d 1049 (Wyo. 2005).

Counsel's failure to file motion ineffective. — Defense counsel performed deficiently by waiting 27 days after defendant was convicted of attempted first degree murder and kidnapping before filing a new trial motion under this rule; defendant was prejudiced by the timely motion, because the district court would have granted the motion in the interest of justice as defendant's conviction for attempted first degree murder was contrary to the weight of the evidence. Ken v. State, 267 P.3d 567 (Wyo. Dec. 22, 2011).

When ruling on motion for acquittal judge must assume truth of state's evidence and give the state the benefit of all legitimate inferences to be drawn therefrom. If the evidence, so measured at the point in the prosecution to which the motion is properly addressed, portends to establish guilt beyond a reasonable doubt, it is for the jury to make the decision as to whether it actually does. Russell v. State, 583 P.2d 690 (Wyo. 1978).

Jury decides if evidence establishes guilt. — If the evidence given the view most favorable to the state portends to establish guilt beyond a reasonable doubt, it is for the jury to make the decision as to whether it actually does. Chavez v. State, 601 P.2d 166 (Wyo. 1979).

Case held from jury if evidence permits conjecture or speculation. — The motion for acquittal must be granted when the evidence, viewed in the light most favorable to the state, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime. If the evidence is such that a reasonable man may have a reasonable doubt as to the defendant's guilt, the case should go to the jury. On the other hand, the trial judge should not allow the case to go to the jury if the evidence is such as to permit the jury to merely conjecture or to speculate as to defendant's guilt. Russell v. State, 583 P.2d 690 (Wyo. 1978); Chavez v. State, 601 P.2d 166 (Wyo. 1979).

Verdicts of acquittal are properly directed only when trial court determines there is no substantial evidence to sustain the charges. Fresquez v. State, 492 P.2d 197 (Wyo. 1971).

Verdicts of acquittal are only directed when in the court's opinion there is no substantial evidence to sustain the material allegations of the information. Heberling v. State, 507 P.2d 1 (Wyo.), cert. denied, 414 U.S. 1022, 94 S. Ct. 444, 38 L. Ed. 2d 313 (1973).

Court may only direct entry of judgment of acquittal when it may be said as a matter of law that there is no evidence of guilt whatsoever in the record or where there is no substantial evidence from which reasonable men may say that the defendant is guilty beyond a reasonable doubt. Chavez v. State, 601 P.2d 166 (Wyo. 1979).

A motion for judgment of acquittal is to be granted only when the evidence is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime; or, stated another way, if there is substantial evidence to sustain a conviction of the crime, the motion should not be granted. Wise v. State, 654 P.2d 116 (Wyo. 1982).

A trial court shall order the entry of a judgment of acquittal upon motion if the evidence is insufficient to sustain a conviction. The trial court must assume that the state's evidence is true and must give the state the benefit of all legitimate inferences. Dover v. State, 664 P.2d 536 (Wyo. 1983).

District court did not plainly err in denying an appellant's motion for judgment of acquittal where the circumstantial evidence was sufficient to allow a jury to conclude beyond a reasonable doubt that the appellant had left his place of employment and thus, the evidence was supported the convictions under Wyo. Stat. Ann. §§ 7-18-112 and § 6-5-206(a)(ii) (2006). Martin v. State, 149 P.3d 707 (Wyo. 2007).

First degree attempted murder. — In an attempted first degree murder case, the trial court did not err when it denied defendant's motion for a judgment of acquittal. Taken as a whole, a jury could conclude that the acts that defendant completed before being apprehended by the police, such as having a verbal and physical altercation with the victim, attempting to run over the victim with his car, retrieving his gun, and returning to the scene of the altercation, constituted a substantial step toward the commission of first degree murder. Gentilini v. State, 231 P.3d 1280 (Wyo. 2010).

Defense counsel performed deficiently under the Sixth Amendment for failing to timely file a new trial motion; defendant was prejudiced because the district court would have granted the motion in the interest of justice as defendant's conviction for attempted first degree murder was contrary to the weight of the evidence. The State would have had no means to

challenge the order, because an order granting a new trial on the grounds of ineffective assistance was not the sort of issue contemplated by a writ of review pursuant to this rule. Ken v. State, 267 P.3d 567 (Wyo. Dec. 22, 2011).

Introduction of evidence results in waiver of motion. — Following the denial of a motion for acquittal, the introduction of evidence by a defendant results in a waiver of the motion for acquittal on grounds of insufficient evidence, and an appellate court cannot review the sufficiency of the evidence except for plain error. Farbotnik v. State, 850 P.2d 594 (Wyo. 1993).

Defendant waived the right to challenge the district court's denial of defendant's motion for judgment of acquittal because defendant presented evidence after making the motion, on which the court reserved its ruling, as the motion was de facto denied after defendant did not renew the motion and within ten days of the jury being discharged. McEuen v. State, 388 P.3d 779 (Wyo. 2017).

Supreme Court has same duty as trial court on reviewing motion. — The trial court, when ruling on a motion for judgment of acquittal, is called upon to determine, as a matter of law, whether in its opinion there is sufficient evidence to sustain the charges. On review, the Supreme Court has the same duty. Cloman v. State, 574 P.2d 410 (Wyo. 1978).

Reviewing court may only direct motion for acquittal on sufficiency of evidence when: (1) it may be said as a matter of law that there exists no evidence of guilt whatsoever upon the record; or (2) where there exists no substantial evidence from which reasonable men may say that the defendant is guilty beyond a reasonable doubt. Russell v. State, 583 P.2d 690 (Wyo. 1978).

A reviewing court can only overrule the denial of a motion for acquittal when there is no substantial evidence from which reasonable persons could say that the defendant is guilty beyond a reasonable doubt. Dover v. State, 664 P.2d 536 (Wyo. 1983).

Standards on review. — In reviewing the denial of a motion for judgment of acquittal, the Supreme Court examines and accepts as true the evidence of the prosecution together with all logical and reasonable inferences to be drawn therefrom, leaving out entirely the evidence of the defendant in conflict therewith. Wise v. State, 654 P.2d 116 (Wyo. 1982).

Unrenewed motion not reviewable. — Where the record reveals that, after the close of the state's case and their motion was denied, appellants introduced evidence without renewing their motion at the close of all the evidence, they will be held to have waived that motion and an appellate court cannot review the sufficiency of the evidence except for plain error. Neilson v. State, 599 P.2d 1326 (Wyo. 1979), cert. denied, 444 U.S. 1079, 100 S. Ct. 1031, 62 L. Ed. 2d 763 (1980).

Motion precluded by inference of lawful possession. — A person's description of: (1) his open and notorious possession of the premises; (2) the business activities conducted by him therein, including his duties as warehouse manager; and (3) his seeking of police assistance to maintain exclusive possession of the premises; supports a reasonable inference that he was in lawful possession of the premises and precludes granting a motion for acquittal in a prosecution for burglary. Beane v. State, 596 P.2d 325 (Wyo. 1979).

Denial proper. — In defendant's trial on a charge of second-degree sexual abuse of a child under Wyo. Stat. Ann. § 6-2-315(a)(ii), the trial court did not err in denying defendant's motion for a judgment of acquittal because evidence of his wrongdoing was presented through avenues other than the statement he gave to the investigating detective. Specifically, the seven-year-old victim testified that defendant would get into bed with him while wearing only his underwear and that defendant touched the "front" part of his body that was normally covered by his underwear; further, the victim's mother testified that she saw defendant lying in bed with her son with his body pressed against that of the young boy. While that evidence may not have risen to the level of proof beyond a reasonable doubt, it was sufficient to satisfy the corpus delicti rule and to justify the denial of defendant's acquittal motion. Jones v. State, 228 P.3d 867 (Wyo. 2010).

Trial court properly denied defendant's motions for acquittal during a trial for aggravated assault and battery; even if the jury rejected the victim's version of events, and accepted defendant's version, the jury still could have concluded that defendant did not act in self defense or defense of others when defendant unlocked an apartment door, grabbed a pipe, and chased the victim through a door and down two flights of stairs before striking the victim with the pipe. Jones v. State, 278 P.3d 729 (Wyo. 2012).

Case not to go to jury. — Where the state must prove beyond a reasonable doubt that the victim of first-degree sexual assault was physically helpless and that defendant knew or should reasonably have known that the victim was physically helpless, and it is apparent that the only evidence concerning the intent of defendant is that of a psychiatrist who testified he would have to guess on this issue, it follows that the jury would have to guess or speculate, and the situation is one of the evidentiary situations upon which the trial judge should not permit the case to go to the jury. Chavez v. State, 601 P.2d 166 (Wyo. 1979).

Evidence sufficient to sustain conviction of attempted sexual assault felony murder. — See Murray v. State, 671 P.2d 320 (Wyo. 1983).

Applied in Price v. State, 807 P.2d 909 (Wyo.

1991); Hodges v. State, 904 P.2d 334 (Wyo. 1995).

Quoted in Hankinson v. State, 47 P.3d 623 (Wyo. 2002); Mattern v. State, 151 P.3d 1116 (Wyo. 2007).

Cited in Stambaugh v. State, 566 P.2d 993 (Wyo. 1977); Downs v. State, 581 P.2d 610 (Wyo. 1978); Trujillo v. State, 750 P.2d 1334 (Wyo. 1988); Robinson v. State, 11 P.3d 361 (Wyo. 2000), cert. denied, 532 U.S. 980, 121 S. Ct. 1620, 149 L. Ed. 2d 483 (2001); Martin v. State, 149 P.3d 707 (Wyo. 2007).

Law reviews. — For case note, "Receiving Stolen Property — The Doctrine of Recent Possession and Problems Associated with Defendant's Testimony, Russell v. State, 583 P.2d 690 (Wyo. 1978)," see XIV Land & Water L. Rev. 291 (1979).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Validity of conditions imposed when releasing person committed to institution as consequence of acquittal of crime on ground of insanity, 2 ALR4th 934.

When does trial court's noncompliance with requirement of Rule 30, Federal Rules of Criminal Procedure, that opportunity shall be given to make objection to instructions upon requests, out of presence of jury, constitute prejudicial error, 55 ALR Fed 726.

Rule 29.1. Closing argument.

After the evidence has been presented and the judge has instructed the jury on the law closing argument shall be permitted. The prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Compare. — Rule 29.1, Fed. Rules Cr. Proc.

Rule 30. Instructions to jury; objections.

(a) At the close of the evidence or at such earlier time before or during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. Before instructing the jury the court shall conduct a formal instruction conference out of the presence of the jury at which the court shall inform counsel of the proposed action upon their requests and shall afford them an opportunity to offer specific, legal objection to any instruction the court intends to give and to offer alternate instructions. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury is instructed, stating distinctly the matter to which the party objects and the grounds of the objection. Before the argument of the case to the jury has begun, the court shall give to the jury such instructions on the law as may be necessary and the same shall be in writing, numbered and signed by the judge, and shall be taken by the jury when it retires.

(b) The court shall also provide the jury with appropriate preliminary instructions at the beginning of the trial. Before opening statements, the court shall provide jurors with any general and case-specific instructions that would seem likely to help jurors understand their function during trial, and the issues that they will be required to decide. These preliminary instructions should include any pertinent case-specific instructions that the court anticipates including in the final jury instructions, if the court concludes that it would be helpful to jurors to receive the instructions both at the beginning of the case and again before closing arguments. The court shall confer with counsel at the pretrial conference to determine which instructions should be given to jurors before opening statements. For preliminary instructions, the court shall follow the procedures set forth in subsection (a) with respect to objections and use of written instructions.

(Amended October 26, 2000, effective March 1, 2001.)

Compare. — Rule 30, Fed. Rules Cr. Proc. **Editor's notes.** — For other annotations

dealing with jury instructions in criminal cases, see Rule 51, W.R.C.P.

The purpose of this rule is to offer trial judge an opportunity to correct an erroneous, or at least clarify, proposed instructions, and the burden is on the defendant to show prejudicial error. Downs v. State, 581 P.2d 610 (Wyo. 1978); Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981); Harries v. State, 650 P.2d 273 (Wyo. 1982); Britton v. State, 643 P.2d 935 (Wyo. 1982).

The spirit and policy of this rule is to apprise and inform the trial court of the purpose of offered instructions and of objections to proposed instructions so that it may have an opportunity to correct and amplify them before submission to the jury. Alberts v. State, 642 P.2d 447 (Wyo. 1982).

Criminal instructions considered more strictly than civil instructions. — Requirements as to instructions in the trial of criminal cases are usually considered more strictly than in civil cases. Hursh Agency, Inc. v. Wigwam Homes, Inc., 664 P.2d 27 (Wyo. 1983).

Instructions must be considered as whole and not according to isolated phrases and paragraphs. Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981).

Instructions given where supporting evidence exists. — Instructions given pursuant to this rule and Rule 51, W.R.C.P., advancing the theory of defense, should only be given where some evidence in the record exists to support the theory. Blair v. State, 735 P.2d 440 (Wyo. 1987).

Failure to give presumption of innocence instruction was not plain error. — Where defendant was convicted of aggravated robbery and aggravated assault and battery, the evidence of his guilt was substantial: one witness fingered defendant as the masked gunman and provided a detailed account of the events surrounding the robbery; another witness recounted his conversations wherein defendant admitted to committing the robbery. Because defendant never requested an instruction on the presumption of innocence, nor did he object to the district court's failure to give one as required by this rule, plain error review applied; the Supreme Court of Wyoming held that defendant's unpreserved claim of error concerning the trial court's failure to instruct the jury on the presumption of innocence was not an obvious transgression of a clear and unequivocal rule of law that mandated reversal. Bloomer v. State, 233 P.3d 971 (Wyo. 2010).

Defendant's presence. — Since a defendant is required to object to any instruction given to the jury in order to preserve error, the defendant should always be permitted to be present, under this rule, and any waiver should clearly appear in the record; any other course suggests that a defendant may play no role in the defense of his criminal case, and though that likelihood may be insubstantial in some cases, there should be no presumption that it is always insubstantial. Johnson v. State, 61 P.3d 1234 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 108, 157 L. Ed. 2d 74 (2003).

Defendant has duty to make specific legal objection if he wants to preserve the issue for appeal. Britton v. State, 643 P.2d 935 (Wyo. 1982).

In order for an issue regarding the sufficiency of an instruction to be preserved for appeal, there is a duty to make a specific legal objection, in the absence of which, reliance must be upon the plain-error doctrine. Justice v. State, 775 P.2d 1002 (Wyo. 1989).

But explanation that defendant wants instruction sufficient. — A refusal to give a requested instruction on a lesser-included offense would be reviewed without invoking the doctrine of plain error, where, although there was no specific objection, defense counsel sufficiently explained to the court that the defendant wanted the instruction, and he justified that request with appropriate argument. Keller v. State, 771 P.2d 379 (Wyo. 1989).

Failure to object to instructions precludes their review. Downs v. State, 581 P.2d 610 (Wyo. 1978); Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981); Harries v. State, 650 P.2d 273 (Wyo. 1982); Sybert v. State, 724 P.2d 463 (Wyo. 1986).

Had defendant objected to unsigned jury instruction before it was given to jury, district court could have easily corrected the omission, but where no objection was made, alleged error was not preserved as an issue on appeal. Ortega v. State, 966 P.2d 961 (Wyo. 1998).

Although defendant made an appropriate request for revision of a jury instruction and the trial court granted it, defendant did not speak up when the final instructions were read without including the agreed upon modification; hence, defendant did not make a proper objection under Wyo. R. Crim. P. 30(a) and the plain error standard of review applied. Mendoza v. State, 300 P.3d 487 (May 8, 2013).

Unless plain error present. — Failure to object to instructions precludes judicial review of possible error in the refusal to give requested instructions; provided, however, that review of such may be had if plain error is present. Morris v. State, 644 P.2d 170 (Wyo. 1982).

Not having objected to the court's instructions, the appellant must show plain error. Cutbirth v. State, 663 P.2d 888 (Wyo. 1983).

When refusal of requested instruction permitted. — A trial court may refuse requested instructions which are correct, as long as the principles embodied in the requested instructions are covered by other instructions. Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981); Britton v. State, 643 P.2d 935 (Wyo. 1982).

Search and seizure instruction not required. — The Supreme Court will not consider appellant's assertion of error for failure to give an instruction to the jury upon the law of

search and seizure where the sole authority cited for such proposition is the general statement in this rule and Rule 51, W.R.C.P., making it the duty of the court to instruct the jury on the law of the case. Storms v. State, 590 P.2d 1321 (Wyo. 1979).

Failure to instruct on prosecution's burden of proof not reversible error per se. — The inclusion in the instructions of a specific statement of the prosecution's burden of proof is preferable, but failure to include it is not reversible error per se. Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981).

Oral modification or explanation of jury instructions. — Jury was properly instructed as to the procedure for considering the charged offense and lesser-included offenses because: (1) a colloquy that occurred during the state's rebuttal closing argument was not an instruction to the jury and did not constitute an oral modification or explanation that violated Wyo. R. Crim. P. 30; (2) all the district court said was that the jury should follow the instructions and the verdict form; and (3) the verdict form was the type of step verdict that had been approved in a prior case. Janpol v. State, 178 P.3d 396 (Wyo. 2008).

No reversible error in failure to reread instructions. — Where a trial court gave part of the jury instructions at the beginning of defendant's criminal trial and gave the remaining instructions after the trial but prior to the jury's deliberations, such complied with this rule, and it was not plain error for the trial court to fail to reread the earlier give instructions at the close of trial. Urbigkit v. State, 67 P.3d 1207 (Wyo. 2003).

Applied in Evans v. State, 655 P.2d 1214 (Wyo. 1982); Jozen v. State, 746 P.2d 1279 (Wyo. 1987); Vigil v. State, 859 P.2d 659 (Wyo. 1993); Johnson v. State, 872 P.2d 93 (Wyo. 1994); Reilly v. State, 55 P.3d 1259 (Wyo. 2002).

Quoted in Story v. State, 721 P.2d 1020 (Wyo. 1986); Muniz v. State, 783 P.2d 141 (Wyo. 1989); State v. Keffer, 860 P.2d 1118 (Wyo. 1993).

Stated in Naugher v. State, 685 P.2d 37 (Wyo. 1984); Sodergren v. State, 715 P.2d 170 (Wyo. 1986).

Cited in Hampton v. State, 558 P.2d 504 (Wyo. 1977); Smith v. State, 773 P.2d 139 (Wyo. 1989); Seeley v. State, 959 P.2d 170 (Wyo. 1998); Ellison v. State, 3 P.3d 845 (Wyo. 2000); McAdams v. State, 75 P.3d 665 (Wyo. 2003); Patterson v. State, 179 P.3d 863 (Wyo. 2008).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 1117.

Instruction in prosecution for rape or other sexual offense, as to ease of making or difficulty of defending against such a charge, 92 ALR3d 866.

Propriety of jury instruction regarding credibility of witness who has been convicted of a crime, 9 ALR4th 897.

Modern status of law regarding cure of error, in instruction as to one offense, by conviction of higher or lesser offense, 15 ALR4th 118.

Necessity of, and prejudicial effect of omitting, cautionary instruction to jury as to reliability of, or factors to be considered in evaluating, eyewitness identification testimony, 23 ALR4th 1089.

Counsel's reference, in presence of sequestered witness in state criminal trial, to testimony of another witness as ground for mistrial or reversal, 24 ALR4th 488.

Instructions to jury as to credibility of child's testimony in criminal case, 32 ALR4th 1196.

Communication between court officials or attendants and jurors in criminal trial as ground for mistrial or reversal — post-Parker cases, 35 ALR4th 890.

Modern status of rule regarding necessity of instruction on circumstantial evidence in criminal trial — state cases, 36 ALR4th 1046.

Lesser-related state offense instructions: modern status, 50 ALR4th 1081.

Instructions in state criminal case in which defendant pleads insanity as to hospital confinement in event of acquittal, 81 ALR4th 659.

Propriety, in federal criminal trial, of including in jury instruction statement disparaging defendants' credibility, 59 ALR Fed 514.

Propriety of lesser-included-offense charge to jury in federal criminal case — general principles, 100 ALR Fed 481.

23A C.J.S. Criminal Law §§ 1302 to 1391.

Rule 31. Verdict.

(a) *Return.* — The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) *Several defendants.* — If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) *Conviction of lesser offense.* — The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) *Poll of jury.* — When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll

there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

Compare. — Rule 31, Fed. Rules Cr. Proc.

Separation of powers. — No violation of the separation of powers doctrine occurred when a trial court found a juvenile guilty of attempted shoplifting even though the juvenile petition only charged shoplifting and was never amended to include a charge of attempted shoplifting since a trial court may properly rely on Rule 31 to find a juvenile defendant guilty of a lesser-included or attempted offense even if not originally charged. MJS v. State (in re MJS), 20 P.3d 506 (Wyo. 2001).

Guilty verdict unconstitutional where insufficient evidence to support element of crime. — A general verdict of guilty returned on an aggravated burglary count which alleged in the alternative intent to steal or intent to commit an assault violated the defendant's rights to a unanimous jury verdict where the court had already ruled as a matter of law that there was insufficient evidence to support the intent to assault element. Fife v. State, 676 P.2d 565 (Wyo. 1984) (decided under former § 6-7-201).

Failure to object to irregularity is waiver. — Failure to object to the form or substance of a verdict within time whereby corrective action could be obtained amounts to a waiver of any irregularity, informality, ambiguity or other error in the verdict. Clegg v. State, 655 P.2d 1240 (Wyo. 1982).

Purpose of subdivision (c) is to aid the prosecution where its proof failed to make out all of the elements of the offense charged. State v. Selig, 635 P.2d 786 (Wyo. 1981).

Subdivision (c) is beneficial to defendant because it affords the jury a less drastic alternative than the choice between conviction of the offense charged and acquittal. State v. Selig, 635 P.2d 786 (Wyo. 1981).

Lesser included offense defined. — A lesser included offense is one which is necessarily established by proof of the greater offense, and which is properly submitted to the jury, should the prosecution's proof fail to establish guilt of the greater offense charged, without necessity of multiple indictment. Evanson v. State, 546 P.2d 412 (Wyo. 1976).

A crime described by statute may not be necessarily included within another statutory offense unless all of the elements within the claimed lesser offense are to be found in the greater, and unless the greater offense cannot be committed without also committing the putative lesser offense. Balsley v. State, 668 P.2d 1324 (Wyo. 1983); Amin v. State, 694 P.2d 119 (Wyo. 1985).

For a lesser offense to be "necessarily included" in the offense charged, it must be such that the greater offense cannot be committed without also committing the lesser. Evanson v. State, 546 P.2d 412 (Wyo. 1976).

The determination of the existence of a necessarily included offense pursuant to subdivision (c) of this rule is a question of law that justifies de novo review. Sindelar v. State, 932 P.2d 730 (Wyo. 1997).

Test for determining entitlement to lesser-included offense instruction. — Defendant is entitled to lesser-included offense instruction, as provided for in subdivision (c), when the following five elements are present: (1) a proper request is made; (2) the elements of the lesser offense are identical to part of the elements of the greater offense; (3) there is some evidence that would justify conviction of the lesser offense; (4) the proof on the element or elements differentiating the two crimes is sufficiently in dispute so that the jury may consistently find the defendant innocent of the greater and guilty of the lesser-included offense; and (5) there is mutuality, i.e., a charge may be demanded by either the prosecution or the defense. State v. Selig, 635 P.2d 786 (Wyo. 1981).

Statutory elements test. — Under the statutory elements test, one offense is not "necessarily included" in another unless the elements of the lesser offense are a subset of the elements of the charged offense; where the lesser offense requires an element not required for the greater offense, no instruction is to be given under this rule. Sindelar v. State, 932 P.2d 730 (Wyo. 1997).

Both the prosecution and the defense have an equal right to lesser included offense instruction, in light of the fact that the language of subsection (c), identical to Federal Rule 31(c), implies and requires such equality. State v. Keffer, 860 P.2d 1118 (Wyo. 1993).

Instructions regarding greater and lesser offenses. — When a greater and lesser offense are charged to the jury, the proper course is to tell the jury to consider first the greater offense, and to move on to consideration of the lesser offense only if they have some reasonable doubt as to the guilt of the greater offense. A jury that finds guilt as to the greater offense does not enter a verdict concerning guilt of the lesser offense. The reason for this absence of consideration is not any inconsistency between the offenses, but rather reflects the very "inclusion" that defines the lesser offense as one "included" in the greater. Evanson v. State, 546 P.2d 412 (Wyo. 1976).

No instruction on lesser offense where evidence concerns only greater. — When the evidence shows that the defendant is either guilty or not guilty of the higher grade of the offense, the court is not required to instruct on the lesser offense. Richmond v. State, 554 P.2d 1217 (Wyo. 1976); State v. Selig, 635 P.2d 786 (Wyo. 1981); Amin v. State, 694 P.2d 119 (Wyo. 1985).

But instruct on lesser if jury could rationally find guilty thereof. — The defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater. Richmond v. State, 554 P.2d 1217 (Wyo. 1976); State v. Selig, 635 P.2d 786 (Wyo. 1981).

Notice invalid for improper lesser included offense. — Where the information charged defendant with only second degree sexual assault, instructing jury members that defendant could be convicted for taking indecent liberties with a child worked material prejudice for failure of full proper notice, requiring reversal. Derksen v. State, 845 P.2d 1383 (Wyo. 1993).

The jury has the duty to resolve conflicting evidence, and an appellate court cannot interfere with their verdict even if it might think the conflict was resolved wrongly. Fresquez v. State, 492 P.2d 197 (Wyo. 1971).

Juror's confusion during polling. — Reversal of defendant's conviction was not warranted where, upon the polling of the jury pursuant to this section, one of the jurors answered "No" when asked if guilty was his verdict and appeared confused. Upon further deliberations the jury unanimously returned a verdict of guilty, and it was determined that any contact the juror had with his wife to determine if his confusion was related to an insulin reaction did not relate to the case. Gunnett v. State, 104 P.3d 775 (Wyo. 2005).

Poll of the jury ensured that the verdict was unanimous. Vargas-Rocha v. State, 891 P.2d 763 (Wyo. 1995).

Questioning of juror by judge. — Subdivision (d) of this rule does not prohibit the trial judge from questioning a juror who has given an uncertain or equivocal answer during the polling. Harris v. State, 933 P.2d 1114 (Wyo. 1997).

The trial judge did not coerce jurors who had indicated during polling that they disagreed with the verdict into accepting the verdict; the judge's questioning them was simply an attempt to determine whether the jurors truly disagreed with the jury's verdict or whether they were just confused. Harris v. State, 933 P.2d 1114 (Wyo. 1997).

False imprisonment is a lesser-included offense of kidnapping; however, a trial court did not err by refusing to give such an instruction because the theory of the defense, consent, only allowed the jury to find defendant guilty or not guilty of kidnapping. Dean v. State, 77 P.3d 692 (Wyo. 2003).

Applied in Seeley v. State, 715 P.2d 232 (Wyo. 1986); Jackson v. State, 891 P.2d 70 (Wyo. 1995); Paramo v. State, 896 P.2d 1342 (Wyo. 1995).

Stated in Jones v. State, 902 P.2d 686 (Wyo. 1995).

Cited in Martinez v. State, 511 P.2d 105 (Wyo. 1973).

Law reviews. — For article: "The Wyoming Criminal Code Revisited: Reflections after Fifteen Years," see XXXIII Land and Water L. Rev. 523 (1998).

Am. Jur. 2d, ALR and C.J.S. references. — 75B Am. Jur. 2d Trials §§ 1750 to 1927.

Inconsistency of criminal verdict with verdict on another indictment or information tried at same time, 16 ALR3d 866.

Inconsistency of criminal verdict as between different counts of indictment or information, 18 ALR3d 259.

Inconsistency of criminal verdicts as between two or more defendants tried together, 22 ALR3d 717.

Validity and efficacy of accused's waiver of unanimous verdict, 97 ALR3d 1253.

Acquittal of principal, or his conviction of lesser degree of offense, as affecting prosecution of accessory, or aider and abettor, 9 ALR4th 972.

Requirement of jury unanimity as to mode of committing crime under statute setting forth the various modes by which offense may be committed, 75 ALR4th 91.

When should jury's deliberation proceed from charged offense to lesser-included offense, 26 ALR5th 603.

23A C.J.S. Criminal Law §§ 1395 to 1419; 24 C.J.S. Criminal Law §§ 1500, 1501, 1512.

Rule 32. Judgment and sentence.

(a) *Presentence investigation.* —

(1) When Made. — In every felony case the Department of Probation and Parole shall conduct a presentence investigation and submit a report to the court. The court may order an investigation and report in misdemeanor cases. In felony cases the investigation and report may not be waived but, with the parties' consent, the court may permit the report to be filed after sentencing. Otherwise, it shall be considered by the court before the imposition of sentence or the granting of probation. Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) Report. — The report of the presentence investigation shall contain:

(A) Information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

(B) Verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed and attaching a victim impact statement as provided in W.S. 7-21-103 if the victim chooses to make one in writing. In any event the report shall state that the victim was advised of the right to make such a statement orally at the defendant's sentencing or in writing. If the victim could not be contacted, the report shall describe the efforts made to contact the victim;

(C) Unless the court orders otherwise, information concerning the nature and extent of non-prison programs and resources available for the defendant; and

(D) Such other information as may be required by the court.

(3) Disclosure.

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (a)(2). The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the state.

(C) If the comments of the defendant and the defendant's counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make:

(i) A finding as to the allegation; or

(ii) A determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to penal institutions.

(b) *Judgment.* —

(1) Except for forfeit offenses for which citations have issued (Rule 3.1), other misdemeanors where the penalty imposed does not exceed a fine of $200.00, and pleas entered under Rule 43(c)(2), judgment of conviction upon a plea of guilty or nolo contendere shall include:

(A) The plea, including the name and statute number of each offense to which the defendant pleaded and whether such offense was a felony or a misdemeanor;

(B) Findings that:

(i) The defendant was competent to enter a plea;

(ii) The defendant was represented by competent counsel with whom the defendant was satisfied including the name of the attorney (or that the defendant knowingly waived such right);

(iii) The defendant was advised as required by Rule 11 and understood those advisements; and

(iv) The plea was voluntary, and not the result of force or threats or of promises apart from a plea agreement;

(C) A statement as to whether the plea was the product of a plea agreement and, if so, that the plea agreement was fully disclosed and accepted by the court as required by Rule 11(d);

(D) An adjudication as to each offense; and

(E) Any other advisements required by law or that the court deems appropriate.

(2) Except for forfeit offenses for which citations have issued, other misdemeanors where the penalty imposed does not exceed a fine of $200.00, and pleas entered under Rule 43(c)(2), a judgment of conviction after a trial shall include:

(A) The plea and the verdict for each offense for which the defendant was tried;

(B) A statement as to whether the defendant testified and whether or not the defendant was advised by the court with respect to the defendant's right to testify or not to testify;

(C) An adjudication as to each offense including the name and statute number for each convicted offense and whether such offense is a felony or a misdemeanor; and

(D) The name of the defendant's attorney or a statement that the defendant appeared *pro se*.

(3) If the defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly.

(4) The judgment shall be promptly signed by the judge and entered by the clerk.

(c) *Sentence.* —

(1) Imposition. — Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the state with a copy of the probation officer's report. Pending sentence, the court may continue or alter the defendant's bail or may confine the defendant. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the state an opportunity to comment upon the probation officer's report and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also:

(A) Determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (a)(3)(A);

(B) Afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

(C) Address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The attorney for the state shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the state, the court may hear *in camera* such a statement by the defendant, counsel for the defendant, or the attorney for the state.

(2) Contents. — A written sentence shall be signed by the judge and entered by the clerk of court without delay. The sentence may be included in the judgment or separately entered. Except for forfeit offenses for which citations have issued, other misdemeanors where the penalty imposed does not exceed a fine of $200.00, and pleas entered under Rule 43(c)(2), as a minimum the sentence shall:

(A) State each offense for which sentence is imposed, including the statute number and whether the offense is a felony or a misdemeanor;

(B) State the sentence imposed for each convicted offense including for felonies the minimum and maximum term and state whether multiple sentences are to run concurrently or consecutively;

(C) State whether the sentence is to run concurrently with or consecutive to any other sentence being served or to be served by the defendant;

(D) If probation is not granted, state whether probation was considered by the court;

(E) Include a finding of all time served by the defendant in presentence confinement for any sentenced offense;

(F) State the extent to which credit for presentence confinement is to be given for each sentenced offense;

(G) Include an assessment for the victims of crime compensation fund as required by W.S. 1-40-119; and

(H) Include a finding as to whether the defendant is able to make restitution and if restitution is ordered fix the reasonable amount owed to each victim resulting from the defendant's criminal acts.

(3) Advisement of Right to Appeal. — At the time of sentencing, regardless of the defendant's plea or trial, the court shall advise the defendant of the right to appeal the sentence or conviction. This advisement includes:

(A) The defendant's right to appeal, including the time limits for filing a notice of appeal; and

(B) The right of a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis* and to have appointed counsel represent the defendant on appeal.

(4) Notice of Appeal. — If the defendant so requests, the clerk of the court shall prepare and serve forthwith a notice of appeal in accordance with the Wyoming Rules of Appellate Procedure on behalf of the defendant.

(d) *Plea withdrawal.* — If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only to correct manifest injustice.

(e) *Probation.* — After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(Amended July 22, 1993, effective October 19, 1993; amended June 17, 2014, effective September 1, 2014.)

Cross References. — As to pleas generally, see Rule 11.

Compare. — Rule 32, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.

The failure to attach a written record to the trial court's disposition of disputed information to the presentence report requires only a limited remand; this ministerial duty may be corrected by either attaching the relevant pages from the sentencing hearing or by appending the trial court's written findings regarding the disputed information to the presentence report. Upon completion of this task, the presentence report and attachments are to be forwarded to the Department of Corrections in compliance with § 7-13-303. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

Executive, not judicial, department has power to decide whether to defer prosecution under § 7-13-301 (placing person found guilty, but not convicted, on probation). The exercise of that prosecutorial discretion is not subject to judicial review as long as any unjustifiable or suspect factors such as race, religion or other arbitrary or discriminatory classifications are not involved. Thus, the requirement that the state consent to the court's deferral of further proceedings and the placement of the defendants on probation without entry of a judgment of conviction does not infringe on the judicial department's sentencing power in violation of the principle of separation of powers explicitly stated in Wyo. Const., art. 2, § 1. Billis v. State, 800 P.2d 401 (Wyo. 1990).

Advisement of right to appeal. — Where district court abrogated its duty by failing to

advise petitioner of his right to appeal his conviction, the court thus undermined petitioner's ability to take a timely direct appeal, and petitioner's failure to appeal could not be relied upon as grounds for summarily dismissing his petition for post-conviction relief pursuant to Wyo. Stat. Ann. § 7-14-101(b). Hauck v. State, 162 P.3d 512 (Wyo. 2007).

Plea knowing and voluntary. — Plea to kidnapping was knowing and voluntary where, although defendant's attitude was hostile, he was advised of the nature of the plea, the penalties, and the consequences, and he repeatedly affirmed that he understood the proceedings. Major v. State, 83 P.3d 468 (Wyo. 2004).

Applied in Vialpando v. State, 494 P.2d 939 (Wyo. 1972); Montez v. State, 573 P.2d 34 (Wyo. 1977); Young v. State, 904 P.2d 359 (Wyo. 1995); Haddock v. State, 909 P.2d 974 (Wyo. 1996); Grady v. State, 914 P.2d 1230 (Wyo. 1996); Daugherty v. State, 44 P.3d 28 (Wyo. 2002); Abeyta v. State, 78 P.3d 664 (Wyo. 2003); Abitbol v. State, 178 P.3d 415 (Wyo. 2008); Pinker v. State, 188 P.3d 571 (Wyo. 2008).

Quoted in Carson v. State, 755 P.2d 242 (Wyo. 1988); Schepp v. Fremont County, 685 F. Supp. 1200 (D. Wyo. 1988), aff'd, 900 F.2d 1448 (10th Cir. 1990); Despain v. State, 774 P.2d 77 (Wyo. 1989); Swackhammer v. State, 808 P.2d 219 (Wyo. 1991); State v. Keffer, 860 P.2d 1118 (Wyo. 1993).

Stated in Duran v. State, 949 P.2d 885 (Wyo. 1997); Burkhardt v. State, 117 P.3d 1219 (Wyo. 2005).

Cited in Martin v. State, 780 P.2d 1354 (Wyo. 1989); Mehring v. State, 860 P.2d 1101 (Wyo. 1993); Van Riper v. State, 882 P.2d 230 (Wyo. 1994); Swingholm v. State, 910 P.2d 1334 (Wyo. 1996); Reese v. State, 910 P.2d 1347 (Wyo. 1996); Mapp v. State, 929 P.2d 1222 (Wyo. 1996); Parkhurst v. Shillinger, 128 F.3d 1366 (10th Cir. 1997); Nixon v. State, 4 P.3d 864 (Wyo. 2000); Lee v. State, 36 P.3d 1133 (Wyo. 2001), cert. denied, 535 U.S. 1103, 122 S. Ct. 2307, 152 L. Ed. 2d 1062 (2002); Kenyon v. State, 96 P.3d 1016 (2004); Jet v. State (In re DRT), 241 P.3d 489 (Wyo. 2010).

Law reviews. — For article, "Disparity and the Sentencing Process in Wyoming District Courts: Recommendations for Change," see XI Land & Water L. Rev. 525 (1976).

For discussion of Rule 410, Fed. R. Evid., relating to inadmissibility of pleas, offers of pleas and related statements, see XII Land & Water L. Rev. 601 (1977).

For article, "The Greatest Lawyer in the World (The Maturing of Janice Walker)," see XIV Land & Water L. Rev. 135 (1979).

For comment, "The Institutional Transfer Statute: Three Challenges to the Imprisonment of Juvenile Offenders," see XVII Land & Water L. Rev. 643 (1982).

For comment, "Reforming Criminal Sentencing in Wyoming," see XX Land & Water L. Rev. 575 (1985).

Am. Jur. 2d, ALR and C.J.S. references. — Acquittal in criminal proceeding as precluding revocation of probation on same charge, 76 ALR3d 564.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim, 79 ALR3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs, 79 ALR3d 1025.

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation, 79 ALR3d 1068.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches, 79 ALR3d 1083.

Adequacy of defense counsel's representation of criminal client regarding argument, 6 ALR4th 16.

Adequacy of defense counsel's representation of criminal client regarding speedy trial and related matters, 6 ALR4th 1208.

Power of court, after expiration of probation term, to revoke or modify probation for violations committed during the probation term, 13 ALR4th 1240.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or other restrictive environment as condition of probation, 24 ALR4th 789.

Power or duty of state court, which has accepted guilty plea, to set aside such plea on its own initiative prior to sentencing or entry of judgment, 31 ALR4th 504.

Revocation of probation based on defendant's misrepresentation or concealment of information from trial court, 36 ALR4th 1182.

Probation revocation: insanity as defense, 56 ALR4th 1178.

When does delay in imposing sentence violate speedy trial provision, 86 ALR4th 340.

Right of convicted defendant or prosecution to receive updated presentence report at sentencing proceedings, 22 ALR5th 660.

What constitutes "unreasonable delay" within meaning of Rule 32(a)(1) of Federal Rules of Criminal Procedure, providing that sentence shall be imposed without unreasonable delay, 52 ALR Fed 477.

What standard, regarding necessity for change of trial result, applies in granting new trial pursuant to Rule 33 of Federal Rules of Criminal Procedure for newly discovered evidence of false testimony by prosecution witness, 59 ALR Fed 657.

Disclosure to third party of presentence report under Rule 32(c), Federal Rules of Criminal Procedure, 91 ALR Fed 816.

II. PRESENTENCE INVESTIGATION.

Failure to request presentencing investigation report. — In a sexual assault case, defendant did not show prejudice for alleged ineffectiveness of counsel for failing to request

a presentencing investigation report or to object to the harshness of imposition of two life sentences either at sentencing or afterwards where no prejudice occurred because, under the habitual criminal statute, the trial court had no choice but to impose two life sentences. Daniel v. State, 78 P.3d 205 (Wyo. 2003), cert. denied, 540 U.S. 1205, 124 S. Ct. 1476, 158 L. Ed. 2d 127 (2004).

Failure to object to presentence investigation report. — Defendant was sentenced to 6 to 10 years on the marijuana charge and 3 to 10 years on the methamphetamine charge, to be served consecutively. In light of defendant's failure to object to the presentence investigation report which contained his prior criminal history and in light of his taped statements to police claiming to be a significant drug dealer in the area, the appellate court saw no reliance by the trial court on prosecutorial misconduct in formulating its sentencing decision. Manes v. State, 92 P.3d 289 (Wyo. 2004).

When defendant convicted of battery against a household member did not exercise his right under this rule to rebut presentence information confirming that the victim of his prior battery and aggravated assault was the mother of his child, the district court was permitted to treat this information as reliable and accurate. The district court correctly determined that defendant was subject to felony punishment for a third offense of battery against a household member. Romero v. State, 233 P.3d 951 (Wyo. 2010).

Self incrimination. — In a case involving sexual abuse of a minor, counsel was not ineffective for failing to object to a presentence investigation (PSI) report or by failing to advise appellant against make certain statements because appellant requested to and agreed to the investigation, he declined to answer questions about his case, and a consent to disclose agreement was honored. The information in the PSI was not presented to the jury, and the State did not present any information at trial that was contained in the PSI that was not already received from another source; the seeking of the PSI by defense counsel was likely strategic in case the parties managed to reach a plea agreement. Leonard v. State, 298 P.3d 700 (Wyo. 2013).

Constitutional for prosecutor to present evidence of other crimes at sentencing hearing. — There was no violation of the separation of powers doctrine with respect to the sentencing court requiring the prosecutor to present at the sentencing hearing evidence of other crimes with which the defendant had not been charged pursuant to his plea agreement. MJP v. State, 706 P.2d 1108 (Wyo. 1985), overruled on other grounds, Vaughn v. State, 962 P.2d 149 (Wyo. 1998).

Presentence investigation report did not improperly contain confidential information because the information contained in the evaluator's report to the probation and parole officer, which related directly to defendant's propensity for violence, was meant to be related to the district court, as it was indispensable in deciding whether treatment options should be considered as part of any sentence. Janpol v. State, 178 P.3d 396 (Wyo. 2008).

Filed presentence reports and information are evidence for exercise of sentencing discretion, subject only to rights of the convicted individual to deny, dispute or disprove. Christy v. State, 731 P.2d 1204 (Wyo. 1987).

Trial court did not violate defendant's due process rights under Wyo. Const. art. I, § 6 in sentencing defendant to consecutive five-to eight-year prison terms for his convictions on four counts of forgery because defendant's sentence did not exceed the maximum penalty provided in Wyo. Stat. Ann. § 6-3-602(b) and defendant's trial counsel had withdrawn her objection to the remaining disputed items in a pre-sentence investigation report. W.R.Cr.P. 32(a) specifically permits information about the prior criminal record of the defendant and his characteristics to be considered by the trial court before imposing sentence, and the trial court, in exercising its discretion, may consider a broad range of reports and information. Davis v. State, 117 P.3d 454 (Wyo. 2005).

Subdivision (a)(2) does not except hearsay or conclusionary "information". Johnson v. State, 790 P.2d 231 (Wyo. 1990).

Judge to disclose viewing videotape of defendants. — The sentencing judge erred in failing to disclose to the defendants, before sentencing, that he had viewed a videotape taken of them while they were in police custody. Griebel v. State, 763 P.2d 475 (Wyo. 1988).

Findings as to contested matters. — Although district court failed to make specific findings regarding controverted facts in presentence investigation report, record revealed that court did not rely on contested information, and therefore there was no error or prejudicial harm and only a limited remand was required. Blankinship v. State, 974 P.2d 377 (Wyo. 1999).

Once a defendant has alleged a factual inaccuracy in the presentence investigation report, the district court must either make a finding as to the contested matter or make a determination that no finding is necessary because the matter will not be considered for sentencing. Bitz v. State, 78 P.3d 257 (Wyo. 2003).

The district court abused its discretion in relying on the alleged validity of a contested matter, charges dismissed in a plea agreement, in a presentence investigation report without making a record or finding as to the reliability of the information. Neither the facts that the charges were bound over for a probable cause hearing nor that the court did not believe the defendant was a sufficient finding that defendant committed the offense. Bitz v. State, 78 P.3d 257 (Wyo. 2003).

No reversal where ex parte communication quashed. — The judge's impropriety in reading an ex parte communication from a deputy county sheriff just prior to the sentencing hearing did not automatically require reversal and remand for resentencing by another judge, where the court stated on the record that the letter was quashed and that he would not consider it in sentencing. Coletti v. State, 769 P.2d 361 (Wyo. 1989).

Defendant denied access to probation records. — Since a criminal defendant has no right to examine the files and records of the department of probation and parole in connection with a sentencing hearing, but is only entitled to a disclosure of all of the material contained in the presentence report and any other information that is known to the trial court with respect to sentencing, the court committed no error in denying the defendant access to the records of any prior probation supervision or notes taken by any probation and parole agent to prepare the presentence report. Alexander v. State, 823 P.2d 1198 (Wyo. 1992).

Sexual offender evaluation. — Defendant's sentence was not based on an inadequate presentence investigation and did not violate due process, where he failed to request sexual offender evaluation and failed to specify what benefit he would have derived from such an evaluation or what impact it potentially held for the ultimate sentencing determination. Brower v. State, 1 P.3d 1210 (Wyo. 2000).

It was not an abuse of discretion for the district court to sentence defendant without a previously-ordered psychosexual evaluation because eight months elapsed from the date the evaluation was ordered until the sentencing hearing and defendant failed to raise the issue of his inability to pay for the evaluation until the sentencing hearing. Defendant failed to show prejudice because there was no evidence as to what the findings of an evaluation would have been. Hirsch v. State, 135 P.3d 586 (Wyo. 2006).

Mental health evaluations. — District court had authority to order and consider a psychosexual offender evaluation in connection with sentencing; repeal of statutes providing for compulsory mental health evaluations for certain sex offenses did not deprive court of discretionary power to order mental health evaluations pursuant to this section. Hornecker v. State, 977 P.2d 1289 (Wyo. 1999).

Finding of presentence time required. — The "Order Upon Probation Revocation Hearing" in this case does not comply with paragraph (c)(2)(E) since it does not "include a finding of all time served by the defendant in presentence confinement for any sentenced offense." Milladge v. State, 900 P.2d 1156 (Wyo. 1995).

Limited remand for presentence credit. — Under paragraphs (c)(2)(E) and (c)(2)(F), a sentence must contain both a finding of the amount of the presentence confinement and either an express award or an express denial of a credit for that presentence confinement. If a sentence fails to comply with these requirements, the accused would be entitled to a limited remand for a new award of credit unless the Supreme Court is able to fashion a correct award from the record. Milladge v. State, 900 P.2d 1156 (Wyo. 1995).

Presentence confinement credit. — In sentencing proceedings, if the accused has access to, and fails to contest, the information used by the sentencing court to fix the amount of the presentence confinement credit, the supreme court will presume, except in extraordinary cases, that the accused acknowledged the essential accuracy of that information. Eustice v. State, 871 P.2d 682 (Wyo. 1994).

For findings which involve a contested presentence confinement credit, in reaching its findings on all controverted issues the sentencing court should employ the preponderance of the evidence standard and may treat the contents of a verified presentence report as presumptively accurate, provided, however, that unless reasonable verification of material factual information can be shown to have been made or adequate factual corroboration otherwise exists in the record, material factual allegations made in the presentence report and effectively challenged by the defendant should not be deemed to satisfy the government's burden of persuasion. Eustice v. State, 871 P.2d 682 (Wyo. 1994).

No credit for time awaiting probation revocation. — The defendant is not entitled to credit against his sentence for time spent in custody while awaiting revocation proceedings because that is not attributable to his inability to post bond due to indigence. Milladge v. State, 900 P.2d 1156 (Wyo. 1995).

Inaccuracies in report. — Sentencing court did not disregard corrections offered by defendant to presentence investigation report; however, since court merely noted its findings on its copy of presentence report and attached its notations to original report, remand was required in order for court to append complete findings and determinations pursuant to subdivision (a)(3)(C) of this rule. Van Riper v. State, 999 P.2d 646 (Wyo. 2000).

Detail of report. — In a first degree sexual assault case, the district court did not err in considering a presentence investigation report in full when sentencing defendant. While the information in the report might have been quite detailed, the information was not outside the scope of the purview of this rule. Hackett v. State, 233 P.3d 988 (Wyo. 2010).

Report was clearly comprehensible. — While defendant's written statement did contain some grammar and spelling errors, it was clearly comprehensible and provided no evidence that defendant was unable to understand

the presentence investigation report, and there was no violation of Wyo. R. Crim. P. 32(a)(3)(A); under Wyo. R. Crim. P. 32(a)(3)(C), defense counsel was not making an allegation of factual inaccuracy, and no response or action from the district court was required. Duke v. State, 209 P.3d 563 (Wyo. 2009).

No procedural errors in victim impact statement. — Mere submission of a victim impact statement and presentence investigation report that contains statements from individuals who may be beyond those affected by the charged crimes, does not, without more, constitute a procedural error in sentencing or prosecutorial misconduct. Therefore, in a case involving sexual assault and indecent acts with a minor, error was not shown based on the fact that other statements were included. Hubbard v. State, 175 P.3d 625 (Wyo. 2008).

No error in sentencing defendant. — Because defendant affirmatively denied the presence of factual inaccuracies in the presentence report (PSI), did not introduce any testimony or other information relating to any alleged factual inaccuracy contained in the PSI, and vigorously challenged the probation officer's opinion, the court did not err in sentencing defendant. Smith v. State, 119 P.3d 411 (Wyo. 2005).

In a murder case, a court properly sentenced defendant on accurate information from a presentence report where information other than that complained of, contained in the presentence investigation report, supported the passage in the report to which defendant objected; the report quoted the sworn affidavit that stated that social service workers interviewed one of defendant's children, the child stated that he was present when defendant and the victim "became involved in an argument," that the victim "had been harmed by the gun," and that defendant had been "cleaning up blood at the residence." Furthermore, defendant never sought to deny, dispute, or disprove the information that the children were present during the murder. Martinez v. State, 128 P.3d 652 (Wyo. 2006).

Under Wyo. Stat. Ann. § 7-13-303 and Wyo. R. Crim. P. 32(a)(2), the district court did not abuse its discretion when it denied defendant's motion to strike from the PSI report the sentencing recommendations of the probation and parole agent; the PSI writer could make sentencing recommendations and such recommendations were appropriate. Scott v. State, 248 P.3d 1162 (Wyo. 2011).

Contacting family. — There is no mandate in Wyo. R. Crim. P. 32 that information from the family of a defendant be compiled for the trial court's consideration. Gorseth v. State, 141 P.3d 698 (Wyo. 2006).

Probation agent opinion. — Although Wyo. R. Crim. P. 32 does not specifically charge a probation agent with giving an opinion about the defendant (making an evaluation and giving recommendations), the district courts deem such information to be of value in the sentencing process because the form used in that process calls for such evaluations and recommendations. It is not an abuse of discretion for the district court to utilize such information in imposing sentence. Gorseth v. State, 141 P.3d 698 (Wyo. 2006).

Defendant's due process rights were not violated by the procedures surrounding a presentence report under Wyo. R. Crim. P. 32; a foreign probation report was properly considered, a statement that defendant did not accept responsibility was not inaccurate, the report was made in a "nonargumentative style," the failure to address alternatives to prison was corrected in an amended report, and there was no requirement that members of defendant's family be contacted. Gorseth v. State, 141 P.3d 698 (Wyo. 2006).

Probation revocation proceedings. — This rule applies to sentencing, not to probation revocation proceedings. In re Abraham, — P.3d —, 2009 Wyo. LEXIS 165 (Wyo. Aug. 27, 2009).

III. SENTENCE.

The final judgment in a criminal case means sentence. Vigil v. State, 563 P.2d 1344 (Wyo. 1977).

Adjudication as to each offense is essential. — An adjudication of guilt and conviction under the statute and an adjudication as to each offense is essential to the power of the court to impose sentence. Dickson v. State, 903 P.2d 1019 (Wyo. 1995).

Sentencing delay for probationer not unreasonable. — The defendant was not deprived of his right to a speedy sentence, where he was placed on probation without any determination of a sentence of confinement and, approximately two years later, a prison term was specified upon the revocation of his probation. The fact that the court continued to manage a lawfully imposed sentence did not equate to an unreasonable delay in sentencing. Davila v. State, 815 P.2d 848 (Wyo. 1991).

Sentencing delay over one year presumptively unreasonable. — A delay in sentencing in excess of one calendar year from the date guilt is established is presumptively unreasonable, unless the record clearly establishes facts and circumstances that excuse the delay, thus making later imposition of the sentence reasonable. The state must bear the burden of establishing those facts and circumstances. Yates v. State, 792 P.2d 187 (Wyo. 1990).

Sentence delay unreasonable. — One-year delay in imposing a sentence for felony stalking of a year's probation conditioned on defendant's staying away from the victim was unreasonable, where he had complied with this same condition for the year prior to sentencing. Detheridge v. State, 963 P.2d 233 (Wyo. 1998).

Facts established that trial court failed

to impose sentence within reasonable time. — See Thom v. State, 792 P.2d 192 (Wyo. 1990).

No unreasonable delay found. — A sentence for multiple counts was proper where defendant's sentences on three counts were to run consecutively and sentence on a fourth count was suspended with defendant placed on probation but where a specified term of imprisonment, three to nine years, would be imposed upon revocation of the term of probation, because there was no danger that punishment would increase as a result of acts underlying the revocation of parole or that vagaries of memory would interfere with the imposition of a proper sentence. Reagan v. State, 14 P.3d 925 (Wyo. 2000).

It was not unreasonable for the district court to sentence defendant one year and 17 days after his conviction as there were several legitimate reasons for the length of time between conviction and imposition of sentence because (1) various significant issues, including decisions on evidence questions, required resolution before the sentencing hearing could take place; (2) scheduling conflicts with counsel for both sides compounded the situation to a certain extent; and (3) a considerable portion of the delay was attributable to defendant. Brown v. State, 340 P.3d 1020 (Wyo. 2015).

In consecutive sentence case, remand for resentencing necessary. — Because the prosecutor did not focus the district court's attention on the factors that counseled in favor of a finding that the sentences previously imposed on defendant should be consecutive with an earlier sentence and because the prosecutor's argument was given over to an emotional attack on the functions of the parole board and executive clemency, essentially exhorting the district court to punish defendant for the perceived sins of the parole board and the state governor, the supreme court was unable to effectively perform a meaningful review of the provision that the sentences be consecutive and it was compelled to remand the case for another sentencing hearing. Jones v. State, 79 P.3d 1021 (Wyo. 2003).

The sentencing judge has wide discretion in determining the length of the term of imprisonment to be imposed upon the defendant. Jaramillo v. State, 517 P.2d 490 (Wyo. 1974).

Determination not disturbed absent abuse of discretion. — The sentencing judge is given wide discretion in determining the length and conditions of the term of imprisonment to be imposed upon conviction and such determination, if within the statutory limits, will not be disturbed absent a clear abuse of discretion. Jones v. State, 602 P.2d 378 (Wyo. 1979).

A sentence will not be disturbed because of sentencing procedures unless the defendant can show an abuse of discretion, procedural conduct prejudicial to him, and circumstances which manifest inherent unfairness and injustice, or conduct which offends the public sense of fair play. Clouse v. State, 776 P.2d 1011 (Wyo. 1989).

A sentencing recommendation represents one of the factors which the trial court may properly consider. Mehring v. State, 860 P.2d 1101 (Wyo. 1993).

Circumstances considered in sentencing. — In the imposition of a criminal sentence, the judge in exercising his judicial discretion should give consideration to all circumstances — aggravating as well as mitigating. Cavanagh v. State, 505 P.2d 311 (Wyo. 1973).

Consideration of uncharged crimes. — Defendant's due process rights under U.S. Const. amend XIV, § 1 and Wyo. Const. art. I, § 6 were not violated when uncharged activity was considered by a trial court during sentencing for a drug offense, where the evidence was reliable and accurate based on an officer's involvement and the information was taped and corroborated. Peden v. State, 129 P.3d 869 (Wyo. 2006).

Defendant claimed that consideration of uncharged conduct evidence in sentencing was error, and requested adoption of "offense of conviction" sentencing, limiting the sentencing court to information pertaining strictly to the offense for which the defendant is sentenced; claim was rejected where defendant did not object to consideration of the uncharged conduct in the presentence investigation report, and therefore application of the plain error standard was triggered, and resolution of "offense of conviction" sentencing issue was therefore not necessary. Hirsch v. State, 135 P.3d 586 (Wyo. 2006).

Notice of opportunity to present mitigation. — The defendant must be given notice of his opportunity to present whatever he has in mitigation. Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

Notice of testimony at sentencing not required. — Nowhere in either the statutes of the state or these rules is there any requirement of notice that testimony will be produced and taken at time of sentencing. Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

Defendant's voluntary statements later admissible against him. — A defendant's choice to exercise his right to allocution at his sentencing hearing is entirely voluntary; he can speak to the court, but he is not required to do so; a defendant's statements may be admissible against him in further criminal proceedings, provided they were voluntary. Harvey v. State, 835 P.2d 1074 (Wyo.), cert. denied, 506 U.S. 1022, 113 S. Ct. 661, 121 L. Ed. 2d 586 (1992).

Defendant cannot address court fixing execution date after stay. — The procedures outlined in subdivision (c)(1) as to the defendant's right to address the court did not extend

to the mere fixing of an execution date after a stay. Hopkinson v. State, 704 P.2d 1323 (Wyo.), cert. denied, 474 U.S. 1026, 106 S. Ct. 582, 88 L. Ed. 2d 564 (1985).

Trial judge has discretion to deny or grant credit for time served in presentence custody where: (1) the presentence custody is not due to the defendant's indigency; and (2) the sum of the time spent in presentence custody plus the sentence does not exceed the maximum allowable sentence. Jones v. State, 602 P.2d 378 (Wyo. 1979).

If a sentence fails to comply with subdivisions (c)(2)(E) or (F) of this rule, the accused would be entitled to have a limited remand for a new award of a credit unless the supreme court has been able to fashion a correct award from the record. Eustice v. State, 871 P.2d 682 (Wyo. 1994).

Effect on sentence of court's failure to comply with rule. — Although the district court failed to comply with this rule, where the sentence was well within the ten year maximum punishment for burglary, the sentence would not be set aside absent a clear abuse of discretion. Wayt v. State, 912 P.2d 1106 (Wyo. 1996).

Restitution order valid. — Sentencing order stating the amount of restitution but not including a finding as to defendant's ability to pay was not invalid. A silent record, containing neither a finding of ability to pay nor a finding of inability to pay, supports an order requiring the payment of restitution. Whitten v. State, 110 P.3d 892 (Wyo. 2005).

Restitution order invalid. — Defendant's judgment and sentence violated Wyo. R. Crim. P. 32(c)(2)(H) where, under Wyo. Stat. Ann. § 7-9-103(b) and Wyo. Stat. Ann. § 7-9-101(a)(iii), the sentencing court did not specify a victim, and it was impossible to tell if "loss of support" fit the statutory definition of "pecuniary damage"; the state failed to prove a victim's legal entitlement to restitution. Hite v. State, 172 P.3d 737 (Wyo. 2007).

Sentence not cruel or unusual. — To say that the imposition of a 21 to 24 month sentence for an offense which is punishable by a maximum of 10 years is cruel and unusual punishment is so presumptuous as to challenge credibility. Cavanagh v. State, 505 P.2d 311 (Wyo. 1973).

District court did not abuse its discretion in denying defendant's motion to strike portions of the PSI report where, under Wyo. Stat. Ann. § 7-13-303 and Wyo. R. Crim. P. 32, the district court considered a variety of information and sources in imposing sentence, and did not rely on the agent's comments in imposing sentence. Noller v. State, 226 P.3d 867 (Wyo. 2010).

Victim impact evidence inadmissible in capital sentencing. — Existing Wyoming law did not authorize the introduction of evidence of victim impact during the sentencing phase of a capital case. Thus, in the capital case at hand, the trial court erred in its ruling which allowed the prosecution to introduce victim impact evidence in the case's sentencing phase. Olsen v. State, 67 P.3d 536 (Wyo. 2003).

Defendant's right to allocution denied. — Defendant was entitled to resentencing on an aggravated robbery conviction because the trial court failed to follow the requirements of Wyo. R. Crim. P. 32(c)(1)(C) during sentencing; defendant was never addressed by the trial court, and was thus not offered any opportunity to make a statement or present any mitigating information. Presbury v. State, 226 P.3d 886 (Wyo. 2010).

IV. WITHDRAWAL OF PLEA.

Standards are different for presentence and postsentence withdrawals. — A defendant seeking to withdraw before sentencing must present the court with a plausible reason for withdrawal. After sentencing, the defendant must justify the withdrawal by showing a manifest injustice. Zanetti v. State, 783 P.2d 134 (Wyo. 1989).

To determine whether breach of plea occurred. — To determine whether a plea agreement has been breached, the appellate court, guided by principles of contract law, analyzes the government's obligation in light of the nature of the promise and the defendant's understanding of it when the plea was entered. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

Time limit for filing motion to withdraw guilty plea. — Although W.R.Cr.P. 32(d) does not, in and of itself, set a time limit for filing a motion to withdraw a guilty plea with the district court after sentencing, trial courts lack subject matter jurisdiction to entertain a motion to withdraw a guilty plea under W.R.Cr.P. 32(d) if that motion is filed after an appeal of right from a conviction has been concluded, after the time for such an appeal has run and no appeal has been taken, or after such an appeal has been taken but then voluntarily dismissed. Nixon v. State, 51 P.3d 851 (Wyo. 2002).

District court did not have jurisdiction to rule on defendant's motion to withdraw defendant's guilty plea because the motion was untimely as defendant asked to withdraw the guilty plea after defendant's conviction became final. Because the district court did not have jurisdiction to rule on defendant's motion, the appellate court did not have jurisdiction to consider defendant's appeal from the district court's ruling. Shue v. State, 367 P.3d 645 (Wyo. 2016).

When appellant filed a motion to withdraw his no contest plea, more than two years had passed since his conviction and sentence for indecent liberties was affirmed by the state supreme court; because the motion to withdraw the plea was untimely, the district court did not have jurisdiction to entertain the motion. Neidlinger v. State, 230 P.3d 306 (Wyo. 2010).

Standard of review. — Decisions concern-

ing whether a trial court properly denied a motion for withdrawal of a guilty plea, either pre-sentence or post-sentence, are determined under an abuse of discretion standard of review. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

District court lacked jurisdiction to consider motion to withdraw guilty pleas. — Where defendant entered pleas to operating an unlawful clandestine laboratory operation and possession of a controlled substance, the state failed to uphold its promise that he would not be charged with federal firearms crimes; because the sentence and judgment had already been imposed, the district court had no jurisdiction over defendant's motion to withdraw his guilty pleas under this section. Brown v. State, 175 P.3d 1158 (Wyo. 2008).

No absolute right to withdrawal. — The withdrawal of a plea of guilty before sentencing is not an absolute right, and a denial by the district court is within its sound discretion. The state need not establish prejudice. Schmidt v. State, 668 P.2d 656 (Wyo. 1983).

The withdrawal of a plea of guilty is not an absolute right and the right to do so is within the sound discretion of the trial court. A presentencing withdrawal motion is measured by whether it would be fair and just to allow it. Osborn v. State, 672 P.2d 777 (Wyo. 1983), cert. denied, 465 U.S. 1051, 104 S. Ct. 1331, 79 L. Ed. 2d 726 (1984).

After sentencing, a defendant must justify the withdrawal of a guilty plea by showing manifest injustice. The determination of such a motion is addressed to the discretion of the trial court. Flores v. State, 822 P.2d 369 (Wyo. 1991).

The trial court properly denied defendant's motion to withdraw his guilty plea where he confessed to the crime when interviewed after his arrest, and his only assertion of innocence was his original plea of not guilty; the government would likely have suffered prejudice from a withdrawal plea because the crime involved an informant and occurred three years earlier and defendant absconded from the jurisdiction and delayed filing his motion to withdraw the plea of guilty more than two years after his original plea of not guilty. Doles v. State, 55 P.3d 29 (Wyo. 2002).

Fair and just reason. — District court abused its discretion in denying defendant's pre-sentence motion for withdrawal of his guilty plea where the defendant had established a "fair and just reason" for withdrawal that related to comments by prosecutor about his agreed to sentencing. Herrera v. State, 64 P.3d 724 (Wyo. 2003).

Defendant was not allowed to withdraw his nolo contendere plea to aggravated assault when he failed to provide the trial court with a fair and just reason, or any reason, for withdrawing the plea. Van Haele v. State, 90 P.3d 708 (Wyo. 2004).

Manifest injustice. — Manifest injustice contemplates a situation that is unmistakable or indisputable, was not foreseeable, and affects the substantial rights of a party. It is, in part, intended to address a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure. Browning v. State, 32 P.3d 1061 (Wyo. 2001); Reyna v. State, 33 P.3d 1129 (Wyo. 2001).

The burden of proof of manifest injustice is on the party seeking to withdraw the guilty plea. McGiff v. State, 514 P.2d 199 (Wyo. 1973), cert. denied, 415 U.S. 992, 94 S. Ct. 1592, 39 L. Ed. 2d 889 (1974).

The burden of proving manifest injustice under subdivision (d) is on the defendant who seeks to withdraw his plea of guilty. Angerhofer v. State, 758 P.2d 1041 (Wyo. 1988).

To secure withdrawal of a plea bargain after sentencing, a defendant must demonstrate manifest injustice. Johnson v. State, 922 P.2d 1384 (Wyo. 1996).

Defendant failed to prove the presence of manifest injustice in order to withdraw his plea of nolo contendere where the defendant's belief concerning the relationship between his and his father's plea was self induced; the district court took extraordinary care to provide appellant with every constitutional protection from arraignment to the hearing on a motion to withdraw, and the district court did not abuse its discretion in finding that defendant's plea was voluntary. Rude v. State, 851 P.2d 20 (Wyo. 1993).

Where defendant entered into nolo contendere plea to aiding and abetting an unlawful clandestine laboratory operation in exchange for probation, the district court's denial of defendant's subsequent motion to withdraw the guilty plea was proper where the state's failure to return certain seized property did not constitute a substantial breach of the plea agreement or a manifest injustice. Browning v. State, 32 P.3d 1061 (Wyo. 2001).

As defendant entered a guilty plea on the basis the state would recommend alternative sentencing, and the state did not make that recommendation at the sentencing hearing, the trial court erred in not granting defendant's motion to withdraw his plea. Ford v. State, 69 P.3d 407 (Wyo. 2003).

Defendant must show reliance on statements of judge or prosecutor. — The burden is on the defendant to make a showing of reliance on statements of the judge or prosecutor which prompted the entry of a guilty or nolo contendere plea, and where he has failed to show any manifest injustice or any unfairness at all or that he was deceived in any fashion or that he was in the slightest tricked into withdrawing his plea of not guilty and entering his plea of nolo contendere, refusal to allow withdrawal of the plea is proper. Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

And reliance on advice of counsel not enough. — Even if the defendant received

erroneous advice of counsel upon what to expect by way of a sentence or there was some hope of leniency, these are not sustainable grounds for withdrawal of a plea of guilty or nolo contendere when there is no showing of an actual reliance on statements of the judge or the prosecutor which prompted the entry of a guilty or nolo contendere plea. Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

Change of plea on advice of counsel not manifest injustice. — Defendant's changing his plea to nolo contendere on advice of counsel is, in itself, no demonstration of a "manifest injustice." Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

"Manifest injustice" plainly contemplates a situation that is unmistakable or indisputable, was not foreseeable, and affects the substantial rights of a party. McCarthy v. State, 945 P.2d 775 (Wyo. 1997).

New plea permitted where guilty plea not properly scrutinized. — Where there has been a failure to properly scrutinize a guilty plea in accordance with Rule 11, a defendant may be entitled to plead anew without a showing of manifest injustice. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Breach of plea agreement. — Defendant was not entitled to withdraw his guilty plea to first degree murder based upon an allegation that the state violated the plea agreement because the prosecutor's statement that the operative language for consideration was that defendant "unlawfully, knowingly, and purposely, in the perpetration of any robbery killed another human being," was not evidence of premeditation in violation of the agreement. Booth v. State, 174 P.3d 171 (Wyo. 2008).

Motion granted in absence of evidentiary hearing. — In absence of evidentiary hearing, factual assertions made in defendant's motion to withdraw guilty plea were required to be accepted as true and, so taken, defendant's claim of ineffective assistance of counsel constituted a fair and just reason to grant motion for withdrawal. Brock v. State, 981 P.2d 465 (Wyo. 1999).

Rule violation need not be explicitly presented. — Although not explicitly presented to the trial court, in view of the policy that strict adherence to Rule 11 is mandatory, an alleged violation of that rule will be viewed as having been sufficiently presented in the trial court to invoke review in the context of the motion to withdraw the guilty plea. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Plea not withdrawn if rules' criteria met. — Abuse of discretion is not demonstrated even if a "plausible" or a "just and fair" reason for the withdrawal of a guilty plea is presented if the requirements of Rule 11 have been met and the record is clear that the defendant intelligently, knowingly and voluntarily entered into his plea of guilty. If those criteria are satisfied, it is not an abuse of discretion to refuse to allow withdrawal of the plea. Triplett v. State, 802 P.2d 162 (Wyo. 1990).

Denial of withdrawal not error. — In a kidnapping case, a court did not err by denying defendant's motion to withdraw his plea where defendant entered into the plea intelligently, knowingly, and voluntarily, he failed to supply the district court with any fair and just reason for withdrawing the plea, and the record manifestly demonstrated the district court's compliance with W.R.C.P. 11 in accepting the plea. Major v. State, 83 P.3d 468 (Wyo. 2004).

Court properly denied defendant's motion to withdraw his guilty plea because defendant's guilty plea to sexual assault was voluntarily entered; the court engaged in the required colloquy, defendant indicated that he understood his rights, defendant stated that he both discussed the agreement with his attorney and understood it, and after pleading guilty, defendant answered questions by his attorney to establish the factual basis. Palmer v. State, 174 P.3d 1298 (Wyo. 2008).

Court did not err by denying defendant's post-sentence motion to withdraw his no contest plea because he was represented by counsel, and the court engaged defendant in dialogue regarding various constitutional rights at both the arraignment and change of plea proceeding and defendant indicated his understanding. Dobbins v. State, 298 P.3d 807 (Wyo. 2012).

Defendant failed to prove plea involuntary. — Defendant failed to prove his guilty plea was not voluntarily entered where the defendant was meticulously informed of the direct consequences of his plea and he expressly acknowledged awareness of the consequences and the record reflected that no threats, misrepresentations or bribes were used by any party to induce the appellant to plea. Rude v. State, 851 P.2d 20 (Wyo. 1993).

Fear of incarceration for maximum allowable term did not make pro se defendant's guilty plea involuntary, and district court correctly denied his motion to withdraw plea. Burdine v. State, 974 P.2d 927 (Wyo. 1999).

Trial court did not err in denying defendant's motion to withdraw his guilty plea, where (1) defendant entered his plea of guilty voluntarily and with full knowledge of its consequences; (2) defendant's counsel was not deficient for advising defendant of the maximum possible sentence associated with a burglary charge; and (3) even if counsel's statement were deficient, no prejudice resulted, because the district court appropriately advised defendant of the possible maximum sentence that could be assessed. Wilson v. State, 68 P.3d 1181 (Wyo. 2003).

Motion denied for lack of evidence of ineffective assistance at hearing. — The district court did not abuse its discretion by denying defendant's presentence motion to withdraw his guilty pleas because he failed to present any evidence at the motion hearing

concerning his counsel's alleged ineffective assistance, and could not do so originally on appeal as a fair and just reason for withdrawal. Dichard v. State, 844 P.2d 484 (Wyo. 1992).

Motion denied for inconsistent allegations. — The district court properly denied defendant a hearing on his renewed motion to vacate a plea of nolo contendere because he failed to prove that the withdrawal of his plea would prevent a manifest injustice given the inconsistency and inherent unreliability of his allegations with respect to the record. Coleman v. State, 843 P.2d 558 (Wyo. 1992).

Effect of setting aside prior felony conviction. — Although the defendant's felony conviction was set aside and the accusation or information dismissed pursuant to California's § 1203.4 (completion of probation), that did not preclude its use against the defendant. The grace extended to the defendant by the state of California did not go so far as to extinguish his conviction for all purposes. Since the California felony existed for purposes of § 6-8-102 (firearm possession by convicted felon), there existed no plausible reason for the defendant to withdraw his guilty plea. Reay v. State, 800 P.2d 499 (Wyo. 1990).

Evidence of mental illness is plausible reason for withdrawal. — A presentation by the defendant, in connection with his motion for leave to withdraw his plea of guilty, of documentation that he has developed reliable evidence sustaining the defense of mental illness or deficiency presents a plausible reason and a fair and just reason for withdrawing the plea. Schmidt v. State, 668 P.2d 656 (Wyo. 1983).

But mental illness not considered reason for more lenient standard. — Supreme court would not consider the issue of a more lenient standard for withdrawal of a guilty plea entered as part of a plea agreement by defendant with a mental disease where the issue was raised for the first time on appeal and there was evidence his mental difficulties were not a factor in his decisions to plead guilty or to withdraw his plea. McCarthy v. State, 945 P.2d 775 (Wyo. 1997).

Severity of sentence is not sustainable ground under subdivision (d). — Severity of sentence, even if upon erroneous advice of counsel, or greater than defendant's attorney had led him to expect, or an unfulfilled hope of leniency, is not a sustainable ground for withdrawal of a guilty plea in the absence of showing actual reliance on statements of the judge or prosecutor which resulted in the entry of the guilty plea. McGiff v. State, 514 P.2d 199 (Wyo. 1973), cert. denied, 415 U.S. 992, 94 S. Ct. 1592, 39 L. Ed. 2d 889 (1974).

Inquiry by court adequate. — Where the court made a sufficient inquiry and was satisfied with the factual basis for the plea, there was no abuse of discretion in denying defendant's motion to withdraw the guilty pleas based on the fact that defendant did not understand the nature of the charges. Barnes v. State, 951 P.2d 386 (Wyo. 1997).

Not abuse of discretion to refuse plea withdrawal. — Where, upon the insistence of defendant that he did not want counsel, wanted to plead guilty without counsel and that he understood fully what he was doing, the district court proceeded to sentence defendant, the refusal of the district court to permit the withdrawal of the guilty plea after sentencing was neither an abuse of discretion nor a manifest injustice. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

A trial judge does not abuse his discretion in refusing withdrawal of a plea of guilty where he carries on a careful and complete Rule 11 hearing with the defendant assisted by competent counsel, and the defendant enters a knowing and voluntary plea of guilty. Osborn v. State, 672 P.2d 777 (Wyo. 1983), cert. denied, 465 U.S. 1051, 104 S. Ct. 1331, 79 L. Ed. 2d 726 (1984); Johnson v. State, 922 P.2d 1384 (Wyo. 1996).

No abuse of discretion in refusing to allow withdrawal of plea of nolo contendere. Kaldwell v. State, 908 P.2d 987 (Wyo. 1995).

Although the trial court did furnish erroneous advice as to the maximum sentence, that advice overstated rather than understated the sentence; thus, the defendant's substantial rights were not affected and he was not prejudiced. Bird v. State, 901 P.2d 1123 (Wyo. 1995), aff'd, 939 P.2d 735 (Wyo. 1997).

Justice court did not abuse its discretion in denying defendant's request to withdraw her guilty plea after sentencing, despite her contention that mental problems caused by hyperthyroidism undermined the voluntariness of her plea. State v. McDermott, 962 P.2d 136 (Wyo. 1998).

Denial of motion to withdraw plea was proper. — Trial court's conclusion that defendant did not come forward with any fair and just reason for the withdrawal of his nolo contendere plea to sexual assault was not clearly erroneous as defendant did not assert his innocence or make a credible argument that the State would not be prejudiced by a grant of the withdrawal, his motion was not promptly filed, the record supported a conclusion that defendant was represented by a series of very competent public defenders, his plea was knowing and voluntary, and the withdrawal of the plea would have wasted judicial resources. McCard v. State, 78 P.3d 1040 (Wyo. 2003).

There was no violation of Wyo. R. Crim. P. 11 based on an alleged failure to advise defendant of the immigration consequences of pleading to a lesser drug charge; therefore, no evidentiary hearing was required on a motion to withdraw the plea since there was no relief available, and no ineffective assistance of counsel claim was alleged. Valle v. State, 132 P.3d 181 (Wyo. 2006).

District court provided the appropriate ad-

visements to defendant because (1) the district judge recited a comprehensive summary of the charge and explained the penalties associated with the charge; (2) the district judge specifically noted that defendant had the right to be represented by an attorney at every stage in the proceedings and, even though he was represented by private counsel at that time, she informed him he could request court appointed counsel in the future if he satisfied the indigency requirements; (3) defendant was told that he would be presumed innocent throughout the proceedings and that the State had the burden of proving his guilt beyond a reasonable doubt; (4) defendant was informed that he had the right to: plead not guilty; be tried by a jury; assistance of counsel; confront and cross-examine witnesses; use court processes to obtain the testimony of witnesses; a speedy trial; and appeal all errors; (5) the district judge explained in detail his right against self-incrimination; (6) defendant responded that he understood his rights; and (7) defendant stated that he understood the consequences of a guilty plea. Thus, the district court did not abuse its discretion when it denied defendant's motion to withdraw his guilty plea because his claim that it was not voluntary and knowing was unfounded. Follett v. State, 132 P.3d 1155 (Wyo. 2006).

In an action in which a defendant appealed from his convictions of two counts of felony conversion of grain in violation of Wyo. Stat. Ann. § 11-11-117(b) and one count of felony check fraud in violation of Wyo. Stat. Ann. § 6-3-702(a)(b)(iii), defendant failed to meet his burden of showing the district court abused its discretion when it denied his motion to withdraw his guilty plea where (1) the district court fully informed defendant concerning the maximum penalties for the charged offenses and advised him no one could make him plead a certain way and if anyone tried to do so he should inform the court; (2) defendant was further specifically advised there were no guarantees about sentencing; and (3) the district court's imposition of a more severe penalty than defense counsel believed was appropriate and advised defendant was likely did not constitute manifest injustice. Reichert v. State, 134 P.3d 268 (Wyo. 2006).

Defendant's motion to withdraw his guilty plea based on claim of ineffective counsel was properly denied by the district court ;at the motion hearing, defendant did not testify and did not call his counsel as a witness, defendant acknowledged that Wyo. R. Crim. P. 11 was complied with, and the court's independent review of the transcript confirmed that the plea was voluntarily and knowingly given. Hirsch v. State, 135 P.3d 586 (Wyo. 2006).

V. PROBATION.

No error in denial of motion to correct illegal sentence. — Court did not err in denying the defendant's motion for correction of an illegal sentence where it considered that he would not be a good risk for probation because he lived out of state and he was a truck driver. Martinez v. State, 39 P.3d 394 (Wyo. 2002).

A court has no inherent right to grant probation. — The authority over sentencing comes from the legislature. Hicklin v. State, 535 P.2d 743 (Wyo. 1975).

Grant of probation is addressed to sound discretion of trial court. Jones v. State, 602 P.2d 378 (Wyo. 1979).

Court adequately considered probation. — Court adequately considered and did not err in rejecting the option of placing defendant on probation after his guilty plea to two counts of third-degree sexual assault because, in its written judgment, the court stated that it found that probation was inappropriate, the issue of probation was also brought to the attention of the district court by witnesses who testified on defendant's behalf, and the PSI discussed probation as a sentencing option and provided a detailed probation plan. Monjaras v. State, 136 P.3d 162 (Wyo. 2006).

Defendant's sentence after he was convicted of the possession of methamphetamine was appropriate because he failed to object at the time the district court made an offending remark regarding probation and there was no plain error, Wyo. R. Crim. P. 32(c)(2)(D). The district court clearly considered probation at sentencing, despite unfortunate remarks earlier in the proceedings. Williams v. State. ex rel. Wyo. Workers' Safety & Comp. Div. (In re Worker's Compensation Claim), 205 P.3d 1024 (Wyo. 2009).

It is error for sentencing judge to fail to consider probation except for crimes punishable by death or life imprisonment. Jones v. State, 602 P.2d 378 (Wyo. 1979).

Defendant's probation began once sentence was pronounced in open court in his presence, not several weeks later when the judgment and sentence were actually filed, and he was therefore accountable for probation violations which occurred during the interim period. Chapman v. State, 728 P.2d 631 (Wyo. 1986).

Probation denial based on alcoholism. — A judge soundly exercises his discretion when he concludes that a defendant — because of an uncured drinking problem — is in danger of further injuring the public if released and denies probation. Jones v. State, 602 P.2d 378 (Wyo. 1979).

Rule 32.1. Offender payments and restitution.

The clerk of court shall use the following prioritized order when distributing offender payments and restitution:

1. Crime Victims Compensation Surcharge (Wyo. Stat. Ann. § 1-40-119)
2. Judicial Systems Automation Fee (Wyo. Stat. Ann. § 5-2-120)
3. Indigent Civil Legal Services Fee (Wyo. Stat. Ann. § 5-2-121)
4. Restitution as follows:
    a) Restitution payments received by a court shall be forwarded to the third party whenever the court has received funds totaling $25 or more. Nothing in this rule shall be construed as to limit any number of additional payments the clerks may choose to make.
    b) If there are multiple victims in a case, the clerk shall pay out to each victim in equal amounts, but may hold those monies until the clerk has received funds totaling $25 per victim.
    c) If six months between restitution payments have lapsed, the clerk shall pay out in equal amounts the remainder of monies held.
5. Drug Court Surcharge (Wyo. Stat. Ann. § 7-13-1616)
6. Court costs
7. Fines
8. Fees (in the following order, including but not limited to: public defender fee, prosecution fee, addicted offender fee, probation fee, jail costs, extradition fee, and other fees)
9. Contempt.

(Amended May 25, 2010, effective July 1, 2010; amended June 28, 2016, effective July 1, 2016.)

Rule 33. New trial.

(a) *In general.* — The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. If trial was by the court without a jury, the court, on motion of a defendant for a new trial, may vacate the judgment if entered, take additional testimony, and direct the entry of a new judgment.

(b) *Any grounds except newly discovered evidence.* — A motion for a new trial based on any grounds, except newly discovered evidence, shall be made within 15 days after verdict or finding of guilty or within such further time as the court may fix during the 15 day period; but the time for filing of motion may not be extended to a day more than 30 days from the date the verdict or finding of guilty is returned. The motion shall be determined and a dispositive order entered within 15 days after the motion is filed and if not so entered shall be deemed denied, unless within that period the determination shall be continued by order of the court, but no continuance shall extend the time to a day more than 60 days from the date the verdict or finding of guilty is returned.

(c) *Newly discovered evidence.* — A motion for a new trial based on the grounds of newly discovered evidence may be made only before or within two years after final judgment but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for new trial based on the ground of newly discovered evidence shall be heard and determined and a dispositive order entered within 30 days after the motion is filed unless, within that time, the determination is continued by order of the court, but no continuance shall extend the time to a day more than 60 days from the date that the original motion was filed. When disposition of a motion for new trial based on newly discovered evidence is made without hearing, the order shall include a statement of the reason for determination without hearing.

(Amended and effective November 1, 1993.)

Compare. — Rule 33, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.
II. GROUNDS.
III. DISCRETION OF COURT.

I. GENERAL CONSIDERATION.

Motion should be made in trial court. — It is both unnecessary and improper to apply in the first instance to the appellate court for leave to make a motion under this rule. The motion should be made, as with any other motion, in the trial court. Sims v. State, 495 P.2d 256 (Wyo. 1972).

No new-trial motion following guilty plea. — A motion for a new trial will not lie to attack a judgment and sentence based upon a plea of guilty. Garnett v. State, 769 P.2d 371 (Wyo. 1989).

Defendant alone may move for new trial. State v. Ginther, 53 Wyo. 17, 77 P.2d 803 (1938).

No hearing required where record complete. — A court may deny a motion for new trial without a hearing when all that is necessary for disposition is already in the record. Best v. State, 769 P.2d 385 (Wyo. 1989).

And rule does not require that court make specific findings in its order. Best v. State, 769 P.2d 385 (Wyo. 1989).

Untimely motion could not be considered. — Where defendant's judgment and sentence for delivery of a controlled substance, methamphetamine, were entered on August 23, 1999, and his conviction and sentence were affirmed on October 23, 2000, defendant's motion for a new trial, filed on April 15, 2002, was untimely and neither the trial court nor the appellate court had jurisdiction to consider the motion. Pearson v. State, 70 P.3d 235 (Wyo. 2003).

Untimeliness barred motion. — Even if a former inmate's pro se "petition to show cause why judgment was not void" were to be construed as a motion for a new trial, the former inmate was 3 years too late in the request. Taylor v. State, 74 P.3d 1236 (Wyo. 2003).

Motion based on recanting testimony properly denied. — Trial court exercised sound discretion in denying defendant's motion for a new trial based on alleged recantations by a child sexual assault victim because the trial judge presided over the trial and was well acquainted with the evidence presented, including the detailed testimony of the victim; the trial judge was in the best position to determine the credibility of the recanting evidence. Garza v. State, 231 P.3d 884 (Wyo. 2010).

Applied in Vialpando v. State, 494 P.2d 939 (Wyo. 1972); Hoskins v. State, 552 P.2d 342, rehearing denied, 553 P.2d 1390 (Wyo. 1976), cert. denied, 430 U.S. 956, 97 S. Ct. 1602, 51 L. Ed. 2d 806 (1977); Gist v. State, 737 P.2d 336 (Wyo. 1987); Story v. State, 755 P.2d 228 (Wyo. 1988); Sisneros v. City of Laramie, 773 P.2d 933 (Wyo. 1989).

Quoted in Sims v. State, 530 P.2d 1176 (Wyo. 1975); Murry v. State, 631 P.2d 26 (Wyo. 1981); Story v. State, 788 P.2d 617 (Wyo. 1990); Keene v. State, 835 P.2d 341 (Wyo. 1992); Doney v. State, 59 P.3d 730 (Wyo. 2002).

Cited in Jackson v. State, 522 P.2d 1286 (Wyo. 1974); Downs v. State, 581 P.2d 610 (Wyo. 1978); Louisiana Land & Exploration Co. v. Wyoming Oil & Gas Conservation Comm'n, 809 P.2d 775 (Wyo. 1991); Duffy v. State, 837 P.2d 1047 (Wyo. 1992); Cooney v. White, 845 P.2d 353 (Wyo. 1992); Black v. State, 869 P.2d 1137 (Wyo. 1994); Burton v. State, 46 P.3d 309 (Wyo. 2002); Haynes v. State, 186 P.3d 1204 (Wyo. 2008).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

For case note, "Criminal Procedure — Motion for New Trial Based on Newly Discovered Evidence and Effective Assistance of Counsel: If Counsel Is Not Diligent Is He Necessarily Ineffective? Frias v. State, 722 P.2d 135 (Wyo. 1986)," see XXII Land & Water L. Rev. 597 (1987).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law § 1217; 58 Am. Jur. 2d New Trial § 1 et seq.

Juror's pretrial statement favoring death penalty as ground for new trial, 39 ALR3d 550.

Jury's discussion of parole law as ground for reversal or new trial, 21 ALR4th 420.

Propriety and effect of jurors' discussion of evidence among themselves before final submission of criminal case, 21 ALR4th 444.

Emotional manifestations by victim or family of victim during criminal trial as ground for reversal, new trial or mistrial, 31 ALR4th 229.

Deafness of juror as ground for impeaching verdict, or securing new trial or reversal on appeal, 38 ALR4th 1170.

Postretirement out-of-court communications between jurors and trial judge as grounds for new trial or reversal in criminal case, 43 ALR4th 410.

Juror's reading of newspaper account of trial in state criminal case during its progress as ground for mistrial, new trial or reversal, 46 ALR4th 11.

Coram nobis on ground of other's confession to crime, 46 ALR4th 468.

Unauthorized view of premises by juror or jury in criminal case as ground for reversal, new trial or mistrial, 50 ALR4th 995.

Court reporter's death or disability prior to transcribing notes as grounds for reversal or new trial, 57 ALR4th 1049.

Prosecutor's appeal in criminal case to self-interest or prejudice of jurors as taxpayers as ground for reversal, new trial or mistrial, 60 ALR4th 1063.

Prosecutor's appeal in criminal case to racial, national or religious prejudice as ground for

mistrial, new trial, reversal or vacation of sentence — modern cases, 70 ALR4th 664.

Standard for granting or denying new trial in state criminal case on basis of recanted testimony — modern cases, 77 ALR4th 1031.

Negative characterization or description of defendant, by prosecutor during summation of criminal trial, as ground for reversal, new trial or mistrial—modern cases, 88 ALR4th 8.

Propriety and prejudicial effect of counsel's negative characterization or description of witness during summation of criminal trial—modern cases, 88 ALR4th 209.

Prejudicial effect of statement by prosecutor that verdict, recommendation of punishment, or other finding by jury is subject to review or correction by other authorities, 10 ALR5th 700.

Nature and determination of prejudice caused by remarks or acts of state trial judge criticizing, rebuking, or punishing defense counsel in criminal case as requiring new trial or reversal — Individualized determinations, 104 ALR5th 357.

Time limitations in connection with motions for new trial under Rule 33 of Federal Rules of Criminal Procedure, 51 ALR Fed 482.

Application of civil or criminal procedural rules in federal court proceeding on motion in nature of writ of error coram nobis, 53 ALR Fed 762.

Juror's reading of newspaper account of trial in federal criminal case during its progress as ground for mistrial, new trial or reversal, 85 ALR Fed 13.

Recantation of testimony of witness as grounds for new trial—federal criminal cases, 94 ALR Fed 60.

23A C.J.S. Criminal Law §§ 1423 to 1452.

II. GROUNDS.

Motion for new trial should state the grounds therefor. Ash v. State, 555 P.2d 221 (Wyo. 1976), reh'g denied, 560 P.2d 369 (Wyo. 1977), cert. denied, 434 U.S. 842, 98 S. Ct. 139, 54 L. Ed. 2d 106 (1977).

Misconduct or abuse of discretion by trial judge whereby the defendant was prevented from having a fair trial is not limited to matters occurring after the jury is impaneled and sworn, but applies to precedent matters, and such matters are called to the trial court's attention by the motion for a new trial. Murdica v. State, 22 Wyo. 196, 137 P. 574 (1914) (error in not calling in another judge to preside).

Because defendant's argument that the trial court erred in finding the five-year old child victim competent to testify was rejected, and the basis for defendant's new trial motion was, in large part, based on the argument that the child was not competent to testify, the denial of the motion for new trial on that same basis was not an abuse of discretion. Morganflash v. State, 76 P.3d 830 (Wyo. 2003).

Evidence regarding credibility of witness insufficient grounds. — The court should not grant a new trial so that the jury can consider new evidence bearing upon the credibility of a witness. Grable v. State, 664 P.2d 531 (Wyo. 1983).

New trial granted if witness' recantation true. — When a new trial is sought on the basis of recanting testimony of a prosecution witness, the weight to be given such testimony is for the trial judge passing on the motion for a new trial to determine. The trial judge is required to grant a new trial only when he or she is satisfied the recantation of the witness is true. Brown v. State, 816 P.2d 818 (Wyo. 1991).

Grounds for obtaining new trial based on newly discovered evidence are: (1) that the evidence has come to his knowledge since the trial; (2) that it was not owing to the want of due diligence that it did not come sooner; (3) that it is so material that it would probably produce a different verdict if the new trial were granted; and (4) that it is not cumulative, viz, speaking to facts in relation to which there was evidence at the trial. Salaz v. State, 561 P.2d 238 (Wyo. 1977); Siegert v. State, 634 P.2d 323 (Wyo. 1981).

Newly discovered evidence must be such as probably to produce different verdict. — An application for new trial must be denied when it does not appear the alleged newly discovered evidence would probably produce a different verdict. Flaim v. State, 488 P.2d 153 (Wyo. 1971).

Evidence not newly discovered. — After defendant was convicted of forgery and uttering a forgery, the trial court did not err in denying defendant's motion for a new trial under Wyo. R. Crim. P. 33(a) because the identity of a potential defense witness was not newly discovered, but was known to defendant and counsel before trial; defendant was not prejudiced by the witness's absence from the trial, given the highly questionable value of the witness's testimony. Cross v. State, 221 P.3d 972 (Wyo. 2009).

Burden of proof. — Where a motion for a new trial is made on the ground of newly discovered evidence, the burden is on the moving party to prove that it was discovered since the trial and that he was free from fault or lack of due diligence in failing to discover, before or during the trial, the newly discovered evidence upon which he relies. Salaz v. State, 561 P.2d 238 (Wyo. 1977); Siegert v. State, 634 P.2d 323 (Wyo. 1981).

Defense counsel performed deficiently for failing to timely file a new trial motion; defendant was prejudiced because the district court would have granted the motion in the interest of justice under this rule, as defendant's conviction for attempted first degree murder was contrary to the weight of the evidence. Ken v. State, 267 P.3d 567 (Wyo. Dec. 22, 2011).

Evidence is not newly discovered when it was known to the defendant or could have been known in the exercise of due diligence,

and such evidence is not sufficient to grant a new trial. Salaz v. State, 561 P.2d 238 (Wyo. 1977).

A motion for a new trial based upon newly discovered evidence was properly denied where the following occurred: the defendant knew the identity of the missing witnesses and the substance of the proposed testimony prior to trial; the defendant knew that the witnesses were leaving town several months before the trial but made no effort to preserve their testimony or secure by subpoena their presence at trial; and defendant never requested a continuance before trial asking for more time to find the witnesses. Siegert v. State, 634 P.2d 323 (Wyo. 1981).

The denial of a motion for new trial based upon newly discovered evidence was not reversible error, where, although the evidence was so material that it would probably produce a different verdict, the defendant failed to demonstrate that through the exercise of due diligence the evidence could not have been obtained before trial. Keser v. State, 737 P.2d 756 (Wyo. 1987).

Newly discovered evidence that would impeach credibility of witnesses. — In a prosecution for second degree sexual assault and indecent liberties involving two minors, the defendant was not entitled to a new trial based on newly discovered evidence consisting of documents from the department of family services relating to two witnesses who testified at trial regarding the defendant's prior bad acts since the primary purpose of such evidence would have been to impeach and call into question the credibility of the two witnesses, and new evidence which only impeaches a witness or contradicts evidence produced at the trial is not sufficient to grant a new trial. Griswold v. State, 17 P.3d 728 (Wyo. 2001).

Trial court did not abuse its discretion by denying defendant's motion for a new trial, pursuant to W.R.Cr.P. 33(a), based on his girlfriend's post-trial recantation of her testimony that defendant stole her stepfather's credit cards because the trial court did not find the girlfriend's statements that she and defendant had permission to use the credit cards credible, and her recantation would not have produced a different verdict. Davis v. State, 117 P.3d 454 (Wyo. 2005).

In aggravated assault case, where one of defendant's witnesses failed to appear after being subpoenaed, any alleged testimony by that witness would have simply been cumulative, primarily for the purpose of impeaching the victim's testimony, and the bulk of the purported evidence that allegedly would have been presented by the witness's testimony regarded collateral issues already addressed through many witnesses; thus, defendant's motion for new trial on grounds of newly discovered evidence was properly denied. Terry v. State, 56 P.3d 636 (Wyo. 2002).

Cumulative new evidence not sufficient for new trial. — Testimony by prospective witnesses, which would be cumulative of defendant's testimony or contradictory to state's witnesses, is not new evidence sufficient to justify granting a new trial. Siegert v. State, 634 P.2d 323 (Wyo. 1981).

Nor conflicting evidence. — Courts should not be parties to inordinate delay by attempting to try de novo motions for a new trial based on conflicting evidence and such motions on appeal should be dismissed as frivolous. Hopkinson v. State, 679 P.2d 1008 (Wyo.), cert. denied, 469 U.S. 873, 105 S. Ct. 228, 83 L. Ed. 2d 157 (1984).

New trial, on basis of "newly discovered" evidence, properly refused. — The trial court did not err in failing to grant a motion for a new trial on the basis of "newly discovered" evidence, where there was no evidence that the prosecutor knew about and suppressed information favorable to the defendant, and where the defendant failed to demonstrate either that the evidence was not cumulative or that it would have probably produced a different verdict were a new trial granted. Bueno-Hernandez v. State, 724 P.2d 1132 (Wyo. 1986), cert. denied, 480 U.S. 907, 107 S. Ct. 1353, 94 L. Ed. 2d 523 (1987).

In a prosecution for second degree sexual assault and indecent liberties involving two minors, the defendant was not entitled to a new trial based on newly discovered evidence consisting of a caseworker's comments indicating that the brother of one of the victims had apparently lied about seeing a "lady in the bag under the bed" and evidence that one of the victims had been sexually abused by her brothers five years before being placed in the defendant's foster home since it was improbable that such evidence would have outweighed the overwhelming testimony against the defendant. Griswold v. State, 17 P.3d 728 (Wyo. 2001).

Trial court did not abuse its discretion in refusing to grant defendant a new murder trial based on the alleged discovery of potentially exculpatory evidence from a witness who claimed that another person was responsible for the victim's death, as this evidence was not newly discovered. Robinson v. State, 64 P.3d 743 (Wyo. 2003).

In a death penalty case, a trial court properly refused to grant a new trial based on newly discovered evidence consisting of a new expert whose opinion contravened other experts' opinions that defendant was competent to stand trial, and also evidence of defendant's chaotic childhood which had already been fully explored during the mitigation stage of the trial. Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Prosecutorial misconduct. — Even if a prosecutor's questions were improper pursuant to the section regarding other crimes, wrongs, or acts, defendant failed to establish prejudice because, on direct examination, defendant tes-

tified that he knew he had an outstanding warrant and was going to jail; defendant's testimony implied that he had prior contact with law enforcement. A similar question asked on cross-examination could hardly be said to have had a prejudicial effect; thus, the trial court did not abuse its discretion in denying defendant's motion for a new trial. Doherty v. State, 131 P.3d 963 (Wyo. 2006).

III. DISCRETION OF COURT.

Disposition of defendant's motion for new trial rests largely in trial court's discretion. Flaim v. State, 488 P.2d 153 (Wyo. 1971).

And will not be reversed unless abuse affirmatively shown. — The granting or denying of a motion for new trial based on newly discovered evidence is a choice clearly within the sound discretion of the trial court and shall not be the basis for the reversal of a conviction unless an abuse of discretion is affirmatively shown. Daellenbach v. State, 562 P.2d 679 (Wyo. 1977).

It is clearly within the sound discretion of the trial court to grant or deny a motion for a new trial based upon newly discovered evidence, and the action of the trial court shall not be the basis for the reversal of the conviction unless an abuse of discretion is affirmatively shown. Jones v. State, 568 P.2d 837 (Wyo. 1977).

The decision of whether to grant or deny a new trial on the basis of newly discovered evidence is one within the sound discretion of the district court, and the Supreme Court will not reverse absent a showing of an abuse of that discretion. King v. State, 780 P.2d 943 (Wyo. 1989).

Granting a motion for a new trial is within the sound discretion of the trial court and will not be reversed unless the appellant affirmatively demonstrates an abuse of discretion. Warren v. State, 809 P.2d 788 (Wyo. 1991).

Standard of review. — In determining whether there has been an abuse of discretion in denying a motion for a new trial, the Supreme Court will look to the facts and circumstances of each individual case. The question is not whether the district court would have been justified in granting a new trial but, rather, whether it was error to not grant a new trial. King v. State, 780 P.2d 943 (Wyo. 1989).

Appellate review facilitated by district court statement. — This rule does not require the district court to specifically state its reasons for denying the motion. However, appellate review is facilitated by a statement of the grounds for denial. King v. State, 780 P.2d 943 (Wyo. 1989).

Where a motion based on recanting testimony is refused by the trial court, the Supreme Court ordinarily will be bound by that decision. Flaim v. State, 488 P.2d 153 (Wyo. 1971); Jones v. State, 568 P.2d 837 (Wyo. 1977).

Prior cases not sole determinant of abuse of discretion. — Because the facts and circumstances of each case are different, prior cases alone may not be relied upon as a binding precedent in determining whether there has been an abuse of discretion in denying a motion for continuance or a motion for a new trial. Siegert v. State, 634 P.2d 323 (Wyo. 1981).

Within discretion of judge to dispose of motion without hearing. — There is no law which requires a hearing on a motion for new trial unless the motion and its supporting papers require confirmation. The law is clear that a motion may be disposed of without a hearing and it is within the sound discretion of the district judge to do so. Hopkinson v. State, 679 P.2d 1008 (Wyo.), cert. denied, 469 U.S. 873, 105 S. Ct. 228, 83 L. Ed. 2d 157 (1984).

Judge hearing motion may agree with verdict. — The mere fact that a judge has expressed agreement with the jury's verdict does not disqualify him from hearing a motion for new trial, though it may result in a situation where he should not sit on a new trial if one is granted on appeal. Brown v. State, 816 P.2d 818 (Wyo. 1991).

And may believe in defendant's guilt. — Knowledge of a defendant's past, or even a belief on the part of the trial judge that defendant is guilty, is not enough to require disqualification of a judge from hearing a motion for a new trial. The question is not if the trial judge believes defendant is guilty, but if the trial judge can be fair. Brown v. State, 816 P.2d 818 (Wyo. 1991).

Trial court not bound to accept testimony as true. — In exercising its discretion to grant or deny a new trial, the trial court is not bound to accept testimony as true, even where it is uncontradicted. Flaim v. State, 488 P.2d 153 (Wyo. 1971).

New trial where witness gives false testimony. — The trial court erred in denying a motion for a new trial when it was conclusively shown that the witness who testified that he had heard the defendant "confess" to the offense had given false testimony. Jones v. State, 813 P.2d 629 (Wyo. 1991).

Jury Impropriety. — If a defendant or his counsel knows of potential impropriety in connection with the jury during trial and fails to object before the return of the verdict, he waives any right to a new trial based on that impropriety; therefore, in a felony larceny case, a motion for a new trial was properly denied because any challenge based on a jury's exposure to improper information was waived because it was not raised at trial. Trial counsel was notified of the communication claimed to be improper during the trial, and the record was barren of any reference to the alleged event. Pe/Tna v. State, 294 P.3d 13 (Wyo. 2013).

Prosecutorial statements not misconduct warranting new trial. — Trial court did not err by denying defendant's motion for a new trial because the prosecutor did not commit

misconduct during his rebuttal closing argument; while the prosecutor's comments "father from hell" and "no refuge but the grave" were better left unsaid, the trial court did not abuse its discretion by finding that they were not prejudicial, given the length of the trial, the overwhelming evidence against defendant, and the length of closing arguments. The prosecutor's asking the jury to hold defendant responsible for the crime because the "evidence shows you he is guilty" was not the same as telling the jury that it had a duty to convict defendant. Yellowbear v. State, 174 P.3d 1270 (Wyo. 2008).

Rule 34. Arrest of judgment.

The court on motion of a defendant shall arrest judgment if the indictment, information or citation does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 10 days after verdict or finding of guilty, or after the plea of guilty or nolo contendere, or within such further time as the court may fix during the 10-day period. The motion shall be determined and an order entered within 10 days after such motion is filed and if not so entered it shall be deemed denied, unless within such 10 days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the motion is filed.

Compare. — Rule 34, Fed. Rules Cr. Proc.

Untimeliness barred motion. — Even if a former inmate's pro se "petition to show cause why judgment was not void" were to be construed as a motion for arrest of judgment, the former inmate was 5 years too late in the request. Taylor v. State, 74 P.3d 1236 (Wyo. 2003).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Judgment favorable to convicted criminal defendant in subsequent civil action arising out of same offense as ground for reversal of conviction, 96 ALR3d 1174.

Rule 35. Correction or reduction of sentence.

(a) *Correction.* — The court may correct an illegal sentence at any time. Additionally the court may correct, reduce, or modify a sentence within the time and in the manner provided herein for the reduction of sentence.

(b) *Reduction.* — A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within one year after the sentence is imposed or probation is revoked, or within one year after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within one year after entry of any order or judgment of the Wyoming Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision. The court may determine the motion with or without a hearing.

Compare. — Rule 35, Fed. Rules Cr. Proc.

Applicability. — Alleged error asserted by defendant, that the trial court used a victim's preliminary hearing testimony at trial under a hearsay exception, was not a claim of illegal sentence which could be addressed by a motion under this rule. Cardenas v. State, 925 P.2d 239 (Wyo. 1996).

While a 365-day sentence was clearly illegal as the maximum for defendant's third driving under the influence conviction was six months under Wyo. Stat. Ann. § 31-5-233(e), the sentence could be corrected pursuant to Wyo. R. Crim. P. 35. Crosby v. State, 247 P.3d 876 (Wyo. 2011).

Proceedings prior to sentencing. — Where defendant did not claim the sentence was illegal, only that his understanding of the sentence was imperfect, otherwise he would not have entered his guilty plea, his true issue was not with the sentence but with proceedings prior to the imposition of that sentence, and proceedings prior to the imposition of sentence are beyond the scope of this rule. Duran v. State, 949 P.2d 885 (Wyo. 1997).

Double jeopardy claim improperly

brought. — A motion to vacate or correct sentence brought under subdivision (a) is not the proper remedy by which to assert a violation of double jeopardy protections — the proper remedy is through a petition for post-conviction as provided in § 7-14-101 to § 7-14-108. DeSpain v. State, 865 P.2d 584 (Wyo. 1993).

Double jeopardy claims are not cognizable and can not be entertained upon a motion to correct an illegal sentence, pursuant to this rule. Birr v. State, 895 P.2d 43 (Wyo. 1995).

Fixing a new date for execution following a stay was not a "sentence" within the meaning of this rule or § 7-13-905, which provides that the date of execution "shall not be less than thirty (30) days after the date of the sentence." Hopkinson v. State, 704 P.2d 1323 (Wyo.), cert. denied, 474 U.S. 1026, 106 S. Ct. 582, 88 L. Ed. 2d 564 (1985).

Written judgment and sentence does not control over an oral sentence at variance with it. Where the transcript of the oral sentence and judgment and the mittimus are unambiguous and plain in directing a consecutive, not concurrent, sentence, and the written judgment and sentence contains an oversight and omission in this respect, it may be properly corrected by the trial court in a nunc pro tunc judgment and sentence. Lane v. State, 663 P.2d 175 (Wyo. 1983).

Where defendant was properly convicted but sentenced under wrong statute, case was remanded for resentencing pursuant to this rule. Capwell v. State, 686 P.2d 1148 (Wyo. 1984).

Separate crimes in separate cases. — When an individual is convicted for separate crimes in separate cases, the sentencing judge has discretion to determine whether the sentences shall be served consecutively or concurrently and there is no presumption of a concurrent sentencing. Apodaca v. State, 891 P.2d 83 (Wyo. 1995).

Validity of conviction will not be addressed under this rule. — A motion to correct an illegal sentence presupposes a valid conviction and may not be used to re-examine errors occurring at trial or other proceedings prior to the imposition of sentence; therefore, issues concerning the validity of a conviction will not be addressed in the context of a Rule 35 motion. Evans v. State, 892 P.2d 796 (Wyo. 1995).

And case remanded where sentence of incarceration and restitution unlawful. — Where a sentence of incarceration and restitution was unlawful under former law, and the sentence may have been treated differently if the trial court had known that it could not impose restitution when the defendant was sentenced to incarceration, the case was remanded for resentencing. Bishop v. State, 687 P.2d 242 (Wyo. 1984), cert. denied, 469 U.S. 1219, 105 S. Ct. 1203, 84 L. Ed. 2d 345 (1985); overruled in part, Vigil v. State, 926 P.2d 351 (1996).

Discretion of court. — A motion to correct an illegal sentence is addressed to the sound discretion of the trial court, but if the sentence is, in fact, illegal, that discretion is limited. White v. State, 934 P.2d 745 (Wyo. 1997).

Trial court did not err in denying defendant's motion for correction of illegal sentence; court could not abuse its discretion since defendant failed to present it with any claim of illegality in his sentence. Mead v. State, 2 P.3d 564 (Wyo. 2000).

District court did not abuse its discretion in denying defendant's motion for a sentence reduction. The district court declined to reduce defendant's sentence after giving due consideration to that motion in light of the facts of the case, not because it believed it was precluded from doing so by a plea agreement. Bonney v. State, 248 P.3d 637 (Wyo. 2011).

District court properly denied defendant's motion for a sentence reduction because, although the district court cited the time limits in its order denying defendant's motion, there was no indication the court denied defendant's motion on the basis it found the motion was not timely filed, and defendant did not allege any other error in the district court's ruling. Alford v. State, 401 P.3d 902 (Wyo. 2017).

Reduction of sentence within power of district court. — Since defendant's motion for reduction of sentence was filed within one year of the order dismissing his appeal of the order revoking his probation, the district court had jurisdiction to consider defendant's motion for sentence reduction. Tomlin v. State, 35 P.3d 1255 (Wyo. 2001).

Review of sentencing hearing. — A close review of the sentencing proceeding demonstrated that there was no impropriety during the sentencing hearing. Ayers v. State, 949 P.2d 469 (Wyo. 1997).

Sentence not illegal. — Execution of appellant's sentence was, in essence, conditionally stayed pending appellant's admission to the alcohol treatment center, and he was granted a furlough for that purpose under this section of the statute; however, because appellant willfully refused to conform his behavior to the expectations of the treatment program, he was transferred to the Wyoming Department of Corrections — a condition that was made clear to him at the time of his sentence. While the supreme court did not approve of the departure from the many sentencing alternatives that were available to the district court, appellant's sentence was not illegal under this section of the rule. Center v. State, 252 P.3d 963 (Wyo. 2010).

Sentencing court's failure to state whether defendant's life sentences were to be served concurrently with or consecutively to defendant's parole revocation sentence did not render the sentences illegal because it was pre-

sumed the sentences were consecutive. Bird v. State, 356 P.3d 264 (Wyo. 2015).

Illegal sentence was corrected on appeal where it was in the interest of judicial economy to do so. Kahlsdorf v. State, 823 P.2d 1184 (Wyo. 1991).

Claim of illegal sentence considered by appellate court, although not raised below. — Although the defendant failed to move the sentencing court for correction of the "illegal sentence," and although a motion to correct an illegal sentence is normally for the trial court in the first instance, in the interest of judicial economy, the appellate court considered the defendant's claim, that his sentence was illegal. Price v. State, 716 P.2d 324 (Wyo. 1986) (plurality opinion).

Although defendant did not timely appeal his sentence or request its correction, its legality could be considered for the first time on appeal. Endris v. State, 233 P.3d 578 (Wyo. 2010).

Failure to request a correction of sentence pursuant to subdivision (a) did not bar the supreme court from hearing the appeal because appeal was from judgment and sentence. Leger v. State, 855 P.2d 359 (Wyo. 1993).

Motion for correction or reduction of sentence. — A motion to correct an illegal sentence under subsection (a) is addressed to the sound discretion of the sentencing court. Similarly, a motion for reduction of sentence is subject to the sound discretion of the sentencing court. Sweets v. State, 36 P.3d 1130 (Wyo. 2001).

Application of "deemed denied" rule. — Appellate court assumed jurisdiction over an appeal of denial of postconviction relief although the district court declined to rule on the motion for over a year; the appeals court acknowledged that this rule provides for application of civil procedure rules where there is no rule of criminal procedure on point, but declined to apply the "deemed denied rule" of W.R.C.P. 6(c)(2). Patrick v. State, 108 P.3d 838 (Wyo. 2005).

Reduction of sentence within power of district court. — Where a second sentence imposed, "not less than three years nor more than seven years," was, in effect, a reduction from that imposed from the bench previously, "not less than five years nor more than seven, with three years suspended from top time," since defendant was then eligible for parole in three years rather than four, such a reduction was clearly within the power of the district court. Montez v. State, 573 P.2d 34 (Wyo. 1977).

Judgment and sentences which failed to award credit for presentence incarceration time were illegal and correction was permitted by a motion under subdivision (a). Parker v. State, 882 P.2d 1225 (Wyo. 1994).

There was no abuse of discretion by trial court in denying motion to reduce defendant's sentence based merely upon prisoner's commendable conduct while incarcerated. Carrillo v. State, 895 P.2d 463 (Wyo. 1995).

Motion for reduction of sentence is addressed to sound discretion of trial court, and the court's decision is accorded considerable deference. Peper v. State, 776 P.2d 761 (Wyo. 1989).

Motion barred by res judicata. — When appellant entered his guilty pleas in 2006, he did not challenge the imposition of consecutive sentencing on direct appeal; he did not raise the issue until his 2009 motion to correct an illegal sentence pursuant to Wyo. R. Crim. P. 35(a). Because he failed to show good cause why the issue was not raised earlier, it was barred by res judicata. Cooper v. State, 225 P.3d 1070 (Wyo. 2010).

A trial court has broad discretion in determining whether to modify a defendant's sentence, and the supreme court will not disturb its determination absent an abuse of discretion. Barela v. State, 936 P.2d 66 (Wyo. 1997).

Language of subdivision (b) of this rule is clearly discretionary. Hodgins v. State, 1 P.3d 1259 (Wyo. 2000).

And decision not disturbed absent abused discretion. — The district court has broad discretion in determining whether to reduce a defendant's sentence, and the Supreme Court will not disturb its determination absent an abuse of discretion. McFarlane v. State, 781 P.2d 931 (Wyo. 1989).

The decision to reduce a sentence, pursuant to a motion filed in accordance with this rule, lies in the broad discretion of the trial court, and the Supreme Court will not disturb its decision absent a clear abuse of that discretion. Asch v. State, 784 P.2d 235 (Wyo. 1989).

Appellate court could not review defendant's claim that the judgment and sentence entered after he pleaded guilty were illegal due to the fact that he was not advised that his guilty pleas could result in the disqualification of his right to possess firearms pursuant to federal law because he raised it for the first time on appeal; moreover, even if the claim had been raised before the district court, it would have been barred by res judicata because the claim could have been raised on direct appeal and in defendant's petition for post-conviction relief. Ridgerunner, LLC v. Meisinger, 297 P.3d 121 (Wyo. 2013).

Consecutive life sentences for prior and contemporaneous convictions not unconstitutional. — Defendant's motion to correct an illegal sentence was properly denied where the existence of a prior conviction and the existence of a contemporaneous conviction rested on the same quality of evidence and neither sort of evidence was required to be determined by a jury under the beyond a reasonable doubt standard; the trial court did not err by imposing consecutive life sentences on defendant. Blakeman v. State, 105 P.3d 472 (Wyo. 2005).

Articulation of reason. — Trial court was

not required to articulate a "just cause" for denying defendant's motion for reduction of sentence. Hodgins v. State, 1 P.3d 1259 (Wyo. 2000).

District court entitled to deference. — A district court's resolution of a motion to correct or reduce a sentence is entitled to considerable deference. Fortin v. State, 622 P.2d 418 (Wyo. 1981).

And Supreme Court will not substitute its views. — On appeal of a motion to correct or reduce a sentence, the Supreme Court will not substitute its views for those of the district court unless there is no rational basis for the district court's conclusions. Fortin v. State, 622 P.2d 418 (Wyo. 1981).

But will accept trier's findings supported by evidence. — On appeal of a motion to correct or reduce a sentence, the Supreme Court must accept the trier's finding of facts, as long as they are supported by substantial evidence from which a reasonable inference may be drawn. Fortin v. State, 622 P.2d 418 (Wyo. 1981).

Only sentencing alternatives which may be considered on a motion for sentence reduction are those which would have been proper at the original sentencing. Williams v. State, 692 P.2d 233 (Wyo. 1984).

Presentence confinement. — Presentence confinement is defined as incarceration for inability and failure to post bond on the offense for which the sentence is entered and does not include revoked probation or other confinement that would continue to exist without regard for bond posting capabilities. Sweets v. State, 36 P.3d 1130 (Wyo. 2001).

Defendant's incarceration on a prior conviction was not presentence confinement and he was not entitled to presentence credit for his confinement on that conviction when he was subsequently convicted and sentenced on a new charge of delivering a controlled substance. Sweets v. State, 36 P.3d 1130 (Wyo. 2001).

Motion for correction of a sentence under Wyo. R. Crim. P. 35(a) to allow for 216 days of presentence incarceration was denied because defendant had already been given all the credit he was entitled to; some of the credit had been used in a prior drug case, and defendant was not entitled to credit for confinement that occurred prior to the offense date. Manes v. State, 150 P.3d 179 (Wyo. 2007).

Maximum sentence modified for presentence confinement. — Where the defendant was sentenced to a term of not less than seven nor more than 10 years, but the record demonstrates that he was entitled to a credit against his maximum sentence for pre-sentence confinement of 85 days because of his indigency, because the maximum term would have exceeded that authorized by the legislature, and because his retention in custody for purposes of a competency examination did not justify the denial of the credit, the case was remanded to the district court with the direction that the defendant's sentence be modified to encompass a credit of 85 days for pre-sentence confinement against the maximum 10-year sentence. Lightly v. State, 739 P.2d 1232 (Wyo. 1987).

Failure to credit presentence incarceration abuse of discretion. — Where the original sentence failed to credit the defendant with presentence incarceration time against his minimum term, it was an illegal sentence, and the refusal of the trial court to correct the illegal sentence was an abuse of discretion. Ramirez v. State, 800 P.2d 503 (Wyo. 1990).

Presentence confinement taken into account by prison. — The executive department of government can, and should, award credit for presentence confinements, which simply should be taken into account by the authorities at the penitentiary or prison when determining release dates. It would seem that only in the few instances in which there is some real dispute about the credit that it would be necessary to insist that the convicted person return to the court for obvious relief. Ramirez v. State, 800 P.2d 503 (Wyo. 1990).

Credit for presentence confinement. — There was no error in the decision of the court to deny credit for presentence confinement where the record was clear that defendant was not confined solely because of his inability to post the bond for the offense of which he was convicted. Rosalez v. State, 955 P.2d 899 (Wyo. 1998).

Credit for confinement in community corrections facility. — Appellant inmate was improperly denied credit for the time spent at a community corrections facility (CCF) after a violation of probation because time in a CCF constituted official detention under Wyo. Stat. Ann. § 7-18-108(a) and a person in a CCF could be charged with escape under Wyo. Stat. Ann. § 7-18-112. Baker v. State, 248 P.3d 640 (Wyo. 2011).

Trial court lacks jurisdiction to reduce previously imposed sentence beneath legislatively-mandated minimum term. Williams v. State, 692 P.2d 233 (Wyo. 1984).

Jurisdiction to consider motion. — Court had jurisdiction to consider a motion for reduction of sentence where the circumstances that supposedly divested the court of jurisdiction were beyond defendant's control; he timely filed his motion for reduction, and there was no indication of an improper purpose for the delay. Patrick v. State, 108 P.3d 838 (Wyo. 2005).

Court may reduce sentence of incarceration to probation after defendant has served only two and one-half months of his sentence of five to eight years for aggravated burglary. State v. Knapp, 739 P.2d 1229 (Wyo. 1987).

Reimposition of sentence after probation revoked. — It is within the district court's discretion to consider a motion for sen-

tence reduction filed 120 days (now one year) from the imposition of sentence, which includes the reimposition of sentence following a probation revocation. Nelson v. State, 733 P.2d 1034 (Wyo. 1987).

District judge had no jurisdiction to reduce death sentence, supported by sufficient evidence, to life imprisonment under this rule, because to have done so would have been in direct conflict with the legislative mandate of § 6-2-102 (presentence hearing for murder). Hopkinson v. State, 704 P.2d 1323 (Wyo.), cert. denied, 474 U.S. 1026, 106 S. Ct. 582, 88 L. Ed. 2d 564 (1985).

It is not abuse of discretion to deny motion for sentence reduction despite demonstration of commendable behavior made to the district court. Montez v. State, 592 P.2d 1153 (Wyo. 1979).

Failure to reduce sentence not abuse of discretion. — Court did not abuse its discretion in failing to accept the prosecution's recommendation for a lesser sentence when it revoked the defendant's probation and reimposed upon him the original sentence which was within the statutorily prescribed limits. Mower v. State, 750 P.2d 679 (Wyo. 1988), aff'd, 770 P.2d 233 (Wyo. 1989).

Restitution order not illegal. — Order to pay $93,966 in restitution after pleading guilty to first and third degree arson was not illegal where evidence showed that the trial court properly advised defendant prior to acceptance of his guilty plea of his potential restitution obligation and where specific finding of defendant's ability to pay was not required. Whitten v. State, 110 P.3d 892 (Wyo. 2005).

Multiple motions within time period allowed. — This rule does not prohibit the filing and considering more than one motion if done within the 120-day (now one-year) limitation. Nelson v. State, 733 P.2d 1034 (Wyo. 1987).

Issues decided may not be relitigated. — Where the issue relating to the imposition of a second increased sentence was raised in defendant's direct appeal from conviction and there considered and decided, the question is governed by the doctrine of the law of the case, and the availability of relief under this rule, as is true of all other post-conviction relief mechanisms, does not permit a defendant to revitalize and relitigate the issue. Montez v. State, 592 P.2d 1153 (Wyo. 1979).

A motion to correct an illegal sentence does not permit a defendant to relitigate an issue which has already been considered and decided. Brown v. State, 894 P.2d 597 (Wyo. 1995).

Any issues not previously decided are barred by § 7-14-103 or are not properly matters for consideration under a Rule 35(a) motion. Brown v. State, 894 P.2d 597 (Wyo. 1995).

Motion to correct an illegal sentence is not available for an attack on the validity of a conviction. — A motion to correct an illegal sentence presupposes a valid conviction and may not be used to re-examine errors occurring at trial or other proceedings prior to the imposition of sentence; therefore, issues concerning the validity of a conviction will not be addressed in the context of a Rule 35 motion. Bird v. State, 39 P.3d 430 (Wyo. 2002).

Res judicata. — Issue of illegality of sentence could have been raised in defendant's earlier appeal from order revoking his probation and sentencing him to incarceration, and therefore his subsequent motion for correction of illegal sentence was barred by doctrine of res judicata. Mead v. State, 2 P.3d 564 (Wyo. 2000).

On direct appeal, defendant's argument centered around defendant's status as a habitual criminal, and its effect on defendant's sentences, and although in defendant's motion to correct an illegal sentence, defendant's argument differed slightly from that presented on direct appeal, the distinction was insufficient to avoid the application of res judicata; further, defendant offered no showing of why the issues raised in the current appeal could not have been raised in defendant's direct appeal, and absent such a showing defendant's claims were barred by the doctrine of res judicata. Lacey v. State, 79 P.3d 493 (Wyo. 2003).

Relief not available following guilty plea. — Relief under subdivision (a) of this rule was not available to defendant seeking to attack voluntariness of his guilty plea, and thus the validity of his conviction. Smith v. State, 969 P.2d 1136 (Wyo. 1998).

No abuse of discretion to exclude expert testimony regarding mental condition. — A trial court did not abuse its discretion in refusing to allow defendant to provide expert testimony concerning his mental condition in sentence modification hearings; defendant failed to explain how expert testimony that might provide a different diagnosis could or should result in a reduction of his sentence. Barela v. State, 936 P.2d 66 (Wyo. 1997).

Hearing permitted during appeal preparation. — A trial judge is permitted to conduct a hearing under this rule while defendant is in the process of preparing an appeal. Jones v. State, 602 P.2d 378 (Wyo. 1979).

This rule makes no provision for furnishing transcript to defendant preliminary to the application for reduction. Escobedo v. State, 601 P.2d 1028 (Wyo. 1979).

Proper to deny sentence reduction where no abuse of discretion in original sentence. — There was no abuse of discretion in the imposition of the original sentence of two-to-five years on each of two counts of third-degree sexual assault, to be served consecutively, upon a defendant who forced an 11-year-old victim to have sex with him over a period of years and who showed only situational remorse. Given this fact, and the fact that no error of law was committed, there was no justification for the appellate court to interfere with the trial court's discretion in denying a

motion to reduce sentence. Peterson v. State, 706 P.2d 276 (Wyo. 1985).

District court loses jurisdiction after time period. — A district court loses jurisdiction of a criminal case 120 days (now one year) following the date of the judgment and sentence and, thus, may not consider a motion to reduce a sentence filed after that time period. Stewart v. State, 654 P.2d 727 (Wyo. 1982) (decided prior to 1987 amendment).

District court without jurisdiction to hear appeal. — Except where there has been a remand following an appeal in a criminal case, or where one of the statutes or rules, Wyo. Stat. Ann. § 1-27-101 et seq., Wyo. Stat. Ann. § 7-14-101 through 7-14-108, or W.R.Cr.P. 35, otherwise expressly permits a district court to continue to assert jurisdiction over that criminal case, no authority exists for the court to act in the case, and thus the district court was without jurisdiction to consider defendant's motion to withdraw his guilty plea where the motion was filed over five years after entry of his plea and over five years after his sentence was imposed. Barela v. State, 55 P.3d 11 (Wyo. 2002).

Court may reduce sentence beyond time period. — The trial court had a "reasonable" amount of time to rule on a timely motion for sentence reduction, even if the motion had not been decided within 120 days (now one year) from the date of entry of the sentence. Arland v. State, 788 P.2d 1125 (Wyo. 1990).

Double jeopardy remedy appropriate under § 7-14-101. — A motion under subsection (a) of this rule is not the proper remedy by which to assert a violation of double jeopardy protections. Upon exhaustion of the right to directly appeal from conviction, post-conviction relief provided through §§ 7-14-101 through 7-14-108 is the only proper method of gaining relief on a double jeopardy claim. Birr v. State, 878 P.2d 515 (Wyo. 1994).

Claims alleging a violation of double jeopardy are not cognizable under the language of this rule. Instead, such challenges must be brought as a petition for post-conviction relief under §§ 7-14-101 and 7-14-108. Parker v. State, 882 P.2d 1225 (Wyo. 1994).

Physical inability to complete program did not justify sentencing change. — Although defendant had entered a plea agreement which recommended him for the Wyoming Youthful Offender Program, his inability to participate in the program due to a physical impairment did not violate the doctrines of equal protection and separation of powers and did not entitle the district court to correct his sentence. The defendant's plea was not induced by false promises and the error alleged did not fall within the narrow definition of illegal sentences; therefore, the warden's refusal to accept him in the program because of his physical injury was rationally related to a legitimate governmental interest and was supportable. Ellett v. State, 883 P.2d 940 (Wyo. 1994).

Executive department actions beyond scope of section. — The manner in which the executive department of government is directing the service of defendant's sentences cannot be addressed pursuant to a motion under this section. Apodaca v. State, 891 P.2d 83 (Wyo. 1995).

Because the Wyoming legislature has delegated the power to revoke parole to an executive agency and divested the courts of any such power, a prisoner whose parole has been revoked cannot challenge the Wyoming board of parole's decision by filing a motion pursuant to this rule in Wyoming district court to correct an illegal sentence. Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996).

Applied in Dobbins v. State, 483 P.2d 255 (Wyo. 1971); Wright v. State, 718 P.2d 35 (Wyo. 1986); Starr v. State, 821 P.2d 1299 (Wyo. 1991); Aldridge v. State, 956 P.2d 341 (Wyo. 1998); Mack v. State, 7 P.3d 899 (Wyo. 2000); Martinez v. State, 39 P.3d 394 (Wyo. 2002); Padilla v. State, 91 P.3d 920 (Wyo. 2004).

Quoted in Dorman v. State, 665 P.2d 511 (Wyo. 1983); Wright v. State, 670 P.2d 1090 (Wyo. 1983); Stanton v. State, 686 P.2d 587 (Wyo. 1984); Hamill v. State, 948 P.2d 1356 (Wyo. 1997); Lemus v. State, 162 P.3d 497 (Wyo. 2007).

Stated in Yates v. State, 792 P.2d 187 (Wyo. 1990); Neidlinger v. State, 230 P.3d 306 (Wyo. 2010).

Cited in Strode v. Brorby, 478 P.2d 608 (Wyo. 1970); Duffy v. State, 730 P.2d 754 (Wyo. 1986); Hopkinson v. Shillinger, 645 F. Supp. 374 (D. Wyo. 1986); Whitney v. State, 745 P.2d 902 (Wyo. 1987); Mower v. State, 770 P.2d 233 (Wyo. 1989); McGraw v. State, 770 P.2d 234 (Wyo. 1989); Schuler v. State, 771 P.2d 1217 (Wyo. 1989); Juarez v. State, 791 P.2d 287 (Wyo. 1990); Kennedy v. State, 890 P.2d 37 (Wyo. 1995); Rich v. State, 899 P.2d 1345 (Wyo. 1995); Hamill v. Ferguson, 937 F. Supp. 1528 (D. Wyo. 1996); Frenzel v. State, 938 P.2d 867 (Wyo. 1997), cert. denied, 522 U.S. 959, 118 S. Ct. 388, 139 L. Ed. 2d 303 (1997); Mitchell v. State, 982 P.2d 717 (Wyo. 1999); Reagan v. State, 14 P.3d 925 (Wyo. 2000); Jenkins v. State, 49 P.3d 1028 (Wyo. 2002); Amin v. State, 138 P.3d 1143 (Wyo. 2006); Capellen v. State, 161 P.3d 1076 (Wyo. 2007).

Am. Jur. 2d, ALR and C.J.S. references. — Propriety of increased sentence following revocation of probation, 23 ALR4th 883.

Right of convicted defendant or prosecution to receive updated presentence report at sentencing proceedings, 22 ALR5th 660.

Excessiveness of sentence, under 18 USC § 751(a), for escape from federal custody, 77 ALR Fed 318.

Rule 36. Clerical mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Compare. — Rule 36, Fed. Rules Cr. Proc.

Erroneous description of the crime for which defendant was convicted. — Where the judge misspoke during the sentencing proceeding, calling defendant's conviction by the jury a conviction for attempted aggravated robbery rather than for aggravated robbery, the judge's use of the word "attempted" was not the deliberate result of judicial reasoning and determination but was, instead, a clerical error which could be corrected by virtue of W.R.Cr.P. 36 to accurately reflect the offense of which defendant was convicted. Kearns v. State, 48 P.3d 1090 (Wyo. 2002).

Applicability. — Action to which defendant objected, namely the imposition of consecutive terms rather than concurrent terms of incarceration, was a result of judicial, not clerical, action, and the asserted "mistake" was not a mistake at all, but the product of a written and signed plea agreement, which defendant approved; therefore, W.R.Cr.P. 36 provided no relief. Beck v. State, 110 P.3d 898 (Wyo. 2005).

Written judgment and sentence does not control over an oral sentence at variance with it. Where the transcript of the oral sentence and judgment and the mittimus are unambiguous and plain in directing a consecutive, not concurrent, sentence, and the written judgment and sentence contains an oversight and omission in this respect, it may be properly corrected by the trial court in a nunc pro tunc judgment and sentence. Lane v. State, 663 P.2d 175 (Wyo. 1983).

Applied in Grabill v. State, 621 P.2d 802 (Wyo. 1980); Kahlsdorf v. State, 823 P.2d 1184 (Wyo. 1991); Sargent v. State, 828 P.2d 100 (Wyo. 1992); Brenning v. State, 870 P.2d 349 (Wyo. 1994).

Quoted in Jones v. State, 602 P.2d 378 (Wyo. 1979); Clouse v. State, 809 P.2d 791 (Wyo. 1991).

Stated in Kane v. Kane, 706 P.2d 676 (Wyo. 1985).

Cited in Badura v. State, 832 P.2d 1390 (Wyo. 1992).

Rule 37. [Reserved].

Rule 38. Stay of execution of sentence.

(a) *Death.* — A sentence of death shall be stayed pending automatic review by the Wyoming Supreme Court.

(b) *Imprisonment.* — A sentence of imprisonment shall be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal. If not stayed, the court may require of the state penal authorities that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where an appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of an appeal.

(c) *Fine.* — A sentence to pay a fine or a fine, costs and other assessments, if an appeal is taken, may be stayed by the sentencing court or by an appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating such defendant's assets.

(d) *Probation.* — A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.

(e) *Restitution.* — A sanction imposed as part of the sentence pursuant to W.S. 1-40-119 (victims fund) or W.S. 7-9-101 *et seq.* (restitution) may, if an appeal of the conviction or sentence is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may issue such orders as may be reasonably necessary to ensure compliance with the sanction upon disposition of the appeal, including the entering of a restraining order or an injunction or

requiring a deposit in whole or in part of the monetary amount involved into the registry of the sentencing court or execution of a performance bond.

(f) *Civil or employment disability.* — A civil or employment disability arising under a statute by reason of the defendant's conviction or sentence, may, if an appeal is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.

Compare. — Rule 38, Fed. Rules Cr. Proc.

Editor's notes. — Former Rule 38, relating to appeals, was superseded by Rule 1.01, W.R.A.P., effective August 1, 1978. Now see Rule 1.02, W.R.A.P. Also, see Rule 27, W.R.A.P.

Rule 39. Revocation or modification of probation.

(a) *Revocation.* — Proceedings for revocation of probation shall be initiated by a petition for revocation filed by the attorney for the state, setting forth the conditions of probation which are alleged to have been violated by the probationer and the facts establishing the violation.

(1) Process. — If it appears from a verified petition to revoke probation, or from an affidavit or affidavits filed with the petition, that there is probable cause to believe the probationer violated the terms of probation, the court shall order the probationer to appear before the court on a date and time stated to answer to the allegations in the petition. Upon the written request of the attorney for the state demonstrating good cause therefor, the court may issue a warrant for the probationer. A copy of the petition for revocation shall be served upon the probationer along with the order to appear or warrant.

(2) Appearance. — A probationer arrested on a warrant and taken into custody shall be taken before a judicial officer without unnecessary delay.

(3) Advice to Probationer. — At the probationer's first appearance before the court, the court shall advise the probationer of the allegations of the petition for revocation and of the contents of any affidavits and shall further advise the probationer:

(A) Of the probationer's right to retain counsel and, where applicable, the right to appointed counsel;

(B) That the probationer is not required to make a statement and that any statement made could be used against the probationer;

(C) Of the right to a hearing before a judge without a jury;

(D) Of the state's burden of proof;

(E) Of the probationer's right to confront adverse witnesses, to call other witnesses and have court process to obtain the testimony of reluctant witnesses and to present other evidence at the hearing; and

(F) If the probationer is in custody, of the general circumstances under which release may be secured pending a hearing.

(G) Of probationer's right to appeal.

(4) Plea. — The probationer shall be given a copy of the petition for revocation of probation before being called upon to plead. The probationer shall be called upon to admit or deny the allegations of the petition for revocation. If the probationer admits the allegations of the petition, the court may proceed immediately to disposition, or may set a future date for disposition. If the petitioner denies the allegations of the petition, or declines to admit or deny, the court shall set the matter for hearing.

(A) If further proceedings are to follow the first appearance, the court may commit or release the probationer as provided in Rule 46.2.

(B) A hearing on the petition shall be held within the following time limits:

(i) If the probationer is in custody because of the probation revocation proceedings, a hearing upon a petition for revocation of probation shall be held within 15 days after the probationer's first appearance before the court following the filing of the petition. If the probationer is not in custody because of the probation revocation proceedings, a hearing upon the petition shall be held within 30 days after the probationer's first appearance following the filing of the petition. For good cause the time limits may be extended by the court.

(ii) Where it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, the court may continue the probation revocation proceedings until the termination of the criminal proceeding if the probationer consents, or regardless of consent, if the probationer is not in custody because of the probation revocation proceedings.

(5) Hearing. — At the hearing upon the petition for revocation of probation, the state must establish the violation of the conditions of probation alleged in the petition by a preponderance of the evidence.

(A) The probationer shall have the right to appear in person and by counsel, to confront and examine adverse witnesses, and at the dispositional stage to make a statement in mitigation of revocation.

(B) The Wyoming Rules of Evidence shall apply to the adjudicative phase of probation revocation hearings; however, hearsay that is probative, trustworthy and credible may be received into evidence. The Wyoming Rules of Evidence do not apply to the dispositional stage.

(6) Findings. — If the court finds a violation of conditions of probation and revokes probation, it shall enter an order reciting the violation and the disposition.

(A) Advisement of Right to Appeal. — At the dispositional stage, the court shall advise the defendant of the right to appeal the probation revocation or the disposition. This advisement includes:

(i) The defendant's right to appeal, including the time limits for filing a notice of appeal; and

(ii) The right of a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis* and to have appointed counsel represent the defendant on appeal.

(B) Notice of Appeal. — If the defendant so requests, the clerk of the court shall prepare and serve forthwith a notice of appeal in accordance with the Wyoming Rules of Appellate Procedure on behalf of the defendant.

(b) *Modification.* — Proceedings for modification of conditions of probation may be initiated by a petition for modification filed by the attorney for the state, a probation agent or the probationer, setting forth the proposed modification and a statement of the reasons therefor. A copy of the petition shall be served upon the adverse party; if made by a probation officer it shall also be served upon the attorney for the state and, unless the attorney for the state consents, no action may be taken for five days without a hearing. Thereafter, the adverse party shall have 20 days to respond to the petition for modification of probation. If the adverse party consents to the requested modification or fails to respond to the petition, the court may act upon the requested modification with or without a hearing. If the adverse party responds by opposing the requested modification the court may hold a hearing. The Wyoming Rules of Evidence shall not apply at the modification hearing; all relevant, probative evidence may be received if the adverse party is given a fair opportunity to rebut the evidence. Within a reasonable time, the court shall grant or deny the requested modification in whole or in part.

(Amended July 22, 1993, effective October 19, 1993; amended May 8, 2001, effective September 1, 2001; amended March 2, 2010, effective July 1, 2010; amended July 17, 2014, effective September 1, 2014.)

Editor's notes. — Former Rule 39, relating to stay of execution and relief pending appeal, was superseded by Rule 2.11, W.R.A.P., effective August 1, 1978. Now see Rule 5.01, W.R.A.P.

Rule supersedes statute. — The present text of this rule is definitely structured to intentionally require initial involvement of the county or district attorney for the practice of law function intrinsically involved in judicial probation termination proceedings. Therefore, § 7-13-408, as it relates to judicial revocation proceedings in probation cases and its process of notice or arrest based on the issuance of a bench warrant, is superseded by this rule. Wlodarczyk v. State, 836 P.2d 279 (Wyo. 1992), overruled on other grounds, Daugherty v. State, 44 P.3d 28 (Wyo. 2002).

Inherent court power of probation revocation. — This rule is consistent with the concept that courts which grant probation have inherent power to revoke it. Weisser v. State, 600 P.2d 1320 (Wyo. 1979).

Finding of willfulness. — In revoking defendant's probation, the district court did not commit reversible error by failing to make an express finding that defendant's probation condition violations were willful; although the district court did not use the term "willful" in its decision in this case, it clearly addressed the requirement when it rejected defendant's excuses for the violations. Miller v. State, 350 P.3d 742 (Wyo. 2015).

Two-part process. — The proceedings for probation revocation consist of a two-part process: (1) the adjudicatory phase, requires the district court to determine by a preponderance of the evidence whether a condition of probation was violated; (2) the dispositional phase, is triggered only upon a finding that a condition of probation was violated. Mapp v. State, 929 P.2d 1222 (Wyo. 1996).

In the adjudicatory phase of probation revocation, the Fourteenth Amendment right to due process and the Wyoming Rules of Evidence apply; in the dispositional phase, only general due process protections continue to attach and the rules of evidence are suspended. Mapp v. State, 929 P.2d 1222 (Wyo. 1996).

Revocation hearing time limits not jurisdictional. — While the 30 and 15-day time limits set forth in subdivision (a)(4)(B) should be adhered to, failure to do so will not divest the trial court of its jurisdiction, nor will it result in an automatic dismissal of a revocation petition. In determining whether a revocation hearing is provided within a reasonable time, the state supreme court will consider the length of the delay (against the prescribed time frame), the cause of delay, and whether the delay prejudiced the probationer. The probationer carries the burden of proving the unreasonableness of the delay and the prejudice imposed by the delay. Reese v. State, 866 P.2d 82 (Wyo. 1993).

Dismissal of a probation revocation case with prejudice was not warranted for a failure to comply with the 15-day time limitations in Wyo. R. Crim. P. 39(a)(4)(B(i) because a deviation from that time limit was allowed for good cause; moreover, the case was dismissed, it was refiled several days later, and defendant was given credit for time served when his probation was ultimately revoked. Ramsdell v. State, 149 P.3d 459 (Wyo. 2006).

Nothing in the Wyoming rules or in its case law mandates the dismissal of a probation revocation action with prejudice due to a violation of the time limits in Wyo. R. Crim. P. 39(a)(4)(B)(i). However, there are circumstances where this might be appropriate. Ramsdell v. State, 149 P.3d 459 (Wyo. 2006).

Unnecessary delays. — Imposition of probation revocation sentences against defendants was improper where the delays in the appearance of defendants before a judicial officer were unnecessary and violated the W.R. Crim. P. 39(a)(2) requirement that a probationer arrested on a warrant and taken into custody should be taken before a judicial officer without unnecessary delay. Doney v. State, 59 P.3d 730 (Wyo. 2002).

Due process standard for probationer. — Since a person can be arrested upon a judicial ex parte determination of probable cause, there is no reason to believe that the legislature intended to afford a probationer any more due process than that which is guaranteed to any other citizen. Weisser v. State, 600 P.2d 1320 (Wyo. 1979).

The process due a probationer at the adjudicatory stage is found in this section and case law; this includes the right to disclosure of the evidence against the defendant, the right to call witnesses and present documentary evidence, and the conditional right to confront and cross-examine adverse witnesses. Mapp v. State, 929 P.2d 1222 (Wyo. 1996).

One-day delay in revocation hearing not unreasonable. — The defendant's revocation hearing took place 31 days after his initial appearance before the trial court, a delay of one day. Since the court initially scheduled the hearing with the one-day delay, it was presumed the delay was a continuance upon the court's own motion and properly grounded in concerns of docket management and due administration of justice, particularly the court's concerns regarding pending larceny proceedings. The defendant did not demonstrate otherwise, and he thus failed to carry his burden of proving the delay of one day was unreasonable and as such denied him his due process right to a speedy disposition of the charges against him. Reese v. State, 866 P.2d 82 (Wyo. 1993).

Due process. — Where a copy of the petition for revocation was not served upon defendant or his counsel prior to or during the probation revocation hearing, the failure to provide written notice to defendant was a defect affecting a substantial right and, under the circumstances,

was prejudicial to his cause. Shaw v. State, 998 P.2d 965 (Wyo. 2000).

Hearsay. — Despite the fact that a probation agent's testimony regarding a rule infraction was based upon hearsay, the district court did not err when it used this information to revoke defendant's probation. The probation agent faced questions on cross-examination regarding the fact that she did not witness the violation and only heard the information third or fourth hand. Howard v. State, 249 P.3d 230 (Wyo. 2011).

Defendant's due process rights were not under violated in a probation revocation proceeding under Wyo. R. Crim. P. 39 because a district court was allowed to consider a termination report and an investigation report as hearsay evidence in the dispositional stage since the Wyoming Rules of Evidence were suspended during that stage; moreover, the district court obviously did not find defendant's denial of involvement in a robbery scheme to be credible. Sinning v. State, 172 P.3d 388 (Wyo. 2007).

Although defendant argued that his right to due process of law was violated when his probation was revoked without him having received adequate notice of the basis for that revocation, defendant's admission that he had violated the terms of his probation effectively waived any due process rights defendant may have had based on an alleged lack of notice. Counts v. State, 197 P.3d 1280 (Wyo. 2008).

Hearing protects due process rights. — The probationer's due process rights are indeed adequately protected where the court determines the fate of the probationer in the required hearing under this rule. Weisser v. State, 600 P.2d 1320 (Wyo. 1979).

A probationer's due process rights are adequately protected where a court settles not only the initial probable cause question but also determines the fate of the probationer in a single revocation hearing. Krow v. State, 840 P.2d 261 (Wyo. 1992).

Required hearing under this rule in itself provides an inherent sort of fairness which is not achieved through administrative procedures. Knobel v. State, 576 P.2d 941 (Wyo. 1978).

Burden of proof. — District court properly imposed upon the State the burden of proof to revoke defendant's probation, and the district court, which found that defendant had willfully violated the conditions of his probation, did not abuse its discretion in concluding that the State had met that burden. Messer v. State, 145 P.3d 457 (Wyo. 2006).

Revocation hearing not a trial. — A probation revocation hearing is not a trial on a new criminal charge; it is simply an extension of the sentencing procedure resulting from the conviction of the basic charge, coupled with the requirement that the probationer be afforded due process of law before being deprived of the conditional right to liberty granted by probation. Mapp v. State, 929 P.2d 1222 (Wyo. 1996).

All that is essential in determining the revocation of probation is the court's conscientious judgment after hearing the facts that the violation has occurred. This should not be an arbitrary action and should include a consideration of both the reasons underlying the original imposition of conditions, the violation of these, and the reasons leading to such violation. State v. Reisch, 491 P.2d 1254 (Wyo. 1971).

Jury trial not required for such determination. — The matter of conducting a hearing to determine the revocation of probation is not specified and has taken various forms but no trial by jury is requisite. State v. Reisch, 491 P.2d 1254 (Wyo. 1971).

Determination of violation of release agreement requires verified facts. — The determination of whether a probationer or parolee violated his release agreement must be based on verified facts, not hearsay. Mason v. State, 631 P.2d 1051 (Wyo. 1981).

Purpose for allowing hearsay testimony at probation or parole-revocation hearings is to aid the court in determining whether probation or parole should be revoked after the determination has been made that the release agreement has been violated. Mason v. State, 631 P.2d 1051 (Wyo. 1981).

Probation revocation notice requires less specificity. — A probationer is entitled to notice of the nature of the conduct alleged as grounds for revocation of his probation, but such conduct need not be alleged with the same degree of specificity as is required in an indictment, information or complaint. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Minimal probation revocation notice gives adequate notice. — Where notice to defendant of revocation of probation, as contained in a prosecuting attorney's motion, is minimal, but the defendant had been informed at his original sentencing in no uncertain terms that violations such as those enumerated in the motion would be grounds for revocation and the offenses are clearly described in the motion and it is clear from the motion that the offenses occurred in a certain county between defendant's original sentencing and the date of the motion, the defendant has adequate notice of the charge against him, particularly in view of his failure to move for additional information or to request a continuance. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Split sentence violations determined under criminal rules. — If a defendant is given a "split sentence" (incarceration followed by probation) pursuant to § 7-13-107, probation violations will likewise be determined under the sentencing court's continued jurisdiction during the period of probation pursuant to the Wyoming Rules of Criminal Procedure. Wlodarczyk v. State, 836 P.2d 279 (Wyo. 1992), overruled on other grounds, Daugherty v. State, 44 P.3d 28 (Wyo. 2002).

Violation of probation found. — The violation of a condition of probation was conclusively established by the probationer's admission that he failed to complete the Community Alternatives of Casper program. Mapp v. State, 929 P.2d 1222 (Wyo. 1996).

District court properly found that defendant violated his probation willingly, where defendant's mental health diagnosis was called into doubt by his attempts to manipulate the diagnosis, which included defendant's claims of hearing voices and admissions that he thought being diagnosed with schizophrenia would help in getting him out of jail, and the mental illness with which defendant was diagnosed, psychopathy, would not have prevented him from understanding the rules of his treatment program or the nature and consequences of his actions while in the treatment program. Edrington v. State, 185 P.3d 1264 (Wyo. 2008).

Trial court did not abuse its discretion in determining that two separate conditions of probation had been violated, as defendant failed to provide documentation to his probation agent to show he was employed and failed to take a required polygraph, which, contrary to defendant's claim, did not necessitate that he pass the polygraph, only that he take it. Robinson v. State, 378 P.3d 599 (Wyo. 2016).

Violation of probation not found. — The State did not establish that defendant violated her terms of probation by a preponderance of the evidence as required under W.R.Cr.P. 39(a)(5); although the state alleged in its petition that defendant failed to complete her assigned counseling and failed to report to her probation officer, at the revocation hearing the state proved only that defendant had not proved she had completed her counseling, and, that after 33 months of probation without incident, defendant had failed to report, possibly as the result of a genuine misunderstanding. Anderson v. State, 43 P.3d 108 (Wyo. 2002).

Revocation of probation proper. — Trial court did not abuse its discretion in revoking defendant's probation, as defendant admitted to violating probation by using cocaine. Sweets v. State, 69 P.3d 404 (Wyo. 2003).

In a sexual abuse of a minor case, the district court did not err in revoking defendant's probation, where a probation officer found a woman and her minor son hiding in defendant's hotel room. Although defendant was clearly instructed that having the child in his room was violation of his probation, the mother and child were again in the room when the probation officer returned with law enforcement. Horse Creek Conservation Dist. v. State ex rel. Wyo. AG, 221 P.3d 306 (Wyo. 2009).

When defendant violated the terms of his probation by failing to pay restitution, the district court did not abuse its discretion by revoking his probation and reinstating his original prison sentence felony property destruction; defendant did not present any evidence establishing an inability to pay restitution, and the existence of other alleged violations did not taint the district court's decision. Foster v. State, 240 P.3d 200 (Wyo. 2010).

Opportunity to allocute. — In a sexual abuse of a minor case, the district court did not err in failing to provide defendant the opportunity to allocute at his probation revocation hearing. Forbes v. State, 220 P.3d 510 (Wyo. 2009).

Applied in Gailey v. State, 882 P.2d 888 (Wyo. 1994).

Cited in Hewitt v. State, 835 P.2d 348 (Wyo. 1992); Cooney v. White, 845 P.2d 353 (Wyo. 1992); Leyba v. State, 882 P.2d 863 (Wyo. 1994); Pearl v. State, 996 P.2d 688 (Wyo. 2000).

Am. Jur. 2d, ALR and C.J.S. references. — Who may institute proceedings to revoke probation, 21 ALR5th 275.

Rule 40. [Reserved].

Rule 41. Search and seizure.

(a) *Scope and Definitions.* —

(1) *Scope.* — This rule does not modify any law inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made.

(2) *Definitions.* — The following definitions apply under this rule.

(A) "Property" includes documents, books, papers, any other tangible objects and information.

(B) "Tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

(b) *Authority to issue warrant.* — Upon the request of the attorney for the state or a federal, state, or local peace officer, a search warrant authorized by this rule may be issued by a judicial officer. If issued by a judicial officer other than a district or circuit judge it shall be by a judicial officer for the jurisdiction wherein the property sought is located.

(c) *Property or persons which may be seized with warrant.* — A warrant may be issued under this rule to search for and seize any:

(1) Property that constitutes evidence of the commission of a criminal offense;

(2) Contraband, the fruits of crime, or things otherwise criminally possessed;

(3) Property designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(4) Person for whose arrest there is probable cause, or who is unlawfully restrained.

(d) *Issuance of warrant.* — A warrant shall issue on an affidavit sworn to before a person authorized by law to administer oaths and establishing the grounds for issuing the warrant. If the judicial officer is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer shall issue a warrant particularly identifying the property or person to be seized and naming or describing the person or place to be searched. Before ruling on a request for a warrant the judicial officer may require the applicant to appear personally and may examine under oath the applicant and any witnesses the applicant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The following additional rules may apply:

(1) *Warrant on Sworn Testimony.* — The judicial officer may wholly or partially dispense with a written affidavit and base a warrant on recorded sworn testimony, which record shall be preserved as if in writing.

(2) *Recording Testimony.* — Testimony taken in support of a warrant must be preserved by a court reporter or by recording device.

(3) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means.* — A judicial officer may issue a warrant based on information communicated by telephone or other reliable electronic means.

(4) *Procedures for Telephonic or Electronic Warrant.* — If a judicial officer proceeds under this rule, the following procedures apply:

(A) *Taking Testimony Under Oath.* — The judicial officer must place under oath—and may examine—the applicant and any person on whose testimony the application is based.

(B) *Testimony Limited to Attestation.* — If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the judicial officer must acknowledge the attestation in writing on the affidavit.

(C) *Preparing a Proposed Duplicate Original of a Warrant.* — The applicant must prepare a proposed duplicate original of a warrant and must read or otherwise transmit its contents verbatim to the judicial officer.

(D) *Preparing an Original Warrant.* — If the applicant reads the contents of the proposed duplicate original, the judicial officer must enter those contents into an original warrant. If the applicant transmits the contents by reliable electronic means, the transmission received by the judicial officer may serve as the original.

(E) *Modification.* — The judicial officer may modify the warrant. The judicial officer must then:

(i) transmit the modified version to the applicant by reliable electronic means; or

(ii) file the modified original, and direct the applicant to modify the proposed duplicate original accordingly.

(e) *Contents of Warrant.* — The warrant shall be directed to any peace officer authorized to enforce or assist in enforcing the state law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall designate the judicial officer to whom it shall be returned.

(1) *Warrant to Search for and Seize a Person or Property.* — Except for a tracking device warrant, the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate a judicial officer to whom it must be returned. The warrant must command the peace officer to:

(A) initiate execution of the warrant within a specified time not to exceed 10 days;

(B) execute the warrant during the hours of 6:00 a.m. to 10:00 p.m., unless the judicial officer for good cause expressly authorizes, in the warrant, execution at another time.

(2) *Warrant Seeking Electronically Stored Information.* — A warrant under Rule 41(e)(1) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(e)(1) and (f)(1)(A) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(3) *Warrant for a Tracking Device.* — A tracking device warrant must identify the person or property to be tracked, designate a judicial officer to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The warrant must command the peace officer to:

(A) complete any installation authorized by the warrant within a specified time not to exceed 10 days;

(B) perform any installation authorized by the warrant during the hours of 6:00 a.m. to 10:00 p.m., unless the judicial officer for good cause expressly authorizes, in the warrant, execution at another time; and

(C) return the warrant to the judicial officer designated in the warrant.

(f) *Execution of warrant and return with inventory.* —

(1) *Warrant to Search for and Seize a Person or Property.* —

(A) *Noting the Time.* — The peace officer executing the warrant must enter on it the exact date and time it was executed.

(B) *Inventory.* — A peace office present during the execution of the warrant must prepare and verify an inventory of any property seized. The peace officer must do so in the presence of another peace officer and the person from whom, or from whose premises, the property was taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. In a case involving the seizure of electronic storage media, or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The peace officer may retain a copy of the electronically stored information that was seized or copied. If the warrant is self-executing by the person or entity believed to be in possession of the electronically stored information, the warrant shall be considered to have been executed on the date of its transmission to the person or entity. Within 5 days of receiving the information sought in a self-executing warrant the peace officer executing the warrant must make a return to the judicial officer designated in the warrant.

(C) *Receipt.* — The peace officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) *Return.* — The peace officer executing the warrant must promptly return it within five days of seizing the property — together with a copy of the inventory — to the judicial officer designated on the warrant. The peace officer may do so by reliable electronic means. The judicial officer must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) *Warrant for a Tracking Device.* —

(A) *Noting the Time.* — The peace officer executing a tracking device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) *Return.* — Within 5 days after the use of the tracking device has ended, the peace officer executing the warrant must file a return to the judicial officer designated in the warrant. The peace officer may do so by reliable electronic means.

(C) *Service.* — Within 10 days after the use of the tracking device has ended, the peace officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who was tracked or whose property was tracked, or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location, and by mailing a copy to the person's last known address. Upon the applicant demonstrating good cause, the judicial officer may delay notice as provided in Rule 41(f)(3), below.

(3) *Delayed Notice.* — Upon the applicant demonstrating good cause, a judicial officer may delay any notice required by this rule for a reasonable period of time to be noted on the warrant.

(g) *Motion for return of property.* — A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court in which charges are pending or if charges have not been filed the court from which the warrant issued for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing after criminal charges have been filed, it shall be treated also as a motion to suppress under Rule 12.

(h) *Filing of papers with clerk.* — The judicial officer designated to receive the return shall attach to the warrant the copy of the return, inventory and all of the papers in connection therewith and shall file them with the clerk of the district or circuit court in the county in which the property was seized.

(i) *Motion to suppress.* — A motion to suppress evidence may be made in the court where the case is to be tried as provided in Rule 12.

(j) *Confidentiality of information.* — All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application, affidavits, papers and records, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time the information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, judge, court commissioner or another court employee, in the course of official duties.

(Amended July 22, 1993, effective October 19, 1993; amended December 2, 2002, effective January 6, 2003; amended February 3, 2015, effective July 1, 2015; amended November 21, 2017, effective February 1, 2018.)

Rule 42. Contempt.

(a) *Types.* — Criminal contempts of court are of two kinds, direct and indirect.

(1) Direct. — Direct contempts are those occurring in the immediate view and presence of the court, including but not limited to the following acts:

(A) Disorderly, contemptuous or insolent behavior, tending to interrupt the due course of a trial or other judicial proceedings;

(B) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court; and

(C) Refusing to be sworn or to answer as a witness.

(2) Indirect (Constructive). — Indirect (constructive) contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, including but not limited to the following acts or omissions:

(A) Misbehavior in office, or other willful neglect or violation of duty, by an attorney, court administrator, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(B) Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(C) Disobedience of any lawful judgment, order, or process of the court;

(D) Acting as or assuming to be an attorney or other officer of the court without such authority;

(E) Rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(F) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is to be tried;

(G) Any other unlawful interference with the process or proceedings of a court;

(H) Disobedience of a subpoena duly served;

(I) When summoned as a juror in a court, neglecting to attend or serve, improperly conversing with a party to an action to be tried at the court or with any person relative to the merits of the action, or receiving a communication from a party or other person in reference to it, and failing to immediately disclose the same to the court;

(J) Disobedience, by an inferior tribunal or officer, of the lawful judgment, order, or process of a superior court proceeding in an action or special proceeding, in any court contrary to law after it has been removed from its jurisdiction, or disobedience of any lawful order or process of a judicial officer; and

(K) Willful failure or refusal to pay a penalty assessment levied pursuant to statute.

(b) *Direct contempt proceedings.* — A criminal contempt may be punished summarily if the judge saw or heard the conduct constituting the contempt and the conduct occurred in the immediate view and presence of the court. It may be dealt with immediately or, if done without unnecessary delay and to prevent further disruption or delay of ongoing proceedings, may be postponed to a more convenient time. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication is based. Prior to the adjudication of guilt the judge shall inform the accused of the accusation and afford the accused an opportunity to show why the accused should not be adjudged guilty of contempt and sentenced therefor. The accused shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court and reduced to writing, signed by the judge and entered of record. Rule 32 shall not apply to judgment and sentencing for direct contempt.

(c) *Indirect (constructive) contempt proceedings.* — A criminal contempt, except as provided in subdivision (b) concerning direct contempt, shall be prosecuted in the following manner:

(1) Order to Show Cause. — On the court's motion or upon affidavit of any person having knowledge of the facts, a judge may issue and sign an order directed to the accused, stating the essential facts constituting the criminal contempt charged and requiring the accused to appear before the court and show cause why the accused ought not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of a defense.

(2) Motions; Answer. — The accused, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. An accused's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(3) Order of Arrest; Bail. — If there is good reason to believe the accused will not appear in response to the order to show cause the judge may issue an order of arrest of the accused. The accused shall be admitted to bail in the manner provided by these rules.

(4) Arraignment; Hearing. — The accused shall be arraigned at the time of the hearing, or prior thereto upon the request of the accused. A hearing to determine the guilt or innocence of the accused may follow a plea of not guilty or may be set for trial at a later date or time. The judge may conduct a hearing without assistance of counsel or may be assisted by the attorney for the state or by an attorney appointed by the court for that purpose. The accused is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his own defense. Unless the charged contempt is tried to a jury as provided in subdivision (e), all issues of law and fact shall be heard and determined by the judge.

(5) Disqualification of Judge. — If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the hearing and shall assign the matter to another judge.

(6) Verdict; Judgment. — At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. In addition to the requirements of Rule 32, a judgment of guilt for contempt of court shall include a recital of the facts constituting the contempt.

(7) Sentence. — Unless an accused may be sentenced to the penitentiary, a presentence investigation is not required but may be ordered. In other respects, Rule 32 shall apply to sentencing for contempt.

(d) *Punishment.* — Punishment for contempt may not exceed the criminal jurisdiction of the court. A sanction for contempt of court may be imposed by a justice of the supreme court, a judge or commissioner of a district court, a circuit court judge or magistrate or a municipal judge.

(e) *Jury trial.* — Sentence to imprisonment upon a conviction on a charge of criminal contempt shall not exceed a term of six months unless the accused shall have been afforded the right to trial by jury on the charge.

(f) *Other criminal or civil remedies.* — An action for or adjudication of criminal contempt shall not limit nor be limited by any other criminal or civil remedies.
(Amended December 2, 2002, effective January 6, 2003.)

Cross References. — As to courtroom decorum, see Rule 801, D. Ct.
Compare. — Rule 42, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.
II. DIRECT.
III. INDIRECT.

I. GENERAL CONSIDERATION.

A court's power to punish for contempt is a necessary and integral part of the independence of the judiciary. Townes v. State, 502 P.2d 991, rehearing denied, 504 P.2d 46 (Wyo. 1972).

Court must follow proper procedure. — Neither the procedures for direct contempt nor those for indirect contempt were followed where the trial court did not inform the attorney of the accusation against him, did not inform him of his right to present evidence of mitigating circumstances, and, upon an adjudication of guilt, did not pronounce the sentence in open court as required by W.R.Cr. P. 42(b) for direct contempt proceedings. Horn v. Welch, 54 P.3d 754 (Wyo. 2002).

Proceedings in criminal contempts are independent criminal actions and should be conducted accordingly. Garber v. UMW, 524 P.2d 578 (Wyo. 1974).

Where suit was removed to federal court, the district court lacked jurisdiction to enter a contempt order at a later date even though the basis for the order occurred prior to the removal. Garber v. UMW, 524 P.2d 578 (Wyo. 1974).

Direct and constructive contempts distinguished. — Direct contempts are those committed in the court's presence and constructive contempts are those committed outside of the hearing or view of the judge. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

Type of contempt determines type of punishment. — The type of punishment to be imposed is the factor that decides whether a civil or criminal contempt has been committed. Thus, a civil contempt is generally intended to compel a party to comply with a lawful court order, while a criminal contempt is punitive in character and is enforced so that the authority of the law and the court will be vindicated. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

Fine imposed must inure to benefit of court and state. — A criminal contempt is a crime against the court as an agency of the state and not against a private litigant, and any fine imposed must therefore and of necessity inure to the benefit of the court and the state. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

Civil contempt. — During the dependency of a declaratory judgment action to establish rights under an easement, plaintiff used the road across defendants' property in violation of a court order; the district court acted within its jurisdiction in holding defendant in contempt of court and by imposing the punishment of forfeiture of the easement; the contempt proceeding was not rendered criminal even though the district court proceeded under this rule and utilized criminal procedure. The course of the proceedings demonstrated that the contempt proceeding was civil; the action was brought by a private party, rather than the state, to enforce compliance with the protections provided in the injunction. Stephens v. Lavitt, 239 P.3d 634 (Wyo. 2010).

Applied in Jaramillo v. State, 802 P.2d 872 (Wyo. 1990).

Stated in ELR v. State, 902 P.2d 696 (Wyo. 1995).

Cited in Honan v. Honan, 809 P.2d 783 (Wyo. 1991); Munoz v. Munoz, 39 P.3d 390 (Wyo. 2002).

Am. Jur. 2d, ALR and C.J.S. references. — 17 Am. Jur. 2d Contempt § 1 et seq.

Attorney's failure to attend court, or tardiness, as contempt, 13 ALR4th 122.

Contempt finding as precluding substantive criminal charges relating to same transaction, 26 ALR4th 950.

Oral communications insulting to particular state judge, made to third party out of judge's physical presence, as criminal contempt, 30 ALR4th 155.

Attorney's use of objectionable questions in examination of witness in state judicial proceedings as contempt of court, 31 ALR4th 1279.

Contempt based on violation of court order where another court has issued contrary order, 36 ALR4th 978.

Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence, 37 ALR4th 1004.

Failure to rise in state courtroom as constituting criminal contempt, 38 ALR4th 563.

Intoxication of witness or attorney as contempt of court, 46 ALR4th 238.

State court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order — anticipatory contempt, 81 ALR4th 1008.

Profane or obscene language by party, witness, or observer during trial proceedings as basis for contempt citation, 29 ALR5th 702.

Attorney's conduct as justifying summary contempt order under Rule 42(a) of the Federal Rules of Criminal Procedure, 58 ALR Fed 22.

Inherent power of federal district court to impose monetary sanctions on counsel in absence of contempt of court, 77 ALR Fed 789.

Media's dissemination of material in violation of injunction or restraining order as contempt—federal cases, 91 ALR Fed 270.

II. DIRECT.

Court can constitutionally punish contemptuous act in summary manner as long as the act is committed in the face of the court. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

When conduct identifiable as direct criminal contempt. — Conduct can be identified as direct criminal contempt even though the underlying action is of a civil nature, where there is no lawful order of the court with which a party has failed to comply and where the trial judge imposes a fine for punitive reasons rather

than for the purpose of vindicating the rights of a party. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

Court making summary disposition must observe procedural safeguards. — Where there has been a criminal contempt and the trial court makes a summary disposition under subdivision (b), it must be meticulously careful to observe procedural safeguards. Townes v. State, 502 P.2d 991 (Wyo.), reh. denied, 504 P.2d 46 (Wyo. 1972).

Nature of contempt to be explained. — A witness, who had been offered full use immunity, was cursorily warned in chambers that he would be found in contempt if he refused to testify the following day, but no attempt was made to fully explain either the nature or the effect of a finding of contempt, and the next day the district court made no attempt to question the witness about his refusal to be sworn or his understanding of the consequences of that refusal and, instead, the court angrily slapped him with a contempt charge and dismissed him from the courtroom. At the very least, the court should have asked the witness (whose counsel was not present) if he was attempting to assert his fifth amendment privilege and, if so, first to be sworn and then claim the privilege on the record; because the totality of the circumstances demonstrated that the court failed to adequately inform the witness of the nature and effect of a finding of contempt, the contempt judgment could not stand. Haselhuhn v. State, 740 P.2d 387 (Wyo. 1987).

Considerations in determining whether to uphold contempt citation. — Before contempt citation can be upheld, court must consider whether proper intent proved and whether complained of acts actually obstructed the proceedings. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

Certification requirements. — The order or certificate when filed must only specifically recite the facts upon which the conviction rests, and it must be clear, from the record, that the contemptuous conduct took place in the presence of the court. Horn v. District Court, 647 P.2d 1368 (Wyo. 1982).

III. INDIRECT.

Notice required to cite party for failure to advise attorney that case settled. — The trial court, which failed to issue any notice or contempt citation (now order to show cause), lacked jurisdiction to cite the plaintiff with criminal contempt for failure to advise his attorney that the case had been settled, with the result that the attorney issued a contempt citation against the defendant for failure to appear in court so that he could be examined concerning his income and assets. Tracy, Green & Co. v. Warner, 704 P.2d 1306 (Wyo. 1985).

Adequate notice and jury trial advice required. — Upon arraignment pursuant to subdivision (c)(4), compliance with the misdemeanor adequate notice criteria of Rule 11(b) and (c) is required and if the sentence is to be more than six months, advice regarding the right to a jury trial as a full arraignment process in terms similar to requirements for felony advisement is required. Skinner v. State, 838 P.2d 715 (Wyo. 1992).

Orders void where notice provisions not followed. — Contempt orders against unions and individual union members were null and void, where the district court failed to follow the necessary notice procedure in issuing the contempt citations (now orders to show cause) to the individual contemnors and the union contemnors. UMW, Local 1972 v. Decker Coal Co., 774 P.2d 1274 (Wyo. 1989).

Reasonable time for preparation of defense required under subdivision (c). — Where a defendant heard the essential facts constituting the contempt charge for the first time at a hearing to determine his guilt held six days after the contemptuous act occurred, according to subdivision (c) he should have been given a reasonable time for preparation of a defense. Townes v. State, 504 P.2d 46 (Wyo. 1972).

Clear violation to hold contemnor without bond. — By stating that the contemnor would be held without bond, the district court clearly violated the mandatory language of subdivision (c), and such language in the contempt order would therefore be stricken. Connors v. Connors, 769 P.2d 336 (Wyo. 1989).

Failure to follow due process requirements in contempt proceeding in dependency case. — Adjudication of neglect under Wyo. Stat. Ann. § 14-3-402 et seq., the Wyoming Child Protection Act, was entered against defendant for not providing adequate care necessary for the well-being of his minor children; the juvenile court ordered defendant to satisfy certain requirements within a specified period of time. Because the contempt proceeding against defendant was not conducted as an independent criminal action apart from the underlying juvenile case as required by Wyo. R. Crim. P. 42(c), with its own caption and docket number, the juvenile court never acquired jurisdiction to proceed; its judgment and sentence of contempt was null and void. BD v. State, 226 P.3d 272 (Wyo. 2010).

Rule 42.1. Remedial sanctions; payment for losses.

(a) *Initiation of proceedings.* — The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of any person aggrieved by a contempt of court in the criminal proceeding to which the contempt is related. The

proceeding shall be civil in nature and the Wyoming Rules of Civil Procedure shall apply.

(b) *Coercive remedies.* — If, after notice and hearing, the court finds that a person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in civil contempt of court and impose one or more of the following remedial sanctions:

(1) Imprisonment which may extend only so long as it serves a coercive purpose;

(2) An order designed to ensure compliance with a prior order of the court; or

(3) Any other remedial sanction other than the sanctions specified in paragraph (1) or (2) if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(c) *Compensatory remedies.* — The court may, in addition to the remedial sanctions set forth in subdivision (b), order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(d) *Other criminal or civil remedies.* — An action for or imposition of remedial sanctions under this rule shall not limit nor be limited by any other criminal or civil remedies.

(e) *Imposition of sanctions.* — A remedial sanction may be imposed by a justice of the supreme court, a judge or commissioner of a district court, a judge or magistrate of the circuit court, or municipal judge.

(Amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003.)

Quoted in Munoz v. Munoz, 39 P.3d 390 (Wyo. 2002).

Rule 43. Presence of defendant.

(a) *Presence required.* — The defendant shall be present at the initial appearance at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) *Continued presence not required.* — The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present:

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) After being warned by the court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) *Presence not required.* — A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) At a conference or argument upon a question of law; and

(4) At a reduction of sentence under Rule 35.

Compare. — Rule 43, Fed. Rules Cr. Proc. **Besides arraignment, defendant's pres-**

ence not required at pretrial proceedings. — This rule does not include a requirement of the defendant's presence at proceedings prior to trial, other than the arraignment. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Defendant's presence is not required at bench conferences on legal questions. Sandy v. State, 870 P.2d 352 (Wyo. 1994).

There is no right to be present at the jury instruction conference or the jury question conference; the defendant's presence is not required at conferences that encompass purely legal issues. Lobatos v. State, 875 P.2d 716 (Wyo. 1994).

And defendant may relinquish his right to be present at pretrial motions where he is represented by counsel and where the issue is only one of law. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Continuance hearing. — The constitutional guarantee that an accused has the right to be present during every stage of the criminal proceeding that is critical to the outcome if his presence would contribute to the fairness of the proceeding has been embodied into Wyo. Stat. Ann. § 7-11-202 and subsection (a) of this rule but in neither of those laws is it mandated that a defendant be present at a continuance hearing. Hauck v. State, 36 P.3d 597 (Wyo. 2001).

This rule and Rule 11 must be read together, adapting the Rule 11 procedure to the circumstance of a written consent. State v. Rosachi, 549 P.2d 318 (Wyo. 1976).

When accepting a guilty plea in defendant's absence, a court must read Rule 11(b), W.R.Cr.P., in conjunction with subdivision (c)(2) of this rule and adapt the procedure of the former rule so that defendants are afforded the fundamental protections outlined therein. State v. McDermott, 962 P.2d 136 (Wyo. 1998).

Due process not denied in trial proceeding in defendant's voluntary absence. — Where the defendant's absence from trial during the presentation of the state's case was a knowing and voluntary decision on his part, there was no denial of due process nor was there error in proceeding with the trial in the defendant's voluntary absence. Capwell v. State, 686 P.2d 1148 (Wyo. 1984).

Under following facts, reason and justification for the defendant's absence was sufficiently established and could not be held voluntary, such that continuing the trial in his absence resulted in prejudice: (1) the defendant suffered a heart attack during trial and, because of persistent chest pain, there was a risk of a major heart attack or cardiac complications occurring in the future; (2) the defendant was not present to assist and consult with his attorney when instructions on the law were submitted and during closing arguments; and (3) the defendant was not able to consult with or advise his attorney concerning the appropriate means for responding to the jury's inquiry, during deliberations, concerning the applicability of self-defense. Maupin v. State, 694 P.2d 720 (Wyo. 1985).

Waiver of right. — Defendant waived her right to be present at bench conferences involving prospective jurors, where both she and her counsel acquiesced in her absence while defense counsel represented her interests for that part of trial. Campbell v. State, 999 P.2d 649 (Wyo. 2000).

In-court identification, rendered impossible by defendant's own refusal to appear, was not necessary where state otherwise met its burden of identification. Capwell v. State, 686 P.2d 1148 (Wyo. 1984).

Instructions to jury. — Trial court's error in instructing jury to proceed with deliberations outside of presence of defendant and counsel, after jury had reported it was deadlocked, was not harmful error. Smith v. State, 959 P.2d 1193 (Wyo. 1998).

Even though the trial court erred in submitting an "Allen-type" instruction to the jury outside the presence of defendant and his counsel, the error was harmless because the instruction did not contain prohibited new information, was not coercive, and specifically called the jury's attention to previous instructions on the presumption of innocence and the state's burden of proof. Seeley v. State, 959 P.2d 170 (Wyo. 1998).

Trial judge erred in instructing the jurors in writing without bringing them into open court and defendant was not present; however, the record did not disclose that defendant's presence when the jury was given the supplemental instructions was critical where defendant could exert his psychological influence during all other phases of the trial and the bulk of the evidence was presented by the victim's testimony. Daves v. State, 249 P.3d 250 (Wyo. 2011).

Affirmance of conviction. — Where arraignment, trial and sentencing had already occurred, the defendant was not entitled to be present when the trial court entered the written order acknowledging the supreme court's decision affirming the underlying conviction. Smith v. State, 985 P.2d 961 (Wyo. 1999).

Absence from conference. — In a defendant's murder case, the defendant's right to be present was not violated, where (1) there was no indication that the defendant's absence from a conference on an objection was anything but voluntary, (2) the absence was for a brief period of time, (3) there was no indication that the defendant possessed any special information on the question that his counsel did not, and (4) there was no indication that the defendant's presence could have altered the judge's decision on the objection in any way. Belden v. State, 73 P.3d 1041 (Wyo. 2003), cert. denied, 540 U.S. 1165, 124 S. Ct. 1179, 157 L. Ed. 2d 1212 (2004).

Remanded for resentencing. — Because the inmate was not present at sentencing as required by Wyo. Stat. Ann. § 7-11-202 and

W.R.C.P. 43, the court remanded the case for re-sentencing even though the conviction was affirmed. Abeyta v. State, 78 P.3d 664 (Wyo. 2003).

Amended Sentence. — Defendant's presence was not required when the amended sentence was imposed because the district court's action was essentially ministerial and could not be considered critical to the outcome of the case. Hawes v. State, 368 P.3d 879 (Wyo. 2016).

Child witness competency hearing. — Where defendant was charged with the sexual abuse of two young boys, when defendant filed a motion for a competency/pretrial taint hearing, the district court violated his substantive constitutional rights to due process by denying rights under Wyo. R. Crim. P. 43 to be present at a hearing held to determine the competency of the minor victim who was to be a witness against defendant. Woyak v. State, 226 P.3d 841 (Wyo. 2010).

Applied in Montez v. State, 573 P.2d 34 (Wyo. 1977).

Cited in Skinner v. State, 33 P.3d 758 (Wyo. 2001), cert. denied, 535 U.S. 994, 122 S. Ct. 1554, 152 L. Ed. 2d 477 (2002); Penner v. State, 78 P.3d 1045 (Wyo. 2003).

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 997, 998.

Right of accused to be present at suppression hearing or at other hearing or conference between court and attorneys concerning evidentiary questions, 23 ALR4th 955.

Necessity and content of instructions to jury respecting reasons for or inferences from accused's absence from state criminal trial, 31 ALR4th 676.

Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case, 33 ALR4th 429.

Sufficiency of showing defendant's "voluntary absence" from trial for purposes of Criminal Procedure Rule 43, authorizing continuance of trial notwithstanding such absence, 141 ALR Fed 569.

23A C.J.S. Criminal Law §§ 1161 to 1172.

Rule 44. Right to assignment of counsel.

(a) *When right attaches.* —

(1) Any person financially unable to obtain adequate representation who is charged with a crime for which violation, incarceration as a punishment is a practicable possibility or with juvenile delinquency is entitled to appointed counsel. The right extends from the first appearance in the court through appeal.

(2) Any probationer, including an adjudged delinquent juvenile, who is alleged to have violated the terms of a probation order, for which violation incarceration is provided by law, and who is financially unable to obtain adequate representation is entitled to appointed counsel if, after being informed of the right, requests that counsel be appointed to represent him/her.

(3) A fugitive has a limited right to be represented in extradition proceedings as provided in W.S. 7-3-210.

(b) *Procedure.* — The procedures for implementing the right set out in subdivision (a) shall be those provided by W.S. 7-6-101 *et seq.* and by these rules. The appointment of counsel for delinquency cases is governed by W.S. 14-6-222 and, fees, costs and expenses for delinquency cases are governed by W.S. 14-6-235.

(1) The determination of a defendant's eligibility for appointed counsel is a judicial function. An attorney should be appointed at the earliest time after a defendant makes a request, but only after appropriate inquiry into the defendant's financial circumstances and a determination of eligibility.

(2) A defendant requesting appointed counsel must submit a financial affidavit or provide sworn testimony on the record detailing income, expenses, assets and liabilities and may be required to update the affidavit or testimony from time to time.

(3) The judicial officer shall advise any defendant who has requested appointed counsel that, to the extent of ability to do so, the defendant will be required to contribute to the cost of representation. At the time counsel is appointed, the judicial officer shall determine the defendant's ability to make monthly or other periodic payments and require the defendant to make such payments to the clerk of the court as a condition of the appointment.

(4) If at any time after appointment it appears to a judicial officer that a defendant is financially able to make payment, in whole or in part, for legal

services, the judicial officer shall require such payments or terminate the appointment.

(5) A separate order of appointment shall be entered as part of the record by the court for each defendant.

(6) After a hearing, a judicial officer may permit a defendant to withdraw a request for appointed counsel.

(7) If appointed counsel obtains information that a client is financially able to make payment in whole or in part for legal services in connection with his or her representation and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court and as [ask] that the person be required to contribute to the cost of representation or that the appointment be terminated.

(8) Appointed counsel shall represent the defendant at every stage from initial appearance through appeal; however, the appellate section of the public defender's office may be substituted for trial counsel to handle an appeal.

(c) *Joint representation.* — Whenever two or more defendants have been charged with offenses arising from the same or related transactions and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall order separate representation.

(d) *Rules establishing standard of indigency.* — Rule 44(d) is adopted as required by W.S. 7-6-103(c). A person is entitled to the appointment of counsel if, at the time counsel is needed, the person is unable to provide for the full payment of an attorney and all other necessary expenses of representation. In making a determination of eligibility, the judicial officer shall consider:

(1) The probable cost of representation given the number and severity of the offenses charged and the factual and legal complexity of the case.

(2) The defendant's income from all sources and the defendant's capacity to earn income.

(3) The expenses of the defendant's household and whether a spouse or roommate contributes or ought to contribute to those expenses.

(4) The defendant's responsibility for the support of others.

(5) The defendant's assets whether held individually or with others.

(6) The defendant's debts and the periodic payments due on the debts.

(7) The defendant's capacity to borrow money.

Uncertainty as to a defendant's eligibility for appointed counsel should be resolved in the defendant's favor. An erroneous determination of eligibility may be corrected at any time.

(e) *Compensation and expenses of appointed counsel.* —

(1) District, juvenile, and circuit courts shall generally appoint the public defender's office to represent indigent persons, but may, for good cause, appoint private counsel. Unless otherwise provided by ordinance, municipal courts shall appoint private counsel to be paid by the municipality.

(2) Private counsel designated by the public defender's office or by a judicial officer may be compensated at a rate not to exceed one hundred dollars ($100.00) per hour for the time expended in court and a rate not more than sixty dollars ($60.00) per hour and not less than thirty-five dollars ($35.00) per hour for time reasonably expended out of court in preparation or research.

(A) Payment of private counsel designated by the public defender's office shall be made by that office and approval by a judicial officer shall be neither

requested nor required. Transcripts and other extraordinary expenses and expert witness fees must be approved by the public defender's office prior to being incurred. Counsel shall make known to the public defender's office those cases which will be extended or complex.

(B) Payment for private attorneys appointed by the court must be approved by a judicial officer before being submitted to the public defender's office for payment. Vouchers (which are available in the public defender's office) and a supporting invoice detailing the services provided and expenses incurred must be submitted to the court for review. The judicial officer shall approve fees at the rates provided in this section for time necessarily expended and expenses necessarily incurred. Transcripts and other extraordinary expenses and expert witness fees must be approved by the court prior to being incurred. Counsel shall make known to the court and to the public defender's office those cases which will be extended or complex.

(3) If travel is necessary as part of the attorney's compensation, the court or the public defender's office must be immediately notified. Travel expenses may be allowed and shall be paid according to the state per diem rates.

(Amended July 22, 1993, effective October 19, 1993; amended June 30, 2000, effective July 1, 2000; amended May 8, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003; amended December 17, 2002, effective January 1, 2003; amended September 5, 2006, effective January 1, 2007.)

Compare. — Rule 44, Fed. Rules Cr. Proc.

The 2006 amendment, effective January 1, 2007, in (e)(2) increased fee amounts.

The first 2002 amendment, in (e)(1), deleted "justice of the peace courts" and made related changes.

The second 2002 amendment, in (e)(2), raised the cap on the compensation rate for private counsel from $50.00 to $60.00 per hour.

"Stage of the proceedings" defined. — A "stage of the proceedings" is a point in the proceedings in which an important aspect occurs or fails to occur. Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S. Ct. 2967, 64 L. Ed. 2d 841 (1980).

Scope of rule. — The trial itself is not the only critical stage of the proceedings for the purpose of effective representation of counsel, but that stage also includes arraignment, preliminary hearing, the initiation of adversary judicial criminal proceedings, custodial interrogation, post-indictment lineup and corporeal identification after the initiation of adversary judicial criminal proceedings. Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S. Ct. 2967, 64 L. Ed. 2d 841 (1980).

Multiple representation requires waiver, absence of conflict. — If the defendant insists on retaining an attorney who is representing another co-defendant, the judge must obtain a knowing and voluntary waiver of the right to be represented by an attorney free from any conflict of interest and determine that no real conflict exists. Kenney v. State, 837 P.2d 664 (Wyo. 1992).

No conflict of interest. — Although two public defenders were assigned to represent defendant and co-defendant, there was no conflict of interest because defendant was not aware that another public defender had been assigned to co-defendant and defendant's public defender. Asch v. State, 62 P.3d 945 (Wyo. 2003).

Attorney cannot represent "heavy" and "follower". — An attorney should not have undertaken joint representation where under the factual circumstances existent between the codefendants, one person likely was the "heavy" as the principal and the other constituted the "follower"; joint representation was sure to disfavor one or the other. Kenney v. State, 837 P.2d 664 (Wyo. 1992).

Four reasons for defendant's attorney to be present at preliminary hearing. — See Haight v. State, 654 P.2d 1232 (Wyo. 1982).

There is distinction between uncounselled failure to assert speedy-trial right and counselled one. Estrada v. State, 611 P.2d 850 (Wyo. 1980).

Revocation of probation. — Although subdivision (a)(2) of this rule limits the circumstances under which the court is required to appoint counsel in a probation revocation proceeding, a defendant is constitutionally entitled to court-appointed counsel in the specific circumstance when the proceeding includes sentencing. Nelson v. State, 934 P.2d 1238 (Wyo. 1997) (decided under prior law).

Defendant was not properly advised of her right to be represented by an attorney, and she did not voluntarily, knowingly, and intelligently waive her right to counsel, Wyo. R. Crim. P. 44(a)(2); defendant should have been advised that she had the right to consult with counsel before entering the plea, Wyo. R. Crim. P.

39(a)(3)(A), Wyo. Stat. Ann. § 7-6-106(a). Rodriguez v. State, 230 P.3d 1111 (Wyo. 2010).

Under Wyoming's judicial revocation procedure where the state is represented by a prosecutor and the rules of evidence apply to a portion of the proceedings, the Sixth Amendment requires appointment of counsel for indigent probationers when the indigent probationer was entitled to be represented by an attorney under § 7-6-104(a). An inescapable corollary to such a holding is the invalidation of subdivision (a)(2), in the context of judicial revocations. Pearl v. State, 996 P.2d 688 (Wyo. 2000) (decided prior to 2001 amendment to subdivision (a)(2)).

Failure to make reasonable examination. — Waiver of right to counsel was not voluntary where circuit court asked only the amount of petitioner's monthly income and then ordered him to sign a waiver of his right to be tried with assistance of counsel; the circuit court did not make a reasonable examination into petitioner's ability to pay for an attorney. Wilkie v. State, 56 P.3d 1023 (Wyo. 2002).

Appointment of counsel not required. — Court properly denied defendants' motions for appointment of counsel in their motions to correct illegal sentences because a motion to correct an illegal sentence was not a critical stage of criminal proceedings, and although defendants made uncorroborated claims about the deficiencies in the legal resources available to them in prison, they did not establish the actual injury required to demonstrate a violation of their constitutional right to access to courts. Gould v. State, 151 P.3d 261 (Wyo. 2006).

Applied in Auclair v. State, 660 P.2d 1156 (Wyo. 1983).

Cited in Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983); Long v. State, 745 P.2d 547 (Wyo. 1987); Parkhurst v. Shillinger, 128 F.3d 1366 (10th Cir. 1997); Penner v. State, 78 P.3d 1045 (Wyo. 2003).

Law reviews. — For note, "Constitutional Law — Right of Indigents to Counsel in Misdemeanor Cases. Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972)," see VIII Land & Water L. Rev. 343 (1973).

For case note, "Criminal Procedure — Fifth and Sixth Amendment Protections. Brown v. State, 661 P.2d 1024 (Wyo. 1983)," see XIX Land & Water L. Rev. 731 (1984).

For article, "Conflicts of Interest in Wyoming," see XXXV Land & Water L. Rev. 79 (2000).

Am. Jur. 2d, ALR and C.J.S. references. — Modern status of rules and standards in state courts as to adequacy of defense counsel's representation of criminal client, 2 ALR4th 27.

What statute of limitations governs damage action against attorney for malpractice, 2 ALR4th 284.

Waiver or estoppel in incompetent legal representation cases, 2 ALR4th 807.

Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial, 3 ALR4th 601.

Right of accused in criminal prosecution to presence of counsel at court-appointed or -approved psychiatric examination, 3 ALR4th 910.

Power of court to change counsel appointed for indigent, against objections of accused and original counsel, 3 ALR4th 1227.

Adequacy of defense counsel's representation of criminal client regarding argument, 6 ALR4th 16.

Adequacy of defense counsel's representation of criminal client regarding speedy trial and related matters, 6 ALR4th 1208.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 ALR4th 719.

Denial of, or interference with, accused's right to have attorney initially contact accused, 18 ALR4th 669.

Denial of accused's request for initial contact with attorney — cases involving offenses other than drunk driving, 18 ALR4th 743.

Waiver of right to counsel by insistence upon speedy trial in state criminal case, 19 ALR4th 1299.

Validity and efficacy of minor's waiver of right to counsel — modern cases, 25 ALR4th 1072.

Validity, construction, and application of state recoupment statutes permitting state to recover counsel fees expended for benefit of indigent criminal defendants, 39 ALR4th 597.

Relief available for violation of right to counsel at sentencing in state criminal trial, 65 ALR4th 183.

Ineffective assistance of counsel: misrepresentation, or failure to advise, of immigration consequences of guilty plea — state cases, 65 ALR4th 719.

Determination of indigency entitling accused in state criminal case to appointment of counsel on appeal, 26 ALR5th 765.

Circumstances giving rise to prejudicial conflict of interests between criminal defendant and defense counsel — federal cases, 53 ALR Fed 140.

What constitutes assertion of right to counsel following Miranda warnings — federal cases, 80 ALR Fed 622.

Rule 45. Time.

(a) *Computation.* — In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal

holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. Except for the time periods prescribed in Rules 5, 6, 12.1, 12.2, 12.3, 21, 32 and 46.1, when a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King, Jr./Wyoming Equality Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(b) *Enlargement.* — When an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect, but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35 except to the extent and under the conditions stated in them.

(c) *Motions and affidavits.* — A written motion, other than one which may be heard *ex parte,* and notice of the hearing thereof, shall be served not later than five days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(d) *Additional time after service by mail.* — Whenever a party has a right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served upon that party by mail, three days shall be added to the prescribed period.

(e) *Continued existence or expiration of term of court.* — The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any criminal action which has been pending before it.

(Amended July 22, 1993, effective October 19, 1993.)

Cross References. — As to legal holidays, see § 8-4-101.

Compare. — Rule 45, Fed. Rules Cr. Proc.

Rule read with Rule 41(e), relating to motion to suppress seized evidence. — See Blakely v. State, 542 P.2d 857 (Wyo. 1975).

Extension of time following expiration not allowed. — There can be no extension of a filing period which has already elapsed, and a valid order extending the time can only be made prior to the time allowed by a previous court order. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Stated in Vlahos v. State, 75 P.3d 628 (Wyo. 2003).

Cited in Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

Rule 46. Release from custody.

(a) *Prior to trial.* — Eligibility for release prior to trial shall be in accordance with Rules 46.1 and 46.3.

(b) *During trial.* — A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions, or the termination, of release are necessary

to assure such person's presence during the trial or to assure that such person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) *Pending sentence and notice of appeal.* — Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with Rule 46.2. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) *Pending determination of a petition to revoke probation.* — When a petition to revoke probation has been filed, the court may, in its discretion, admit the defendant to bail pending a hearing.

(e) *Justification of sureties.* — Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all the other liabilities of the surety. No bond shall be approved unless the surety thereon appears to be qualified.

(f) *Forfeiture of bail.* —

(1) Declaration. — If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. — The court may direct that a forfeiture be set aside in whole or in part, upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture.

(3) Enforcement. — When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. The obligors' liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. — After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2).

(g) *Exoneration of obligors.* — When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(h) *Supervision of detention pending trial.* — The court shall exercise supervision over the detention of defendants and witnesses within its jurisdiction pending trial for the purpose of eliminating all unnecessary detention. Each Monday and Thursday, or if Monday or Thursday is a holiday, the first working day following, the custodial officer shall make a report to the court listing each defendant and witness who has been in custody pending initial appearance, extradition proceedings, or a probation revocation hearing for a period in excess of 48 hours. The sheriff shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending arraignment or trial for a period in excess of 10 days. As to each witness so listed the attorney for the state shall make a statement of the reasons why such witness should not be released with or without the taking of a deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the state shall make a statement of the reasons why the defendant is still held in custody.

(Amended July 22, 1993, effective October 19, 1993.)

Compare. — Rule 46, Fed. Rules Cr. Proc.

Discretion to set aside a forfeiture of bail. — Because the record was not adequate for appellate review and revealed no adequate bases for the ultimate conclusion made by the district court that the surety should forfeit 70 percent of the bond posted on behalf of the defendant, the district court's order of partial forfeiture of bail was remanded with directions to develop the record with respect to the court's consideration of the facts of the case in view of the applicable criteria that must be considered and applied by a court when considering a motion from a surety to set aside forfeiture of a bond. Action Bailbonds v. State, 49 P.3d 1002 (Wyo. 2002).

Where the district court focused on defendant's previous failure to appear, the resulting inconvenience to the court and other participants in having to reset defendant's probation revocation hearing, and the surety's awareness of the high bond amount, the district court did not address the factors relevant under case law to determining a motion to set aside a forfeiture, and no adequate bases existed for appellate review of the district court's order of partial bond forfeiture, thereby necessitating a remand for development of the record. Northwest Bail Bonds, Inc. v. State, 50 P.3d 313 (Wyo. 2002).

Remission appropriate. — District court did not abuse its discretion by ordering the remission of 50 percent of forfeited bail bonds based on its consideration of all applicable factors under W.R.Cr.P. 46(f)(4), including the court's interest in ensuring the timely appearance of criminal defendants, the fact that defendants' conduct did not rise to the level of "willfulness," and the mitigating factors offered in favor of two sureties. Beagle v. State (In re Application of Action Bailbonds), 86 P.3d 1271 (Wyo. 2004).

Sentencing credit. — Where defendant was arrested for felony attempted larceny, he was granted a conditional release from pretrial custody under subsection (a) of this rule to participate in a residential substance abuse treatment facility; because defendant was not in official detention and was not subject to a charge of escape from official detention under Wyo. Stat. Ann. § 6-5-206(a), defendant was not entitled to credit against his prison sentence for that time period. Morrison v. State, 272 P.3d 321 (Wyo. Mar. 20, 2012).

Rule 46.1. Pretrial release.

(a) *Applicability of rule.* — All persons shall be bailable by sufficient sureties, except for capital cases when the proof is evident or the presumption great. Excessive bail shall not be required. When a person charged with the commission of a crime is brought before a court or has made a written application to be admitted to bail, a judicial officer shall order that such person be released or detained pending judicial proceedings, under this rule.

(1) Request for Release. — Within four hours after a person is confined to jail, the custodial officer shall advise the person of the right to file a written request with the court to be granted pretrial release. The custodial officer shall provide the necessary writing materials.

(A) No particular form of request for pretrial release shall be required and the request may be hand-written.

(B) The custodial officer shall endorse the date and time upon any written request for pretrial release and deliver it to the court:

(i) Immediately, if made during the court's regular hours; and

(ii) Without unnecessary delay, but in no event more than 72 hours.

(C) Except as provided for in (a)(2) below, all persons in custody who have made a request for pretrial release shall have the request considered by a judicial officer, with or without a hearing, without unnecessary delay, but in no event more than 72 hours. If the decision upon the request was made without a hearing and does not result in the person's release from custody, the judicial officer shall hold a hearing to reconsider the release decision. The confined person or the confined person's attorney shall have an opportunity to participate in the hearing without unnecessary delay, but in no more than 72 hours.

(D) If a request for pretrial release is presented to the court before criminal charges have been filed, it shall be docketed as a criminal case and if criminal charges are later filed they shall be filed in the same case.

(E) Rule 46.1(a)(1) does not apply to persons in custody upon a petition to revoke probation.

(2) Appearance Before Court. — Upon a person's first appearance before the court, and upon motion of either party, the Court may, for good cause shown, delay granting of bond for a period of time not to exceed 24 hours. In any event, the judicial officer shall order that, pending trial or the filing of charges, the person be:

(A) Released on personal recognizance or upon execution of an unsecured appearance bond, under subdivision (b); and

(B) Released on a condition or combination of conditions under subdivision (c).

(b) *Release on personal recognizance or unsecured appearance bond.* — The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a federal, state, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) *Release on conditions.* —

(1) If the judicial officer determines that the release described in subdivision (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person:

(A) Subject to the condition that the person not commit a federal, state, or local crime during the period of release; and

(B) Subject to the least restrictive further condition, or combination of conditions, which will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person:

(i) Remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court if the designated person is able reasonably to assure the judicial officer that the person will appear as required, and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from the use of alcohol, or controlled substances, as defined in W.S. 35-7-1002, *et seq.*, without a prescription by a licensed medical practitioner;

(x) Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) Execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(xii) Execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

(xiii) Return to custody for specified hours following release for employment, schooling, or other limited purposes;

(xiv) Execute a waiver of extradition; and

(xv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) *Factors considered.* — The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(e) *Contents of release order.* — In a release order issued under subdivision (b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest.

(f) *Presumption of innocence.* — Nothing in this rule shall be construed as modifying or limiting the presumption of innocence.

(Amended October 30, 1992, effective January 19, 1993; amended July 22, 1993, effective October 19, 1993; amended July 24, 2001, effective November 1, 2001.)

Bail not deniable because of flight risk. — The language of art. 1, § 14, Wyo. Const., provides without equivocation that all persons shall be bailable, and it must control the right to bail over this rule. The constitution does not permit denial of bail on the ground that the accused is considered to be a serious flight risk. Simms v. Obedekoven, 839 P.2d 381 (Wyo. 1992).

Court failed to provide due process. — Trial court erroneously increased defendant's jail sentence when it revoked probation and ordered defendant to appear to serve his jail sentence because the increase to the jail sentence was based on defendant's failure to appear and court did not follow due process procedural safeguards that are required in contempt hearings. Counts v. State, 899 P.2d 1341 (Wyo. 1995).

Rule 46.2. Post conviction release or detention.

(a) *Pending sentence.* — The court shall order that a defendant who has been found guilty of an offense and who is waiting imposition or execution of sentence be detained, unless the court finds that the defendant is not likely to flee or pose a danger to the

safety of any other person or the community if released under Rule 46.1(b) or (c). If the court makes such a finding, such court shall order the release of the defendant in accordance with Rule 46.1(b) or (c).

(b) *Pending appeal by defendant.* — The court shall order that a defendant who has been found guilty of an offense who is waiting and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released under Rule 46.1(b) or (c). If the court makes such findings, such judicial officer shall order the release of the defendant in accordance with Rule 46.1(b) or (c).

(Amended October 30, 1992, effective January 19, 1993.)

Court failed to provide due process. — Trial court erroneously increased defendant's jail sentence when it revoked probation and ordered defendant to appear to serve his jail sentence because the increase to the jail sentence was based on defendant's failure to appear and court did not follow due process procedural safeguards that are required in contempt hearings. Counts v. State, 899 P.2d 1341 (Wyo. 1995).

Sentencing credit. — Where defendant was arrested for felony attempted larceny, he was granted a conditional release from pretrial custody under subsection (a) of this rule to participate in a residential substance abuse treatment facility; because defendant was not in official detention and was not subject to a charge of escape from official detention under Wyo. Stat. Ann. § 6-5-206(a), defendant was not entitled to credit against his prison sentence for that time period. Morrison v. State, 272 P.3d 321 (Wyo. Mar. 20, 2012).

Am. Jur. 2d, ALR and C.J.S. references. — What constitutes sufficient statement required pursuant to Federal Rule of Appellate Procedure 9(b) by District Court concerning reasons for order regarding release or detention of defendant pending appeal in federal criminal cases, 151 ALR Fed 615.

Rule 46.3. Release or detention of material witness.

If, upon application filed by the state or the defendant and supported by oath or affidavit, it appears that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of Rule 46.1. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Wyoming Rules of Criminal Procedure.

(Amended October 30, 1992, effective January 19, 1993.)

Applicability to spouse. — Where defendant was on trial for aggravated assault and battery upon wife, wife was properly detained as a material witness by the state, as such was not a violation of due process, and wife's credibility was an issue for the jury to determine. Skinner v. State, 33 P.3d 758 (Wyo. 2001), cert. denied, 535 U.S. 994, 122 S. Ct. 1554, 152 L. Ed. 2d 477 (2002).

Rule 46.4. Sanctions for failure to appear or for violation of release order.

(a) *Contempt.* — Whoever having been released under Rules 46 through 46.4 knowingly fails to appear before a court as required by the conditions of release, fails to surrender for service of sentence pursuant to a court order, or fails to comply with any condition set by the court pursuant to Rule 46.1(c), may be punished for contempt. It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing, surrendering, or complying and that the person did not contribute to the creation of such circumstances in reckless disregard of

the requirement to appear, surrender, or comply and that the person appeared, surrendered or complied as soon as such circumstances ceased to exist.

(b) *Declaration of forfeiture.* — If a person fails to appear before a court as required, or fails to comply with any condition set by the court pursuant to Rule 46.1(c) and the person executed an appearance bond, the judicial officer may, regardless of whether the person has been charged with an offense under this rule, declare any property designated pursuant to Rule 46.1 to be forfeited to the State of Wyoming.

(c) *Violation of release condition.* — A person who has been released under Rule 46.1, 46.2, or Rule 46.3 and who has violated a condition of that release, is subject to a revocation of release and a prosecution for contempt of court.

(1) Revocation of Release. — The attorney for the state may initiate a proceeding for forfeiture of bond or revocation of an order of release by filing a motion with the court. A warrant may issue for the arrest of a person charged with violating a condition of release, and the person shall be brought before the court for a hearing. An order of revocation shall issue if, after a hearing, a judicial officer finds that there is:

(A) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(B) Clear and convincing evidence that the person has violated any other condition of release.

If an order of revocation issues, the judicial officer shall again treat the person in accordance with the provisions of Rule 46.1 and may amend the conditions of release accordingly.

(2) Prosecution for Contempt. — A prosecution for contempt may be brought under Rule 42 if the person has violated a condition of release.

A person charged with an offense who is released upon the execution of an appearance bond with a surety may be arrested by the surety, and if so arrested, shall be delivered promptly to a sheriff and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of this rule whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond. The person so committed shall be held in official detention until released pursuant to Rule 46.1 or sentenced upon a finding of contempt under Rule 42.

(Amended October 20, 1992, effective January 19, 1993; amended May 8, 2001, effective September 1, 2001.)

Editor's notes. — Former Rule 46.4, relating to review of release or detention order, was deleted by supreme court order dated October 30, 1992, effective January 19, 1993.

Court failed to provide due process. — Trial court erroneously increased defendant's jail sentence when it revoked probation and ordered defendant to appear to serve his jail sentence because the increase to the jail sentence was based on defendant's failure to appear and court did not follow due process procedural safeguards that are required in contempt hearings. Counts v. State, 899 P.2d 1341 (Wyo. 1995).

Forfeiture for conditions not related to appearance. — W.R.Cr.P. 46.4(b), as amended effective September 1, 2001, places sureties on notice that forfeiture of a bond could result from the violation of any bond condition outside the requirement that a defendant appear before the court when so directed. Action Bailbonds v. State, 49 P.3d 1002 (Wyo. 2002).

Rule 46.5. [Renumbered].

Editor's notes. — Former Rule 46.5 was renumbered as present Rule 46.4, effective January 19, 1993.

Rule 47. Motions.

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Compare. — Rule 47, Fed. Rules Cr. Proc.

Minimal probation revocation notice gives adequate notice. — Where notice to defendant of revocation of probation, as contained in a prosecuting attorney's motion, is minimal, but the defendant had been informed at his original sentencing in no uncertain terms that violations such as those enumerated in the motion would be grounds for revocation and the offenses are clearly described in the motion and it is clear from the motion that the offenses occurred in a certain county between defendant's original sentencing and the date of the motion, the defendant has adequate notice of the charge against him, particularly in view of his failure to move for additional information or to request a continuance. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Rule 48. Dismissal; speedy trial.

(a) *By attorney for the state.* — The attorney for the state may, by leave of court, file a dismissal of an indictment, information or citation, and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) *Speedy trial.* —

(1) It is the responsibility of the court, counsel and the defendant to insure that the defendant is timely tried.

(2) A criminal charge shall be brought to trial within 180 days following arraignment unless continued as provided in this rule.

(3) The following periods shall be excluded in computing the time for trial:

(A) All proceedings related to the mental illness or deficiency of the defendant;

(B) Proceedings on another charge;

(C) The time between the dismissal and the refiling of the same charge; and

(D) Delay occasioned by defendant's change of counsel or application therefor.

(4) Continuances exceeding 180 days from the date of arraignment may be granted by the trial court as follows:

(A) On motion of defendant supported by affidavit; or

(B) On motion of the attorney for the state or the court if:

(i) The defendant expressly consents;

(ii) The state's evidence is unavailable and the prosecution has exercised due diligence; or

(iii) Required in the due administration of justice and the defendant will not be substantially prejudiced; and

(C) If a continuance is proposed by the state or the court, the defendant shall be notified. If the defendant objects, the defendant must show in writing how the delay may prejudice the defense.

(5) Any criminal case not tried or continued as provided in this rule shall be dismissed 180 days after arraignment.

(6) If the defendant is unavailable for any proceeding at which the defendant's presence is required, the case may be continued for a reasonable time by the trial

court but for no more than 180 days after the defendant is available or the case further continued as provided in this rule.

(7) A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay.

(Amended May 8, 2001, effective September 1, 2001.)

Compare. — Rule 48, Fed. Rules Cr. Proc.

Editor's notes. *— Many of the cases below were decided under a prior version of this rule.*

Amendment of rule. — W.R.Cr.P. 48(b) is a procedural rule that does not effect the substantive constitutional right to a speedy trial; therefore, an amended version of W.R.Cr.P. 48(b) that allowed a longer time for trial applied to a kidnapping and sexual assault case, even though the amended Rule 48(b) went into effect after defendant's arrest, but before defendant's arraignment. Dean v. State, 77 P.3d 692 (Wyo. 2003).

Rule supersedes former statutory provisions which were interpreted as making effective art. 1, § 10, Wyo. Const., guaranteeing speedy trial, and constituting a legislative declaration of what is a reasonable delay. Boggs v. State, 484 P.2d 711 (Wyo. 1971).

Rule is mandatory and exclusive. — Because the supreme court adopted this rule by order, it is mandatory; this rule provides the exclusive framework for speedy trial analysis. McDermott v. State, 897 P.2d 1295 (Wyo. 1995).

The mandatory nature of this rule demands that counsel and the district courts be attentive to the requirements of the rule. It is the responsibility of the district court, counsel and the defendant to see that these requirements are fulfilled. Yung v. State, 906 P.2d 1028 (Wyo. 1995).

Executive, not judicial, department has power to decide whether to defer prosecution under § 7-13-301 (placing person found guilty, but not convicted, on probation). The exercise of that prosecutorial discretion is not subject to judicial review as long as any unjustifiable or suspect factors such as race, religion or other arbitrary or discriminatory classifications are not involved. Thus, the requirement that the state consent to the court's deferral of further proceedings and the placement of the defendant on probation without entry of a judgment of conviction does not infringe on the judicial department's sentencing power in violation of the principle of separation of powers explicitly stated in Wyo. Const., art. 2, § 1. Billis v. State, 800 P.2d 401 (Wyo. 1990).

Prosecutor may dismiss, refile charges. — The defendant's mere recitation that the prosecutor dismissed charges against defendant following the disqualification of a justice of the peace, and then refiled the charges before another justice of the peace, did not show prosecutorial misconduct. Kerns v. State, 920 P.2d 632 (Wyo. 1996).

Computing speedy trial when state dismisses and refiles. Defendant's right to a speedy trial under W.R.C.P. 48 was not violated by the delay between his March 8, 2001, arraignment and the State's dismissal and refiling of new charges on October 22, 2001. For purposes of Rule 48 analysis, the speedy trial time period did not commence until the date of the second arraignment. Berry v. State, 93 P.3d 222 (Wyo. 2004).

Speedy trial generally. — In order to determine whether speedy trial provisions of this rule were violated, court must look at reasons for delay in bringing defendant to trial. Germany v. State, 999 P.2d 63 (Wyo. 2000).

Although the burden for bringing the defendant to trial in a timely manner rests with the state, the rule does not require a court ordered continuance before excluding delay attributable to either a change in counsel or proceedings against the defendant on other charges. Taylor v. State, 17 P.3d 715 (Wyo. 2001).

Speedy-trial period begins anew on refiling. — Implied in the language of subdivision (b)(8) (now (b)(7)) permitting a new prosecution is that the 120-day (now 180-day) speedy-trial period will begin anew after each filing; to interpret otherwise would make it impossible to dismiss on the 120th (now 180th) day as required by subdivision (b)(6) (now (b)(5)) and later recharge as allowed by subdivision (b)(8) (now (b)(7)) because there would be no time remaining between a new arraignment and the trial. Hall v. State, 911 P.2d 1364 (Wyo. 1996).

Right to speedy trial not applicable to retrials. — Subdivision (b) of this rule does not apply to retrials, and therefore prosecution did not violate former subdivision (b)(5) (deleted) when it failed to seek leave to continue defendant's retrial to a date more than six months from his arraignment. Newport v. State, 983 P.2d 1213 (Wyo. 1999).

Dismissal improper. — In defendant's aggravated assault case, after declaring a mistrial, a court erred by dismissing the case with prejudice where no speedy trial violation had occurred up to the point when the district court granted the mistrial and dismissed the case with prejudice. The district court's conclusion that any second trial would necessarily violate defendant's right to a speedy trial was premature. State v. Newman, 88 P.3d 445 (Wyo. 2004).

Motion to dismiss properly denied. — Trial court did not err under Wyo. R. Crim. P. 48(a) in denying the State's pretrial motion to

dismiss an information without prejudice because defendant could not construct an injury to the defense strategy based upon the trial court's insistence that the case proceed to trial in accordance with the planned schedule for that trial and in a manner that protected defendant's rights vis-a-vis Wyo. R. Evid. 404(b) evidence. Graham v. State, 247 P.3d 872 (Wyo. 2011).

Right to speedy trial denied. — Where defense counsel at arraignment on May 9, 1972, suggested to the trial court that a trial date could be set when his motions were heard; the court then advised that it could not tell definitely when a jury would be called, and that it could be "this summer, but in the greater likelihood it is going to be this fall"; the prosecutor did nothing to expedite trial; and nothing intervened from June, 1972, to August, 1973, to cause a delay in trial which began in September, 1973; the state, not having shown good cause for the delay or that it was necessary under subdivision (b), deprived the defendants of their state and federal constitutional right to a speedy trial. Stuebgen v. State, 548 P.2d 870 (Wyo. 1976).

Where defendant had filed a timely demand for a speedy trial and neither the district court nor the prosecution took any steps to reset the trial date, file a request for continuance, state the reasons why a continuance was necessary, or grant a continuance prior to conclusion of the 120-day (now 180-day) period, denial of defendant's motion to dismiss was error. Detheridge v. State, 963 P.2d 233 (Wyo. 1998).

Where, under former W.R.Cr.P. 48(b), defendants' joint trial was not set within 120 days (now 180 days) of arraignment, no motions for continuance beyond 120 days were made as provided by the rule, and the district court did not seek approval from the Wyoming Supreme Court to set the joint trial beyond 6 months from the date of arraignment, but defendants did not make demand for a speedy trial nor show prejudice by the delay, dismissal without prejudice was appropriate. Rodiack v. State, 55 P.3d 1 (Wyo. 2002).

Right to speedy trial not denied. — Sixty-eight days from the return of the record to the district court, following appeal from dismissal of the charge, to trial was not unreasonable, and this period of time did not violate any rule regarding a speedy trial. Sodergren v. State, 715 P.2d 170 (Wyo. 1986).

In defendant's conspiracy to commit aggravated robbery case, defendant's speedy trial rights were not violated where, despite the notice resetting the trial, alerting defendant that his case was set behind a number of others, and requiring him to file a statement of prejudice if he objected to delaying the trial, defendant filed no objection or statement of prejudice when his case was not tried within 120 days. Vlahos v. State, 75 P.3d 628 (Wyo. 2003) (decided under former version of the rule).

In defendant's conspiracy to commit aggravated robbery case, defendant's speedy trial rights were not violated where defense counsel represented to the trial court and the State that defendant wanted the trial continued beyond the six-month period, representations the trial court relied on in continuing the trial. Vlahos v. State, 75 P.3d 628 (Wyo. 2003) (decided under former version of the rule).

Defendant's right to a speedy trial was not violated where, calculating the days from October 21, 2004, the date defendant first raised the issue of his mental illness, to June 7, 2005, the date the district court finally resolved the issue once and for all, 230 days elapsed. Of the total 337 days of delay, those 230 were excludable under Wyo. R. Crim. P. 48, thus resulting in a remainder of 107 days; that 107 being well under the 180-day limit of Rule 48. Potter v. State, 158 P.3d 656 (Wyo. 2007).

No speedy-trial violation from continuance. — Under the then-applicable version of W.R.Cr.P. 48, there was no speedy-trial violation from a continuance, where (1) a defendant initially was scheduled for trial on August 13th, 119 days after the defendant's arraignment, and within the then-existing 120-day standard, but the prosecution moved for a continuance because of a conflict with oral arguments before the appellate court on another case, (2) the defendant did not object to the motion, and (3) the defendant's trial was held approximately 2 months later. Sarr v. State, 65 P.3d 711 (Wyo. 2003), aff'd, 85 P.3d 439 (Wyo. 2004).

Defendant's right to a speedy trial was not denied where the jury trial was set within a 120-day (now 180-day) period and was continued for neutral reasons at the state's request within the 180-day deadline, after a hearing, and where defendant failed to prove prejudice based on pretrial anxiety and pretrial incarceration. Sides v. State, 963 P.2d 227 (Wyo. 1998).

Defendant's right to a speedy trial was not violated where, within 354 days from arrest to trial, he received two preliminary hearings and was arraigned twice, six motion hearings were held, he went through two attorneys and four judges, and was evaluated at the state hospital for his competence to stand trial. Vargas v. State, 963 P.2d 984 (Wyo. 1998).

Right to speedy trial not denied.— Where the district court originally scheduled defendant for trial 43 days after arraignment and defense counsel requested several continuances due to health problems, resulting in a delay of 253 days before the start of trial, there was no speedy trial violation. The days that defense counsel was hospitalized were excluded from the speedy trial period. Berry v. State, 93 P.3d 222 (Wyo. 2004).

Because only 105 days passed between defendant's arraignment and his conditional plea,

his right to a speedy trial under this rule was not violated. Almada v. State, 994 P.2d 299 (Wyo. 1999).

Defendant's right to speedy trial was not violated despite passage of 174 days between his arraignment and trial, since first continuance was "required in the due administration of justice" because of crowded nature of trial court's docket, and second continuance was granted at defense attorney's request. Germany v. State, 999 P.2d 63 (Wyo. 2000).

There was no speedy trial violation where the defendant was originally arraigned on September 29, 1997, he waived his right to a speedy trial in those proceedings, and the charges associated with that arraignment were dismissed on July 6, 1998, then the defendant was arraigned on newly filed charges on September 21, 1998, and he was tried during the time period December 14 through 17, 1998. Alicea v. State, 13 P.3d 693 (Wyo. 2000).

The defendant's right to a speedy trial was not violated when the district court granted a continuance resulting in the trial starting 140 days after arraignment where the state requested the continuance in response to the defendant's complaint that he had not received timely notice of the intent of the state to introduce evidence of prior bad acts, a hearing disclosed that notification was provided promptly after the state learned that the witness was available, and the district court determined that a continuance should be granted to permit the defendant to evaluate the evidence and prepare to meet it. Wilson v. State, 14 P.3d 912 (Wyo. 2000).

The defendant's right to speedy trial was not violated, notwithstanding a 165 day period between arraignment and trial, where 28 days was excludable because the parties stipulated to and jointly requested a continuance for the purpose of further discussing a plea agreement, and the additional delay beyond 120 (now 180) days was caused by the defendant's arrest on other charges which necessitated a change in counsel. Taylor v. State, 17 P.3d 715 (Wyo. 2001).

Even though defendant was originally indicted on a murder charge in 1980, yet not brought to trial until 2004, defendant's right to a speedy trial under Wyo. R. Crim. P. 48(b) was not violated, where defendant expressly waived the speedy trial requirements of the rule. Humphrey v. State, 185 P.3d 1236 (Wyo. 2008).

This rule not exclusive on question of speedy trial. — It is possible for a defendant to be tried within time limits of this rule and still suffer a constitutional deprivation due to delay which seriously prejudices his defense. Jennings v. State, 4 P.3d 915 (Wyo. 2000).

Good faith in moving to dismiss. — Because it was unclear whether the State acted in good faith in moving to dismiss, the district court was directed to conduct such proceedings as were necessary to determine whether the State acted in bad faith in seeking dismissal; docket pressure alone did not permit a district judge to deny the State's motion, especially since disservice to the public interest had to be found, if at all, in the State's motive, because district judges historically sat for each other as necessary. State v. Bridger, — P.3d —, 2014 Wyo. LEXIS 193 (Wyo. 2014).

Subtraction of delay attributable to defendant. — The government did not bear the blame for delays following defendant's motions for a change in judges and objecting to extending the speedy trial date, and these delays were subtracted from the computation of the time between the date of arrest and the time of trial. McDaniel v. State, 945 P.2d 1186 (Wyo. 1997).

Applied in Hogan v. State, 908 P.2d 925 (Wyo. 1995); Kleinschmidt v. State, 913 P.2d 438 (Wyo. 1996).

Quoted in Shafsky v. City of Casper, 487 P.2d 468 (Wyo. 1971); Robinson v. State, 627 P.2d 168 (Wyo. 1981).

Stated in Blankinship v. State, 974 P.2d 377 (Wyo. 1999).

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983); Smith v. State, 871 P.2d 186 (Wyo. 1994); Walters v. State, 87 P.3d 793 (Wyo. 2004).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

For article, "Juvenile Injustice in Wyoming," see, 4 Wyo. L. Rev. 669 (2004).

Am. Jur. 2d, ALR and C.J.S. references. — Propriety of court's dismissing indictment or prosecution because of failure of jury to agree after successive trials, 4 ALR4th 1274.

Continuances at instance of state public defender or appointed counsel over defendant's objections as excuse for denial of speedy trial, 16 ALR4th 1283.

Application of speedy trial statute to dismissal or other termination of prior indictment or information and bringing of new indictment or information, 39 ALR4th 899.

When is dismissal of indictment appropriate remedy for misconduct of government official, 57 ALR Fed 824.

Rule 49. Service and filing of papers.

(a) *Service; when required.* — Written motions other than those which are heard *ex parte,* written notices and similar papers shall be served upon each of the parties.

(b) *Service; how made.* — Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided by the Wyoming Rules of Civil Procedure.

(c) *Notice of orders.* — Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall mail to each party a notice thereof and shall make a note on the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

(d) *Filing.* — Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

Compare. — Rule 49, Fed. Rules Cr. Proc.

Am. Jur. 2d, ALR and C.J.S. references. — 61B Am. Jur. 2d Pleading §§ 899 to 904.

Rule 50. Calendars.

The district courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

Compare. — Rule 50, Fed. Rules Cr. Proc.

Rule 51. Exceptions unnecessary.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which that party desires the court to take or that party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party.

Compare. — Rule 51, Fed. Rules Cr. Proc.

Where no objection was made to testimony, defendant cannot be heard to complain on appeal. Loddy v. State, 502 P.2d 194 (Wyo. 1972), cert. denied, 414 U.S. 1134, 94 S. Ct. 877, 38 L. Ed. 2d 760 (1974).

Unobjected to failure to give instruction nonreversible unless plain or fundamental error. — Where record reveals the offer of an instruction concerning testimony of character witnesses, but it is silent as to any objection by counsel to the judge's refusal to give such, the Supreme Court will not consider the contention of a denial of a fair trial unless the failure to give such instruction was plain or fundamental error. Elam v. State, 578 P.2d 1367 (Wyo. 1978).

Applied in Connor v. State, 537 P.2d 715 (Wyo. 1975).

Quoted in State v. Keffer, 860 P.2d 1118 (Wyo. 1993).

Rule 52. Harmless error and plain error.

(a) *Harmless error.* — Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) *Plain error.* — Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Cross References. — As to harmless error, see Rule 9.04, W.R.A.P. As to plain error, see Rule 9.05, W.R.A.P.

Compare. — Rule 52, Fed. Rules Cr. Proc.

I. GENERAL CONSIDERATION.

Effect on substantial rights. — Whether prosecutorial misconduct is reviewed on the basis of harmless error under subdivision (a) or on the basis of plain error under subdivision (b) the focus is whether such error affected the accused's substantial rights. Earll v. State, 29 P.3d 787 (Wyo. 2001).

Whether prosecutorial misconduct is reviewed on the basis of harmless error under W.R.C.P. 52(a) and W.R.A.P. 9.04 or on the basis of plain error under W.R.C.P. 52(b) and W.R.A.P. 9.05, an appellate court focuses on whether such error affected the accused's substantial rights. Before an appellate court will hold that an error has affected an accused's substantial right, thus requiring reversal of a conviction, it must conclude that, based on the entire record, a reasonable possibility exists that, in the absence of the error, the verdict might have been more favorable to the accused. White v. State, 80 P.3d 642 (Wyo. 2003).

The adoption of this rule is procedural. Hays v. State, 522 P.2d 1004 (Wyo. 1974).

And the substantive law as it existed in this state was in no manner altered or diminished thereby. Hays v. State, 522 P.2d 1004 (Wyo. 1974).

Failure to object considered as a waiver of whatever error is said to have occurred at trial, unless some plain and fundamental error was committed. Leeper v. State, 589 P.2d 379 (Wyo. 1979); Bradley v. State, 635 P.2d 1161 (Wyo. 1981).

Failure to timely interpose an objection constitutes a waiver, unless the misconduct is so flagrant as to constitute plain error. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

An inexcusable and unreasonably delayed objection may constitute a waiver of any error. Shaffer v. State, 640 P.2d 88 (Wyo. 1982).

Must satisfy "harmless error" even if "plain error" criteria met. — When review is sought under the plain error doctrine the Supreme Court must be able to discern from the record, without resort to speculation or equivocal inference, what occurred at trial, that is, it is entitled to know the particular facts. Further, the proponent of plain error must demonstrate the existence of a clear and unequivocal rule of law which the particular facts transgress in a clear and obvious, not merely arguable, way. If these criteria are met, the error or defect must adversely affect some substantial right of the accused in order to avoid the application of the harmless error concept procedurally expressed in subdivision (a). Hampton v. State, 558 P.2d 504 (Wyo. 1977); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

Applied in Deeter v. State, 500 P.2d 68 (Wyo. 1972); Newell v. State, 548 P.2d 8 (Wyo. 1976); Stambaugh v. State, 613 P.2d 1237 (Wyo. 1980); MacLaird v. State, 718 P.2d 41 (Wyo. 1986); Summers v. State, 725 P.2d 1033 (Wyo. 1986), aff'd, 731 P.2d 558 (Wyo. 1987); Sanchez v. State, 751 P.2d 1300 (Wyo. 1988); Britt v. State, 752 P.2d 426 (Wyo. 1988); Ramos v. State, 806 P.2d 822 (Wyo. 1991); Cardenas v. State, 811 P.2d 989 (Wyo. 1991); Wright v. State, 851 P.2d 12 (Wyo. 1993); Kenyon v. State, 986 P.2d 849 (Wyo. 1999); Ellison v. State, 3 P.3d 845 (Wyo. 2000); Strickland v. State, 94 P.3d 1034 (Wyo. 2004); Cooper v. State, 174 P.3d 726 (Wyo. 2008).

Quoted in Connolly v. State, 610 P.2d 1008 (Wyo. 1980); Buhrle v. State, 627 P.2d 1374 (Wyo. 1981); Aguilar v. State, 764 P.2d 684 (Wyo. 1988).

Stated in Martin v. State, 157 P.3d 923 (Wyo. 2007).

Cited in Leitel v. State, 579 P.2d 421 (Wyo. 1978); Jackson v. State, 624 P.2d 751 (Wyo. 1981); Gale v. State, 792 P.2d 570 (Wyo. 1990); Warhawk v. State, 849 P.2d 1326 (Wyo. 1993); Candelaria v. State, 895 P.2d 434 (Wyo. 1995), overruled on other grounds, Allen v. State, 43 P.3d 551 (Wyo. 2002); Johnson v. State, 930 P.2d 358 (Wyo. 1996); Kolb v. State, 930 P.2d 1238 (Wyo. 1996); O'Brien v. State, 45 P.3d 225 (Wyo. 2002); Williams v. State, 54 P.3d 248 (Wyo. 2002); Seward v. State, 76 P.3d 805 (Wyo. 2003); Davis v. State, 117 P.3d 454 (Wyo. 2005); Jones v. State, 132 P.3d 162 (Wyo. 2006); Seymore v. State, 152 P.3d 401 (Wyo. 2007); Cooper v. State, 174 P.3d 726 (Wyo. 2008); Majors v. State, 252 P.3d 435 (Wyo. 2011); Tucker v. State, 245 P.3d 301 (Wyo. 2010).

Law reviews. — For case note, "Wyoming's New Missing Witness Rule. Seyle v. State, 584 P.2d 1081 (Wyo. 1978)," see XIV Land & Water L. Rev. 569 (1979).

For case note, "Criminal Procedure — Improper Comment Upon Post-Arrest Silence: Wyoming Returns to the Prejudicial Per Se Rule. Westmark v. State, 693 P.2d 220 (Wyo. 1984)," see XXI Land & Water L. Rev. 231 (1986).

For case note, "Criminal Procedure — The Cumulative-Effect Approach to Plain Error Analysis. Schmunk v. State, 714 P.2d 724 (Wyo. 1986)," see XXII Land & Water L. Rev. 585 (1987).

Am. Jur. 2d, ALR and C.J.S. references. — Counsel's reference, in presence of sequestered witness in state criminal trial, to testimony of another witness as ground for mistrial or reversal, 24 ALR4th 488.

Emotional manifestations by victim or family of victim during criminal trial as ground for reversal, new trial or mistrial, 31 ALR4th 229.

Failure to object to improper questions or comments as to defendant's pretrial silence or failure to testify as constituting waiver of right

to complain of error — modern cases, 32 ALR4th 774.

What constitutes harmless or plain error under Rule 52 of the Federal Rules of Criminal Procedure -- Supreme Court cases, 157 ALR Fed 521.

II. HARMLESS ERROR.

Constitutional errors must be proven harmless beyond reasonable doubt. — Before a federal constitutional error can be held harmless, the burden is on the state to demonstrate, and the court must be able to declare a belief, that it was harmless beyond a reasonable doubt. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

But few constitutional violations can never be classified as harmless. — There are but few constitutional violations so basic that infraction can never be classed as harmless error. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Error harmless where no prejudice. — The trial court's error in dismissing the defendant's pretrial motion for the reason that he was not present at the hearing on the motion is harmless where no prejudice results. Weddle v. State, 621 P.2d 231 (Wyo. 1980).

Where defendant fired two shots at police officers and was subsequently convicted of aggravated assault with a deadly weapon, even assuming, for purposes of defendant's appeal of the habitual offender charge, validity of alleged errors that he was denied due process and a fair trial, that his pretrial motion to dismiss the habitual offender charge was improperly denied, and that there was prosecutorial misconduct, defendant failed to show that he was prejudiced by those errors; his belief that his sentence would have been more lenient if he pled guilty was purely speculative, ignored the district court's duty to consider the crime and its circumstances, and disregarded the fact that the officers' testimony would have come before the district court at sentencing even if defendant had pled guilty to the aggravated assault charge. Hopson v. State, 130 P.3d 494 (Wyo. 2006).

Even if a district court erred by admitting testimony concerning the events surrounding an arrest in violation of Wyo. R. Evid. 402 and Wyo. R. Evid. 403, there was no reversible error since defendant did not show that the error was prejudicial or that a substantial right was adversely affected. Gabbert v. State, 141 P.3d 690 (Wyo. 2006).

In a case where defendant was charged with being an accessory before the fact to an arson, several statements relating to defendant's involvement were properly introduced into evidence under Wyo. R. Evid. 801(d)(2)(E) since they were made during and in the furtherance of a conspiracy; it did not matter that the persons testifying were not members of the conspiracy. Even though some hearsay testimony was admitted regarding defendant's motive, there was no harm since the evidence was cumulative of other testimony offered. Callen v. State, 192 P.3d 137 (Wyo. 2008).

Juror selection error must be harmful. — In defendant's sexual exploitation case, although the trial court erred by denying a challenge for cause to a juror because there was no statement from the juror that he would be able to consider the case only on the evidence presented in court under the law, as instructed, without regard to his stated bias, the error was not prejudicial to defendant. There was nothing to indicate that any of the jurors who served on the panel were not qualified to serve. All of the jurors including the two identified by defendant as likely recipients of a peremptory challenge if he had had one available were passed for cause. Since there is no demonstration that the jury was not impartial and that defendant was denied a fair trial, he could not meet his burden of showing harmful error. Klahn v. State, 96 P.3d 472 (Wyo. 2004).

Defendant's convictions for possession of methamphetamine with intent to deliver were proper because the supreme court was unable to conclude that the jury selected violated the crux of the random selection requirement, although it might not have been fully faithful to the spirit of that time-honoured standard. To the extent that its use was an improper deviation from what the governing statutes required, the error, if any, was harmless because the supreme court was unable to identify an irregularity that affected defendant's substantial rights. White v. State ex rel. Wyo. DOT, 210 P.3d 1096 (Wyo. 2009).

Errors in instructions not injurious or prejudicial are not cause for reversal. Mainville v. State, 607 P.2d 339 (Wyo. 1980).

An error must be "injurious or prejudicial" to warrant reversal, and it is the burden of the party appealing to establish the injurious or prejudicial nature of the error. Roderick v. State, 858 P.2d 538 (Wyo. 1993).

For error to be regarded as harmful there must be a reasonable possibility that in the absence of the error the verdict might have been more favorable to the defendant. Reeder v. State, 515 P.2d 969 (Wyo. 1973); Hoskins v. State, 552 P.2d 342, reh. denied, 553 P.2d 1340 (Wyo. 1976), cert. denied, 430 U.S. 956, 97 S. Ct. 1602, 51 L. Ed. 2d 806 (Wyo. 1977); Trujillo v. State, 750 P.2d 1334 (Wyo. 1988); Miller v. State, 755 P.2d 855 (Wyo. 1988).

A nonconstitutional error in admission of evidence is harmless when a defendant's substantial rights are not affected. The proper inquiry is whether a reasonable probability exists that, but for the error, the verdict may have been more favorable to the defendant. Kerns v. State, 920 P.2d 632 (Wyo. 1996).

An error is harmful if there is a reasonable possibility that the verdict might have been more favorable to the defendant if the error had

never occurred. To demonstrate harmful error, the defendant must show prejudice under circumstances which manifest inherent unfairness and injustice, or conduct which offends the public sense of fair play. Skinner v. State, 33 P.3d 758 (Wyo. 2001), cert. denied, 535 U.S. 994, 122 S. Ct. 1554, 152 L. Ed. 2d 477 (2002).

Variance not prejudicial error. — Where there is a variance in the information in that it alleges that a certain person filled out the check which was later forged and passed, where this variance also appears in an instruction to the jury concerning the elements of the crime, but where the evidence is clearly in conflict, this fact alone is not so prejudicial as to require reversal. Channel v. State, 592 P.2d 1145 (Wyo. 1979).

Admission of expert testimony harmless. — Admission of battered woman syndrome expert's testimony on separation violence was erroneous, but due to the substantial amount of evidence of the murder defendant's guilt, the error was harmless. Ryan v. State, 988 P.2d 46 (Wyo. 1999).

Admission of irrelevant testimony harmless error. — Testimony from defendant's former employer that she fired him three years previous because he was in a physical altercation with another employee and from a former co-employee regarding occasional derogatory comments defendant made was not relevant to prove or disprove any of the elements of first-degree murder or its lesser-included offenses, and the trial court abused its discretion by allowing the testimony into evidence; however, the error was harmless where (1) defense counsel effectively neutralized the suggestion that defendant was violent or prone to vengeance on the cross-examination of both witnesses, (2) defendant failed to show how he was prejudiced by the alleged improper testimony, and (3) the jury heard defendant's own statement to the police wherein he admitted he shot the victim in the face after an argument concerning his giving the victim a meager tip for the delivery of a pizza. Wilks v. State, 49 P.3d 985 (Wyo. 2002).

Prosecutorial failure to permit discovery harmless where records received in time for use. — The defendant's claim of prosecutorial misconduct relating to discovery of the jurors' arrest records was without foundation because an order was never entered providing for discovery. Without such an order, the prosecutor had no general obligation to permit discovery and could not have abused a nonexistent obligation. Moreover, the defendant received the records in time for use during voir dire, and without a showing of prejudice, what occurred was harmless. Capshaw v. State, 714 P.2d 349 (Wyo. 1986).

Prosecutorial misconduct required reversal. — Prosecutor's repeated attempts to introduce evidence of prior bad acts, combined with the prosecutor's repetition of inaudible testimony from the state's prime witness, constituted prosecutorial misconduct requiring reversal and remand for a new trial. Simmons v. State, 72 P.3d 803 (Wyo. 2003).

Although a prosecutor committed misconduct by asking defendant "were they lying" questions, the error was harmless because the circumstantial evidence contradicted defendant's testimony and the evidence was sufficient to sustain the convictions even taking into account the prejudicial effect of the prosecutor's cross-examination. Jensen v. State, 116 P.3d 1088 (Wyo. 2005).

Prosecutorial misconduct did not require reversal. — Under the harmless error and plain error standards of review, a claim of prosecutorial misconduct regarding the questioning of witnesses, the use of victim impact testimony, and an alleged misstatement of evidence did not amount to reversible error since no prejudice was shown where defendant did not meet the burden of establishing that the outcome of the trial would have been different absent the challenged conduct. Gabbert v. State, 141 P.3d 690 (Wyo. 2006).

Court not deprived of jurisdiction merely because case prosecuted by nonadmitted attorney. — The appearance and prosecution of a case by a deputy county attorney who is not then a member of the Wyoming State Bar does not deprive the trial court of jurisdiction of the offense charged when the defendant is in no manner prejudiced. Dotson v. State, 712 P.2d 365 (Wyo. 1986).

Other than on constitutional questions, error in admission of evidence harmless if the facts shown by that evidence are already before the jury through other properly admitted evidence. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Inference of prior wrongdoing not material error. — Where certain testimony may have raised an inference or implication of prior wrongdoing that was emphasized on cross-examination, but the defendants denied the activity on direct and the jury was instructed to disregard such evidence, it must be assumed that no material and prejudicial error was committed. Madrid v. State, 592 P.2d 709 (Wyo. 1979).

Prohibition against counsel eliciting defendant's prior convictions. — The trial court's erroneous ruling that defense counsel could not elicit the fact of the defendant's prior convictions upon direct examination was an error of constitutional magnitude, but was nonetheless harmless error under the totality of all the evidence. Gentry v. State, 806 P.2d 1269 (Wyo. 1991).

Not error to refuse requested instructions which are otherwise covered by other instructions, even though the principles embodied are correct. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Harmless error applied to limiting in-

structions. — Established rules with regard to harmless error should be applied in cases which involve limiting instructions. Nava v. State, 904 P.2d 364 (Wyo. 1995).

Objection to supplemental instruction. — Any prejudice to defendant by losing an opportunity to enter an objection to a supplemental instruction at the time given was cured by waiver of the county and prosecuting attorney and the fact that the trial judge entertained the objection on a motion for new trial and treated it as timely. Hoskins v. State, 552 P.2d 342, reh. denied, 553 P.2d 1390 (Wyo. 1976), cert. denied, 430 U.S. 956, 97 S. Ct. 1602, 51 L. Ed. 2d 806 (Wyo. 1977).

Failure to give instruction as requested under Rule 105, W.R.E. is reversible error, especially where the state's evidence is not particularly strong and no case for harmless error can be justified. Channel v. State, 592 P.2d 1145 (Wyo. 1979), modified by Nara v. State, 904 P.2d 364 (Wyo. 1995).

III. PLAIN ERROR.

A. In General.

Application of subdivision (b) must be exercised cautiously and only in exceptional circumstances. Downs v. State, 581 P.2d 610 (Wyo. 1978).

Plain error will not be conferred gratuitously, but only in the rare circumstances warranting its sovereign application. Benson v. State, 571 P.2d 595 (Wyo. 1977).

Plain error rule is to be applied only in exceptional circumstances. Leeper v. State, 589 P.2d 379 (Wyo. 1979).

Plain error doctrine to be exercised cautiously and only in exceptional circumstances. Hampton v. State, 558 P.2d 504 (Wyo. 1977); Ketcham v. State, 618 P.2d 1356 (Wyo. 1980); Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981).

The "plain error" doctrine must be applied most sparingly. Gallup v. State, 559 P.2d 1024 (Wyo. 1977).

The application of the "plain error" doctrine must be exercised cautiously and only in exceptional circumstances, and the doctrine should only be applied where the error would "seriously affect the fairness, integrity, or public reputation of judicial proceedings." Hays v. State, 522 P.2d 1004 (Wyo. 1974); Horn v. State, 554 P.2d 1141 (Wyo. 1976); Cullin v. State, 565 P.2d 445 (Wyo. 1977).

And mere allegation of prejudice will not suffice to invoke the plain error rule. Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981).

Fairness or integrity of judicial proceeding must be seriously affected. — The "plain-error" doctrine will be applied only where the error seriously affects the fairness or integrity of judicial proceedings. There must be a transgression of a clear and unequivocal rule of law, in a clear and obvious way, which adversely affects a substantial right. Jones v. State, 580 P.2d 1150 (Wyo. 1978); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

Under the plain error doctrine, the rule of law violated must be clear and unequivocal. Bradley v. State, 635 P.2d 1161 (Wyo. 1981).

Harmful error must possibly affect verdict. — This rule provides that the court shall disregard any irregularity which does not affect substantial rights, and under subdivision (a), for an error to be regarded as harmful there must be a reasonable possibility that in the absence of the error the verdict might have been more favorable to the defendant. Nimmo v. State, 603 P.2d 386 (Wyo. 1979).

Error first raised on appeal is ignored unless it qualifies as plain error. Ketcham v. State, 618 P.2d 1356 (Wyo. 1980).

Not having objected to the court's instructions, the appellant must show plain error. Cutbirth v. State, 663 P.2d 888 (Wyo. 1983).

Unassigned error considered on review. — The Supreme Court is duty bound to consider an unassigned error under the plain error doctrine as well as under its general supervisory powers where the error is blatant and results in an unmistakable and unconscionable miscarriage of justice. Sanchez v. State, 592 P.2d 1130 (Wyo. 1979).

B. Burden and Facts.

The burden is on the defendant to show plain error. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Appellant has definite burden to demonstrate existence of clear and unequivocal rule of law which the particular facts transgress in a clear and obvious, not merely arguable, way. Johnson v. State, 562 P.2d 1294 (Wyo. 1977).

Where the alleged errors were not objected to during the trial, in order to warrant reversal, defendant must establish that the alleged error was plain error by adequately demonstrating that there was a transgression of a clear and unequivocal rule of law and that prejudice to defendant resulted. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

To show plain error, appellant has to show a violation of a clear and unequivocal rule of law and has to show that she has been materially prejudiced by that violation. Scheikofsky v. State, 636 P.2d 1107 (Wyo. 1981).

Claim not entertained unless substantial right adversely affected. — In asserting a claim of prejudice and plain error, a party assumes a definite burden of demonstrating, among other things, that a substantial right has been adversely affected, and failing in

which the claim will not be entertained. Brown v. State, 581 P.2d 189 (Wyo. 1978).

An error to warrant reversal must be prejudicial and affect the substantial rights of an appellant. ABC Bldrs., Inc. v. Phillips, 632 P.2d 925 (Wyo. 1981).

Courts must base each case on its particular facts. — There is little value in attempting any definition of "plain error or defects affecting substantial rights," but courts must base each case on its own particular facts. Hays v. State, 522 P.2d 1004 (Wyo. 1974).

Plain error concept must be applied to each case on its own particular facts, and any attempt to define the term "plain error or defects affecting substantial rights" is unlikely to be helpful. Hampton v. State, 558 P.2d 504 (Wyo. 1977).

Substantial likelihood of misidentification not justification in itself to declare plain error. Campbell v. State, 589 P.2d 358 (Wyo. 1979).

Admissibility of statements made during plea hearing. — The court did not commit plain error when it allowed the prosecution to read statements in the presence of the jury which were previously made by the defendant during his unsuccessful attempt to establish a factual basis for a guilty plea. The facts revealed by the defendant's prior testimony were supported by the testimony of other witnesses at the trial which was not related to the plea hearing. Rands v. State, 818 P.2d 44 (Wyo. 1991).

Not plain error if cannot unequivocally say error prejudiced defendant. — Where there is one isolated misstatement of the law in the prosecutor's closing arguments, and the Supreme Court cannot unequivocally say it materially prejudiced the defendant, such prosecutorial conduct does not constitute plain error, warranting a new trial. Jones v. State, 580 P.2d 1150 (Wyo. 1978).

Prosecuting counsel's opening remarks outlining his case, although unsupported by any evidence, do not amount to reversible error where trial judge repeatedly admonishes and instructs the jury that the statements of counsel are not evidence; in order to warrant reversal, the error must be so grievous and prejudicial to the defendant's rights as to justify invocation of the plain error doctrine. Hopkinson v. State, 632 P.2d 79 (Wyo. 1981), cert. denied, 455 U.S. 922, 102 S. Ct. 1280, 71 L. Ed. 2d 463 (1982), 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983).

Failure to give defense instruction on character evidence held not plain error. — See Elam v. State, 578 P.2d 1367 (Wyo. 1978).

Failure to give presumption of innocence instruction. — Where defendant was convicted of aggravated robbery and aggravated assault and battery, the evidence of his guilt was substantial: one witness fingered defendant as the masked gunman and provided a detailed account of the events surrounding the robbery; another witness recounted his conversations wherein defendant admitted to committing the robbery. The Supreme Court of Wyoming held that defendant's unpreserved claim of error concerning the trial court's failure to instruct the jury on the presumption of innocence was not plain error under this rule. Bloomer v. State, 233 P.3d 971 (Wyo. 2010).

Deficient instruction on offense not error where no conviction. — It is difficult to see how a deficient instruction on a lesser offense upon which there was no conviction could be plain error. Cutbirth v. State, 663 P.2d 888 (Wyo. 1983).

Erroneous admission of evidence harmful. — Error in admitting the evidence was prejudicial to defendant, as the only issue in play was whether defendant possessed the drugs with an intent to distribute, the volume of improper admitted evidence was substantial, and it was clear that the prosecution intended to use the evidence of that transaction to prove that defendant had provided the drugs to a woman who had possessed the drugs behind the hotel. Overson v. State, 386 P.3d 1149 (Wyo. 2017).

Court may ascertain whether jurors can act only on evidence presented. — The defendant-appellant failed to establish that the trial court could not have reasonably concluded other than his questions on voir dire were proper and were directed only to ascertain whether or not the prospective jurors could act only on the evidence presented in court, or that the trial court acted beyond the bounds of reason in its attempt to explain to the prospective jurors that which was necessary to them to give a fair and impartial consideration to the case. He did not establish the violation of a clear or unequivocal rule of law and, hence, did not establish plain error. Gresham v. State, 708 P.2d 49 (Wyo. 1985).

Erroneous jury instruction may be considered by reviewing court if plain error is present, even in the absence of an objection at the time of trial. Hays v. State, 522 P.2d 1004 (Wyo. 1974).

Corrective action may cure clear violation. — The answer to a jury question constituted a violation of a clear rule of law; however, the corrective action taken by the trial court in its answer to a second question cured any denial of a substantial right, and no prejudice resulted. Accordingly, the defendant could not succeed under the "plain error" doctrine. Johnston v. State, 747 P.2d 1132 (Wyo. 1987).

No plain error in allowing jury access to tape recording of defendant's statement. — See Stone v. State, 745 P.2d 1344 (Wyo. 1987).

It was not plain error not to let jury retire for the evening after a full day of trial, and to allow it to deliberate until around mid-

night. Munden v. State, 698 P.2d 621 (Wyo. 1985).

Where no motions for judgment of acquittal were made to the trial judge, the issue of the sufficiency of the evidence was reviewed in the context of plain error. Simmons v. State, 687 P.2d 255 (Wyo. 1984).

C. Constitutional Errors.

Even claims of possible constitutional dimensions may not bring about plain error. Gallup v. State, 559 P.2d 1024 (Wyo. 1977).

Not all errors of constitutional dimension justify reversal under the plain error doctrine. Hays v. State, 522 P.2d 1004 (Wyo. 1974).

All findings of clear error must be applied with caution. — Although each case involving a claim of clear error must be decided upon its individual facts, such finding must be applied with caution, and even claims of error of constitutional dimension do not invoke this rule. Johnson v. State, 562 P.2d 1294 (Wyo. 1977).

State's rebuttal argument did not prejudice defendant. — In a criminal trial for burglary, where defendant did not object at trial to the state's rebuttal closing argument, but challenged statements on appeal that allegedly diluted the state's burden of proof, argued facts not in evidence, and presented a community outrage argument, the Supreme Court of Wyoming applied the plain error standard set forth in Wyo. R. Crim. P. 52(b) and found no showing of error or prejudice; the essence of the prosecutor's argument was that there was sufficient evidence for the jury to convict defendant, the argument was supported by the record, and the community outrage argument did not approach the level of "join the war on crime/send a message to criminals" condemned in other cases. Harris v. State, 177 P.3d 1166 (Wyo. 2008).

Assertion of constitutional ground of error will not avoid application of criteria invoked by the Supreme Court, and if they are not satisfied any claim for review under the plain error doctrine must fail. Hampton v. State, 558 P.2d 504 (Wyo. 1977).

Criteria used in determining plain error. — In order for an alleged error to fall within the doctrine of plain error, specific minimum criteria must be met. It must be clear from the record, without resort to speculation or equivocal reference, exactly what occurred at trial. The proponent of the doctrine must demonstrate the existence of a clear and unequivocal rule of law; and the particular facts of the case must clearly and obviously, not just arguably, transgress that rule. Finally, once these criteria have been met, it must be shown that some substantial right of the accused has been adversely affected. These criteria apply even when constitutional error is alleged; and unless each one of them is satisfied, any claim for review under the plain error doctrine must fail. Daellenbach v. State, 562 P.2d 679 (Wyo. 1977); Mason v. State, 631 P.2d 1051 (Wyo. 1981); Hopkinson v. State, 664 P.2d 43 (Wyo.), cert. denied, 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983); Jahnke v. State, 692 P.2d 911 (Wyo. 1984).

For Supreme Court to invoke plain error rule, three specific criteria must be fulfilled: (1) the record must be clear as to the incident that occurred at trial that is alleged as error; (2) the proponent of the rule must demonstrate a violation of a clear and unequivocal rule of law; and (3) the proponent must prove that a substantial right has been violated and that the defendant has been materially prejudiced by that violation. Madrid v. State, 592 P.2d 709 (Wyo. 1979); Ketcham v. State, 618 P.2d 1356 (Wyo. 1980); Settle v. State, 619 P.2d 387 (Wyo. 1980); Bradley v. State, 635 P.2d 1161 (Wyo. 1981); Marshall v. State, 646 P.2d 795 (Wyo. 1982); Britton v. State, 643 P.2d 935 (Wyo. 1982); Westmark v. State, 693 P.2d 220 (Wyo. 1984).

Guiding criteria when an appellant seeks review under the plain-error concept are: (1) that the record reflects clear and unequivocally the facts complained of; (2) that the facts prove a transgression of a clear rule of law; and (3) that the error affects a substantial right of the accused. Harris v. State, 635 P.2d 1165 (Wyo. 1981).

As the allegedly unconstitutional arrest was not illegal, there was no "plain error." Tompkins v. State, 705 P.2d 836 (Wyo.), cert. denied, 475 U.S. 1052, 106 S. Ct. 1277, 89 L. Ed. 2d 585 (1985).

Court need not submit defendant's otherwise legal confession to predetermination of voluntariness. — The court did not commit plain error when, in the absence of any request, it did not subject the defendant's confession to a predetermination of voluntariness. No substantial right of the defendant was adversely affected, inasmuch as the confession was not made during custodial detention and was made voluntarily after the defendant had been advised of his constitutional rights. Wunder v. State, 705 P.2d 333 (Wyo. 1985).

Rule 53. Media access to courts.

The taking of photographs in the courtroom during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the courtroom, may be permitted at the discretion of the court. Permission may be granted if there is substantial compliance with the following requirements and conditions:

(1) The media shall apply for approval of media coverage to the judge presiding over the proceedings to be covered. This application must be made at least 24 hours prior to the proceedings unless good cause is shown for a later application. Only the equipment approved by the presiding judge in advance of the court proceedings may be used during the proceedings;

(2) In a trial of major importance, the presiding judge may appoint a media coordinator and may require that photographic, television or radio broadcast coverage of the trial be pooled;

(3) No photographic, radio or television broadcast equipment shall be used which produces any distracting sound or light. Audio pickup should be made through any existing audio system in the court facility if practical. If no suitable audio system exists in the court facility, microphones and related wiring shall be as unobtrusive as possible. Artificial lighting devices shall not be used;

(4) There shall be no movement of equipment during court proceedings;

(5) No person may enter the courtroom for the purpose of taking photographs or radio or television broadcast after court is already in session;

(6) There shall be no audio broadcast of conferences between attorney and client or between counsel, or between counsel and the presiding judge;

(7) There shall be no close-up photography or visual recording of members of the jury;

(8) The privilege to photograph, televise or record court proceedings may be exercised only by persons or organizations which are part of the accredited news media. Film, videotape, photographic and audio reproduction shall not be used for unrelated advertising purposes; and

(9) The presiding judge may for cause prohibit the photographing, radio or television broadcast of a participant in a court proceeding on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, confidential informants, undercover agents and in evidentiary suppression hearings, a presumption of validity attends such requests. The trial judge shall exercise broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption of validity is not exclusive; the court may, in its discretion, find cause for prohibition in comparable situations.

Compare. — Rule 53, Fed. Rules Cr. Proc.

Am. Jur. 2d, ALR and C.J.S. references. — 21A Am. Jur. 2d Criminal Law §§ 1005 to 1009.

Exclusion of public from state criminal trial in order to prevent disturbance by spectators or defendant, 55 ALR4th 1170.

Exclusion of public from state criminal trial in order to avoid intimidation of witness, 55 ALR4th 1196.

Closed-circuit television witness examination, 61 ALR4th 1155.

23A C.J.S. Criminal Law §§ 1145 to 1149.

Rule 54. Applicability of rules.

(a) *In general.* — Except as noted in subdivision (b), these rules shall apply to all criminal actions in all courts. Rules 6 and 9 do not apply in circuit courts. Rules 6, 9, 20, and 21 do not apply in municipal courts. In proceedings to hold to security of the peace and for good behavior, proceedings for the extradition and rendition of fugitives, and the collection of fines and penalties, these rules shall apply unless in conflict with existing statutes.

(b) *Juvenile proceedings.* — Unless inconsistent with the Juvenile Court Act these rules shall apply in all juvenile cases involving allegations that a child is in need of supervision or delinquent.

(Amended July 22, 1993, effective October 19, 1993; amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003.)

Compare. — Rule 54, Fed. Rules Cr. Proc.

Reliance on Juvenile Court Act precludes injection of criminal rules. — The provisions of the Juvenile Court Act are cumulative and do not in the first instance preclude prosecution under appropriate criminal statutes and rules. However, if the provisions of the act are followed and counsel relies in the appeal on its provisions, the injection of the Criminal Rules of Procedure is improper. Strode v. Brorby, 478 P.2d 608 (Wyo. 1970) (decided under prior law).

Applied in Cisneros v. City of Casper, 479 P.2d 198 (Wyo. 1971).

Quoted in State ex rel. C v. Platte County Dep't of Pub. Assistance & Social Servs., 638 P.2d 165 (Wyo. 1981); Muniz v. State, 783 P.2d 141 (Wyo. 1989); MJS v. State (in re MJS), 20 P.3d 506 (Wyo. 2001).

Law reviews. — For case note, "Constitutional Law — Right of Indigents to Counsel in Misdemeanor Cases. Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972)," see VIII Land & Water L. Rev. 343 (1973).

Rule 55. Court reporters; recording of proceedings.

(a) In the district court, the court reporter shall report all testimony and all proceedings held in open court including but not limited to voir dire, opening statements, motions and final arguments, as well as conferences with the presiding judge in open court and in chambers. Informal discussions, informal instruction conferences and pre-trial conferences shall be reported when requested by a party.

(b) In circuit court and municipal court, all testimony and all proceedings held in open court including but not limited to voir dire, opening statements, motions and final arguments, as well as conferences with the presiding judge in open court and in chambers, shall be recorded by electronic means. Informal discussions, informal instruction conferences and pre-trial conferences shall be recorded when requested by a party. At their own expense, any party may have proceedings reported by a court reporter.

(Amended June 30, 2000, effective July 1, 2000; amended December 2, 2002, effective January 6, 2003.)

Reporting required for bench conferences. — Reporting is required and a complete record is necessary for the supreme court to provide meaningful review because Wyo. R. Crim. P. 55 clearly contemplates that in district court conferences with the presiding judge in open court shall be reported; Wyo. R. App. P. 3.02 also reflects that the rules intend bench conferences in district court to be reported. Mraz v. State, 326 P.3d 931 (Wyo. 2014).

Rule 56. Courts and clerks.

The court shall be deemed always open for the purpose of filing any paper, or issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. With the approval of the supreme court, a court may provide by local rule or order that its clerk's office shall close for specified hours other than New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

Cross References. — As to legal holidays, see § 8-4-101.

Compare. — Rule 56, Fed. Rules Cr. Proc.

Rule 57. Rules governing practice.

The District Court Division of the Judicial Council or the Circuit Court Division of the Judicial Council may from time to time make and amend rules governing practice in the district courts or the circuit courts not inconsistent with rules adopted by the Wyoming

Supreme Court or applicable statutes. Copies of rules and amendments so made shall, upon their adoption, be furnished to the supreme court and shall be promulgated only if approved by the Wyoming Supreme Court and shall be effective 60 days after publication in the Pacific Reporter Advance Sheets.
(Amended June 30, 2000, effective July 1, 2000.)

Compare. — Rule 57, Fed. Rules Cr. Proc.

Local rules relating to appeals not allowed. — The Wyoming Rules of Appellate Procedure do not encompass any authorization for the adoption of local rules pertaining to appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983).

Quoted in Robinson v. State, 627 P.2d 168 (Wyo. 1981).

Rule 58. Forms.

The forms contained in the Appendix of Forms are illustrative and not mandatory. Form No. 1, Criminal complaint, is abrogated and shall be deleted.

Rule 59. Effective date.

These rules shall take effect 60 days after their publication in the Pacific Reporter Advance Sheets and shall be in force from and after that date.

Editor's notes. — See note following analysis at beginning of set of rules.

Rule 60. Title.

These rules shall be cited as the Wyoming Rules of Criminal Procedure, W.R. Cr. P.

Compare. — Rule 60, Fed. Rules Cr. Proc.

Rule 61. Laws superseded.

From and after February 11, 1969, the sections of the Wyoming Statutes, 1977, Republished Edition, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with these rules shall be of no further force or effect:

7-1-104 through 7-1-105
7-7-101 through 7-7-103
7-8-102 through 7-8-103
7-10-101 through 7-10-102
7-10-104 through 7-10-105
7-11-103
7-11-202 through 7-11-203
7-11-403
7-11-407
7-11-501 through 7-11-502
7-12-101
7-12-301
7-13-407 through 7-13-409

(Amended July 22, 1993, effective October 19, 1993.)

Editor's notes. — As to the present section numbers of the sections referred to above, see the table of revised and renumbered sections concerning the revision of Title 7 in the Tables volume.

Rule 32 supersedes statute. — The language of § 7-13-304, relating to imposition or modification of sentence conditions, seems to be in sufficient conflict with Rule 32(b), that the statute should be considered as having been

superseded. Chapman v. State, 728 P.2d 631 (Wyo. 1986) (decided prior to 1987 revision of title 7).

Applied in Hopkinson v. State, 704 P.2d 1323 (Wyo.), cert. denied, 474 U.S. 1026, 106 S. Ct. 582, 88 L. Ed. 2d 564 (1985).

Quoted in Barnes v. State, 640 P.2d 742 (Wyo. 1982).

Cited in Hopkinson v. State, 664 P.2d 43 (Wyo.), cert. denied, 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983); Whitten v. State, 110 P.3d 892 (Wyo. 2005).

Law reviews. — For case note, "Criminal Procedure — Wyoming Recognizes a Substantive Right to Bail Pending Appeal of Conviction. State v. District Court of Second Judicial Dist., 715 P.2d 191 (Wyo. 1986)," see XXII Land & Water L. Rev. 605 (1987).

APPENDIX I
APPENDIX TO RULE 3.1, WYO. R. CR. P.
UNIFORM BAIL AND FORFEITURE SCHEDULES

In the Supreme Court, State of Wyoming

April Term, A.D. 2018

In the Matter of the Adoption)
of the Revised Uniform Bail)
and Forfeiture Schedule)

ORDER ADOPTING THE REVISED UNIFORM
BAIL AND FORFEITURE SCHEDULE

The Court received direction from the Bond Committee that the Uniform Bail and Forfeiture Schedule be revised as shown in the attached schedule. The Court has fully considered the Committee's direction and finds that the attached revised Uniform Bail and Forfeiture Schedule should be adopted. It is therefore

ORDERED that the Uniform Bail and Forfeiture Schedule, as attached, shall be, and hereby is, adopted and shall become effective July 1, 2018; and it is

FURTHER ORDERED that copies of this order and the Uniform Bail and Forfeiture Schedule be distributed to all circuit courts, and all interested law enforcement departments of the state and counties. This order and the Uniform Bail and Forfeiture Schedule shall also be published in the Wyoming Court Rules Volume and published online at this Court's website, http://www.courts.state.wy.us.

DATED this 4th day of June, 2018.

BY THE COURT:

/s/

E. JAMES BURKE
Chief Justice

AMENDED 6/4/2018

APPENDIX I
APPENDIX TO RULE 3.1, Wyo. R. Cr. P.
UNIFORM BAIL AND FORFEITURE SCHEDULES

(Revised July 1, 2018)

To ensure uniformity throughout the state, the following schedule has been established by the Wyoming Supreme Court and shall be used in all circuit courts for misdemeanor offenses for which bond may be posted and forfeited.[1]

Unless a specific bail amount appears in the body of this schedule, the amount of bail is (including $20.00 court costs, a $25.00 court automation fee, and a $10.00 civil legal services fee):

A = $ 70.00
B = $ 85.00
C = $135.00
D = $235.00
E = $435.00

ANYTHING NOT LISTED ON THIS SCHEDULE IS A "MUST APPEAR."

If the "MAY FORFEIT BOND IN LIEU OF APPEARANCE" box is checked, the person has two options:

1. **APPEAR ON THE DAY AND AT THE TIME SPECIFIED ON THE CITATION**
   OR
2. **POST BOND AT OR PRIOR TO THE COURT DATE AND FORFEIT THE SAME IN LIEU OF APPEARANCE.**

A person to whom a citation has been issued MUST APPEAR in court on the day and at the time specified in the citation UNLESS the citing officer checks the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation.

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[1] Seat belt reduction—Wyo. Stat. Ann. § 31-5-1402(e) (2000 amendment) provides that "All citations for violations of the motor vehicle laws of this state shall contain a notation by the issuing officer indicating whether the driver and passenger(s) complied with this section." (Viz, had seat belt fastened or was exempt from the requirement.) "Compliance with this section shall entitle a licensee to a ten dollar ($10.00) reduction in the fine otherwise imposed." The Wyoming Supreme Court ruled that it applies to both bail and fines.

1A. TRAFFIC OFFENSES				
	9-2-1016(j)		Unauthorized use of state vehicles	B
	24-1-109		Failure to observe signs and closed markers	E
	24-1-110(a)		Exhibition of acceleration	C
			Drag racing - two (2) or more vehicles	C
	31-2-205(a)(i)(A)		Failure to display lic plate on front of veh	B
	31-2-205(a)(i)(B)		Failure to display lic plate on rear of veh	B
	31-2-205(a)(ii)		Failure to secure license plate on vehicle	B
	31-2-205(a)(iii)		Failure to attach plate in horizontal position & at least 12 in. off ground	B
	31-2-205(a)(iv)		Failure to maintain lic plate free of foreign material & clearly legible	B
	31-2-225(e)		False certification to Co. Treasurer to obtain license plate	$555.00
	31-2-402(d)		Resident snowmobile registration	B
	31-2-402(e)		Nonresident snowmobile user fee	B
	31-2-405(a)		Resident snowmobile registration decal—failure to display	A
	31-2-409(e)		Nonresident snowmobile user fee decal—failure to display	A
	31-2-702(c)		Off-road registration decal for recreational vehicle	B
	31-4-101(a)		No registration in vehicle as required by 31-2-204 and improper display of tabs as required by 31-2-213	B
	31-4-101(a)(i)		Valid certificate of title, certificate of registration, and license plates/temp permit required	C
	31-4-101(a)(ii)		Failure to display valid license plates, validation stickers (tabs), or permits	B
			License plates for nonresident as required by 31-2-201(a)(iii) on becoming resident and 31-2-201(a)(iv) upon becoming employed in Wyoming	B
	31-4-101(a)(iii)		Operation of vehicle with altered, mutilated, or obscured license plates	B
	31-4-101(b)		Alteration or mutilation of license plates	D
	31-4-101(d)		Transfer interest without certificate	B
	31-4-101(e)		Expired temporary license permit/improper registration	C
	31-4-103(a)or(b)		Compulsory auto insurance-1st offense	$555.00
	31-5-1201		**FOR INFORMATION: PENALTY SECTION FOR UNIFORM ACT REGULATING TRAFFIC (31-5-101 THROUGH 31-5-1601) EXCEPT AS OTHERWISE PROVIDED**	
	31-5-104		Willful refusal to obey officer	D

	31-5-115		Motorcycle, autocycles and pedestrian vehicle operation	B
	31-5-115(o)		Motorcycle operation by minor without helmet	C
	31-5-116		Obstructing driver's view	B
	31-5-117		Putting glass on highway	B
	31-5-119		Clinging to a vehicle on highway	B
	31-5-120		Driving on sidewalks	B
	31-5-121		Opening and closing vehicle door	B
	31-5-122		Riding in house trailer	B
	31-5-124		Off-road recreation vehicle limitation on use	B
	31-5-201		Driving on right side of roadway, exceptions	B
	31-5-202		Improper passing	B
	31-5-203(a)(i)		Overtaking on the left	B
	31-5-203(a)(ii)		Driver of Overtaken Vehicle-failure to yield	B
	31-5-203(c)		Failure to maintain 3 ft separation when overtaking bicycle on left	B
	31-5-204		Passing when free from traffic	B
	31-5-205		No passing on crest of hill or near intersection	C
	31-5-206		When overtaking on right is permitted	B
	31-5-207		No-passing-zones	C
	31-5-208		One-way traffic signal violation	B
	31-5-209		Two-and three-lane traffic	B
	31-5-210		Following too closely	B
	31-5-211		Driving over, across or within median	B
	31-5-212		Controlled access road	B
	31-5-213		Restricting use of controlled access	B
	31-5-214		Turning at intersection	B
	31-5-215		No U-Turn on curve or crest	B
	31-5-216		Starting parked vehicle	B
	31-5-217		Turning requires signals	B
	31-5-218		Signal may be by hand or light	B
	31-5-220		Right-of-way entering intersection	B
	31-5-221		Turning left at intersection	B
	31-5-222(b)		Stop sign	C
	31-5-222(c)		Yield sign	C
	31-5-223		Yield when entering from private road	B
	31-5-224(a)		Right-of-way for emergency vehicles	C
	31-5-224(a)(i) or (ii)		Operation upon approach to parked emergency vehicle	D
	31-5-224(b)(i) or (ii)		Operation upon approach to slow-moving or parked municipal, public utility, or hwy construction or maintenance vehicles	D
	31-5-226		Backing	B

	31-5-227		Driving through defiles, canyon, or mountain roads	B	
	31-5-228		Load on vehicles	B	
	31-5-230		Coasting prohibited	B	
	31-5-231		Following fire engine prohibited	B	
	31-5-232		Driving over fire hose	B	
	31-5-235		Open container in moving vehicle	C	
	31-5-236		Careless driving	D	
	31-5-237		Using handheld electronic device to write, send or read electronic messages while driving	$90.00	
SPEEDING VIOLATIONS—**Too Fast for Conditions**					
	31-5-301(a)		Speed too fast for conditions	B	
SPEEDING VIOLATIONS – **School Zone (31-5-301(b)(i))**					
	31-5-301(b)(i)		Exceeding legal speed limit by **1-5 mph**: $50.00 plus $2.00 for each mph in excess of the legal speed limit (Penalty 31-5-1201(d)(viii)(A))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 1-5 mph—same as VEH		
			No court costs, court automation fee, civil legal services fee, or officer training fee for exceeding legal speed limit by 1-5 mph (Penalty 31-5-1201(d)(v))		
				VEH	**HVY/VEH**
			+1	$52.00	$52.00
			+2	$54.00	$54.00
			+3	$56.00	$56.00
			+4	$58.00	$58.00
			+5	$60.00	$60.00
			Exceeding legal speed limit by **6-10 mph:** $95.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $10.00 for each mph in excess of 5 mph over the legal speed limit (Penalty 31-5-1201(d)(viii)(B))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 6-10 mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+6	$165.00	$460.00
			+7	$175.00	$470.00
			+8	$185.00	$480.00
			+9	$195.00	$490.00
			+10	$205.00	$500.00

			Exceeding legal speed limit by **11+ mph:** $200.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $10.00 for each mph in excess of 10 mph over the legal speed limit (Penalty 31-5-1201(d)(viii)(C))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 11+ mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+11 -	$270.00	$565.00
			+12 -	$280.00	$575.00
			+13 -	$290.00	$585.00
			+14 -	$300.00	$595.00
			+15 -	$310.00	$605.00
			+16 -	$320.00	$615.00
			+17 -	$330.00	$625.00
			+18 -	$340.00	$635.00
			+19 -	$350.00	$645.00
			+20 -	$360.00	$655.00
			+21 -	$370.00	$665.00
			+22 -	$380.00	$675.00
			+23 -	$390.00	$685.00
			+24 -	$400.00	$695.00
			+25 -	$410.00	$705.00
			+26 -	$420.00	$715.00
			+27-	$430.00	$725.00
			+28 -	$440.00	$735.00
			+29 - etc.		
SPEEDING VIOLATIONS: **Urban Districts (31-5-301(b)(ii))** **Construction Zones (31-5-301(c))**					
	31-5-301 (b)(ii) 31-5-301(c)		Exceeding legal speed limit by **1-5 mph**: $65.00 plus $2.00 for each mph in excess of the legal speed limit (Penalty 31-5-1201(d)(vii)(A))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 1-5 mph—same as VEH		
			No court costs, court automation fee, civil legal services fee, or officer training fee for exceeding legal speed limit by 1-5 mph (Penalty 31-5-1201(d)(v))		
				VEH	**HVY/VEH**
			+1	$67.00	$67.00
			+2	$69.00	$69.00
			+3	$71.00	$71.00
			+4	$73.00	$73.00
			+5	$75.00	$75.00

			Exceeding legal speed limit by **6-10 mph**: $40.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $7.00 for each mph in excess of 5 mph over the legal speed limit (Penalty 31-5-1201(d)(vii)(B))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 6-10 mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+6	$107.00	$402.00
			+7	$114.00	$409.00
			+8	$121.00	$416.00
			+9	$128.00	$423.00
			+10	$135.00	$430.00
			Exceeding legal speed limit by **11-20 mph**: $95.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $7.00 for each mph in excess of 10 mph over the legal speed limit (Penalty 31-5-1201(d)(vii)(C))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 11-20 mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+11	$162.00	$457.00
			+12	$169.00	$464.00
			+13	$176.00	$471.00
			+14	$183.00	$478.00
			+15	$190.00	$485.00
			+16	$197.00	$492.00
			+17	$204.00	$499.00
			+18	$211.00	$506.00
			+19	$218.00	$513.00
			+20	$225.00	$520.00
			Exceeding legal speed limit by **21+ mph**: $195.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $7.00 for each mph in excess of 20 mph over the legal speed limit (Penalty 31-5-1201(d)(vii)(D))		
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 21+ mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+21	$262.00	$557.00
			+22	$269.00	$564.00
			+23	$276.00	$571.00
			+24	$283.00	$578.00
			+25 - etc.		

SPEEDING VIOLATIONS FOR: **Interstate Highways (31-5-301(b)(iii))** **Paved or Unpaved Roadways not otherwise specified (31-5-301(b)(iv))** **80 mph Superintendent Zone on Interstate Highways (31-5-301(b)(vi))** **State Highways (31-5-301(b)(vii))** **Superintendent's Zones (31-5-301(c)) – Except Construction Zones and those zones designated by 31-5-302**				
	31-5-301(b)(iii) 31-5-301(b)(iv) 31-5-301(b)(vi) 31-5-301(b)(vii) 31-5-301(c)		Exceeding legal speed limit by **1-5 mph**: $5.00 for each mph in excess of the legal speed limit, not to exceed $25.00 (Penalty 31-5-1201 (d)(vi)(A))	
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 1-5 mph—same as VEH (Penalty 31-5-1201(g))	
			No court costs, court automation fee, civil legal services fee, or officer training fee for exceeding legal speed limit by 1-5 mph (Penalty 31-5-1201 (d)(v))	
				VEH **HVY/VEH**
			+1	$5.00 $5.00
			+2	$10.00 $10.00
			+3	$15.00 $15.00
			+4	$20.00 $20.00
			+5	$25.00 $25.00
			Exceeding legal speed limit by **6-10 mph**: $30.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $2.00 for each mph in excess of 5 mph over the legal speed limit (Penalty 31-5-1201(d)(vi)(B))	
			"VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.—exceeding legal speed limit by 6-10 mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))	
				VEH **HVY/VEH**
			+6	$92.00 $387.00
			+7	$94.00 $389.00
			+8	$96.00 $391.00
			+9	$98.00 $393.00
			+10	$100.00 $395.00
			Exceeding legal speed limit by **11-20 mph**: $45.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $5.00 for each mph in excess of 10 mph over the legal speed limit (Penalty 31-5-1201(d)(vi)(C))	
			VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.— exceeding legal speed limit by 11-20 mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))	

				VEH	**HVY/VEH**
			+11	$110.00	$405.00
			+12	$115.00	$410.00
			+13	$120.00	$415.00
			+14	$125.00	$420.00
			+15	$130.00	$425.00
			+16	$135.00	$430.00
			+17	$140.00	$435.00
			+18	$145.00	$440.00
			+19	$150.00	$445.00
			+20	$155.00	$450.00
			Exceeding legal speed limit by **21+ mph**: $95.00 plus $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee plus $5.00 officer training fee, plus $5.00 for each mph in excess of 20 mph over the legal speed limit t (Penalty 31-5-1201(d)(vi)(D))		
			VEH" = passenger vehicles and light trucks "HVY/VEH" = Vehicles with gross vehicle weight or gross vehicle weight rating exceeding 39,000 lbs.— exceeding legal speed limit by 21+ mph—same as VEH plus $295.00 (Penalty 31-5-1201(g))		
				VEH	**HVY/VEH**
			+21	$160.00	$455.00
			+22	$165.00	$460.00
			+23	$170.00	$465.00
			+24	$175.00	$470.00
			+25 - etc.		
	31-5-304		Driving too slowly—minimum speed	B	
	31-5-304(c)		Impeding traffic left lane of interstate	B	
	31-5-305		Special speeds—bridges	B	
	31-5-402		Obedience to traffic-control device	C	
	31-5-403		Traffic-control signals	C	
	31-5-404		Pedestrian-control signals	B	
	31-5-405		Flashing signals	B	
	31-5-406		Display of unauthorized signs	B	
	31-5-501		Unlawful parking in restricted areas (penalty 31-5-502)	B	
	31-5-504		Prohibited parking spaces	B	
	31-5-504 (a)(i)(J)		Parking prohibited on controlled-access highway	D	
	31-5-505		Parking prohibited on roadways outside business or residence districts	B	
	31-5-506		Stop—emerging from alley	B	
	31-5-507		Meeting or passing stopped school bus (2nd offense within one year is a high misdemeanor)	E	
	31-5-509		Leaving vehicle unattended	B	
	31-5-510		Railroad crossing signal and sight	B	
	31-5-511		Stop at railroad crossing	B	
	31-5-512		Parking in cities and on highways	B	

	31-5-601		Traffic control for pedestrian	B
	31-5-602		Pedestrian right-of-way in crosswalks	B
	31-5-603		Jaywalking	B
	31-5-605		Pedestrian to use sidewalks or left side of highway	B
	31-5-702		Bicyclists subject to applicable motor vehicle laws	B
	31-5-703		Bicyclists must ride on seat and no passengers	B
	31-5-704		Bicyclists riding on roadway and designated paths	B
	31-5-705		Bicyclists able to keep one hand on bar	B
	31-5-706		Nighttime use, equipment and brakes	B
	31-5-801		Snowmobile on highways	B
	31-5-901		Operating vehicles with improper equipment	B
	31-5-910		When headlamps required	B
	31-5-911 thru 31-5-932		Headlights (911, 912); taillights (913); reflectors (914); stoplights and turn lights (915); clearance lights (916); color and mounting of clearance lights and reflectors (917); lamps, etc. on projecting loads (919); lights for parked vehicles (920); spot lights (922); multiple beams (924); single beam (925); lights for operating 20 mph (926); number of driving lights (927); restriction on lights, color flashing emergency, police (928); farm equipment lights (921)	B
	31-5-950 thru 31-5-951		Brakes	B
	31-5-952 thru 31-5-955		Horns (952); mufflers (953); mirrors (954); windshield wipers (955)	B
	31-5-956		Tires, chains	B
	31-5-956(e)		Chain law--no chains when required No chains resulting in incident closing all lanes	$265.00 $765.00
	31-5-957 thru 31-5-958		Flares (957); warning devices on disabled vehicles (958)	B
	31-5-961		Television receivers	B
	31-5-962		Sun screening devices	B
	31-5-970		Unsafe vehicles	C
	31-5-1102		Damage to attended vehicle or property	D
	31-5-1104		Colliding with unattended vehicle, duty	D
	31-5-1105		Failure to report over $1,000.00 property damage or injury	D

	31-5-1106		Written reports required; reports by garage operator of vehicles struck by bullets	B
	31-5-1202		Aiding and abetting the commission of any of the above offenses	Same as Principal's Offense
	31-5-1203		Owner prohibited from permitting operation of vehicles contrary to law	B
	31-5-1206		Failure to appear (F.T.A.) for "must appear" offenses or "forfeitable but non-N.R.V.C.'able" offenses	D
	31-5-1303		Child safety restraint system (Penalty 31-5-1304(b))	$65.00
	31-5-1303		Child safety restraint system 2nd offense	$115.00
	31-5-1304(b)		Improper use-child safety restraint system	$65.00
	31-5-1304(b)		Improper use-child safety restraint system 2nd offense	$115.00
	31-5-1402(a)		Driver	$25.00
	31-5-1402(a)		Driver with passenger under 12 years old	$25.00
	31-5-1402(a)		Passenger over 12 years old	$10.00
	31-5-1601(b)		Operation of off-road recreation vehicles on public roads/driver's license required	C
	31-7-106		Driver's license	C
	31-7-110(h)(i)		Intermediate license violation (other vehicles)	B
	31-7-110(h)(ii) (A-E)		Intermediate license violation (other vehicles)	B
	31-7-110(j)		Intermediate license violation (motorcycles)	B
	31-7-116		Carrying and exhibiting license	B
	31-7-117(e)		Restricted license	C
	31-7-117(f)		Restricted class "C" license	C
	31-7-119(d)		False application for new license	C
	31-7-133		Unlawful use of license	D
	31-7-134(a)		Operating under suspended or revoked license if not for 31-5-229 or 31-5-233	E
	31-7-135		Permitting unlicensed person to operate	C
	31-7-137(b)		Failure to notify change of address	A
	31-12-101(a)		Metal tires w/projections; lugs & cleats	B
	31-16-102		Unlicensed Dealer & Manufacturers-soliciting sales	D
	31-16-108		Unlawful Acts	D
	31-16-108(a)(i)		Misleading or inaccurate advertisement	D
	31-16-108(a)(ii)		Violation of this act or any rules or regulation promulgated under it	D
	31-16-108(a)(iv)		Violate any law of this state or state agency rule respecting vehicle commerce	D
	31-16-108(a)(v)		Engage in business without maintaining a principal place of business	D

	31-16-108(a)(vi)		Sale or exchange of new or new and used vehicles without a vehicle dealer license	D
	31-16-108(a)(ix)		Violate any provision of the federal motor vehicle safety standards	D
	31-16-108(a)(x)		Display for sale, exchange or sell any new motor vehicle without valid franchise	D
	31-16-108(a)(xi)		Import, display for sale, sell, or exchange new or used vehicle manufactured outside the U.S. not meeting federal regulations	D
	31-16-108(a)(xii)		Advertise, display, sell, or exchange vehicle with less than 1,000 miles without proper license or title	D
	31-16-118		Replacement or repair of odometer	E
	31-16-119		Disconnecting, resetting, or turning back odometer	D
	31-16-120		Selling vehicle knowing odometer turned back	E
	31-16-121		Selling vehicle knowing odometer replaced unlawfully	E
	31-16-122		Use of device which causes other than true mileage to register	E
	31-16-126		Misuse of demo/full-use/temp plates	B
1B. REPORTING OF SPECIAL TAXES				
	39-17-208		Dyed Fuel	$515.00
2. COMMERCIAL VEHICLES				
The following uniform schedule for deposits for appearances on commercial vehicle violations are established by court rule or by statutory authority ($20.00 court costs, $25.00 court automation fee, and $10.00 civil legal services fee included).				
	31-18-201(b)		Registration and licensing commercial vehicles	C
	31-18-201(c)(i)(F)		Failure to declare proper gross weight when registering	B
	31-18-201(g)		Registration and licensing rental vehicle	B
	31-18-201(k)		Display registration	B
	31-18-201(m)		Intrastate registration operation	B
	31-18-201(s)		Fail to obtain single trip permit	B
	31-18-201(u)		No transporter plate or permit	B
	31-18-201(y)		Expired temporary registration	B
	31-18-206(c)		Temporary sticker not properly displayed	B
	31-7-137(c)		Failure to apply for duplicate license	B
	31-7-301		Failure to notify DOT of conviction	D
	31-7-306		Commercial driver prohibited from operating with any alcohol in system	E
	31-18-701		**FOR INFORMATION: [PENALTY SECTIONS FOR 31-18-101 THROUGH 607]**	
	31-18-203		Mobile machinery—no operation	B
	31-18-205(a)		Mobile machinery permit required	B

	31-18-205(b)		Mobile machinery permit not properly displayed	B
	31-18-303		WYDOT Rule 1 Code of Federal Regulation (CFR), Title 49-- Hazardous materials—parts CFR 171-174.840, 177-179.500 and 180-180.605k	$355.00
			Motor carrier safety regulation—CFR parts 350-399 including liquor in cab; $185.00 per out-of-service violation (up to $750.00); **COMPLIANCE REVIEW** Controlled Substance & Alcohol Testing-CFR 382.115(a), CFR 382.201, CFR 382.211, CFR 382.213(b), CFR 382.215, CFR 382.301(a), CFR 382.303(a), CFR 382.303(b), CFR 382.305, CFR 382.309(a), CFR 382.309(b), CFR 382.503, CFR 382.505(a) $85.00 per violation of all other violations which are not out-of-service criteria (up to $500.00)	$185.00 $355.00 $85.00
			Except the following six (6) offenses, CFR 391.11(b2), CFR 396.9(c), CFR 397.5, CFR 397.7, CFR 397.13 and CFR 395.13(d)	$255.00
	31-18-209(f)		No bill of lading for contract carriers; intrastate operation	B
	31-18-301(b)		No authority in vehicle	B
	31-18-301(c)		Failure to produce authority upon demand	B
	31-18-301(c)		Failure to stop at port of entry	C
	31-18-304(a)		No display of name of motor carrier	B
	31-18-404		Misuse of commercial vehicle demo permit	B
	31-18-405(b)		Failure to retain records as required	B
	31-18-501		For violations of 39-17-106(f)	B
	31-18-501		For violations of 39-17-206(c)	B
	31-18-603		Loads on vehicles	B
	31-18-605(a)(i)		Failure to activate flashers	B
	31-18-605(a)(ii)		Failure to stop 15-50’ from rail	B
	31-18-605(a)(iii)		Failure to look/listen at railroad crossing	B
	31-18-605(a)(iv)		Shifted gears crossing tracks	B
	31-18-605(a)(v)		Failure to cancel flashers	B
	31-18-606		Metal tire/contact with highway	B
	31-18-703		Failure to obey signs/commercial vehicle	C
	31-18-705		Speed or acceleration contest—commercial vehicles	C

	31-18-802(a)(i) A		Vehicles Over Width Limit	Daytime: C Nighttime: D
	31-18-802(a)(ii) A		Vehicles Over Height Limit	Daytime: C Nighttime: D
	31-18-802(a)(iii) B		Oversize vehicle sign and warning lights required	Daytime: C Nighttime: D
	31-18-802(a)(iv) (A)-(C)		Vehicles Over Length Limit	Daytime: C Nighttime: D
	31-18-802(a)(v)		Violations of legal weight limits (Penalty 31-18-805(e))	
			0 - 2,000	$80.00
			2,001 - 4,000	$130.00
			4,001 - 6,000	$180.00
			6,001 - 8,000	$205.00
			8,001 - 10,000	$255.00
			10,001 - 12,000	$355.00
			12,001 - 14,000	$455.00
			14,001- 16,000	$555.00
			16,001 - 18,000	$655.00
			18,001 - 20,000	$755.00
			Over - 20,000	$1,055.00
			Plus an additional $200.00 for each 1,000 lbs. or fraction thereof exceeding 20,000 lbs. over the legal limits	
	31-18-803		Transporting and towing other vehicles	B
	31-18-804		Oversize and overweight permits	Same bond as 802(a)
	31-18-805(a)		Violation of rules, regulations, or conditions of permit (excluding weight violations)	Daytime: C Nighttime: D
	31-18-805(a)		Weight violations in excess of stated permit limits	Same bond as 31-18-802 (for weights over permit limits)
	31-18-808		Oversize—towing disabled vehicles	B
	39-17-106(f)		No permit-Gasoline	B
	39-17-206(c)		No permit-Diesel	B
3. LITTERING				
	6-3-107		Throwing burning substance from vehicle	$535.00
	6-3-204(a)		Littering	D
	6-3-204(c)		Littering containers with bodily fluids along a highway right of way	$735.00
	35-10-101		Disposal of dead animals, etc.	D
	35-10-104		Failure of owner to remove dead animal	C
	35-10-401		Obstructing highway and pollution	C
4. GAME AND FISH OFFENSES				
101	23-2-202	Low	Fishing without license by a person 14 years and older	$235.00

102	23-2-202	Low	Fishing without license by a person under 14 years	$85.00
103	23-3-201(a)	Low	Fishing with more than 2 rods or poles	$85.00
104	23-3-201(b)	Low	Fishing with more than 3 hooks/lines	$85.00
105	23-3-201(c)	Low	Illegal set lines	$135.00
106	23-3-201(d)	Low	Take, wound or destroy any fish with a firearm	$235.00
107	23-3-201(e)	Low	Snagging fish where not specifically authorized	$135.00
108	23-3-202(b)	Low	Use of illegal bait for fishing-live bait	$135.00
109	23-3-202(b)	Low	Use of illegal bait for fishing-corn	$135.00
110	23-3-202(c)	Low	Releasing live bait fish without authorization	$235.00
111	23-3-202(a)	Low	Fish live bait that is not proper type or origin	$135.00
112	23-3-402	Low	Possess live bait fish without receipt or permit	$135.00
113	23-3-402	Low	Over limit of game fish	$135.00 plus $20.00 per fish
114	23-3-402	Low	Take fish in violation of size or slot limits	$135.00
115	23-3-303(a)	Low	Waste or abandon game fish	$135.00 plus $20.00 per fish
116	23-3-402	Low	Fishing before or after hours	$135.00
117	23-3-402	Low	Fishing in closed waters	$135.00
118	23-3-201(a)	Low	Unattended fishing pole or rod	$85.00
119	23-3-402	Low	Fish adjoining state without reciprocal stamp	$135.00
120	23-3-204(a)	High	Take/destroy fish-poison, electricity, chemical, explosives	$625.00
121	23-3-205(a)	Low	Ship or transport game fish without license or tag	$135.00
122	23-3-403(a)	High	False statement to procure fishing license	$235.00
123	23-4-101	High	Plant/release fish or eggs without authorization	$435.00
124	23-4-104	Low	Intent removal/destruction of hatchery fish-value less than $500.00	$435.00
126	23-3-402	Low	Ice fishing with more than 6 lines in special regulation areas	$85.00
127	23-3-402	Low	Fail to attach name to each ice fishing rod, tip-up or line	$85.00
129	23-3-402	Low	Ice fishing nonattendance-more than 300 yards	$85.00
130	23-3-402	Low	Possess fish when species or number cannot be determined	$135.00
131	23-3-402	Low	Possess fish w/o head or tail attached	$135.00
133	23-3-402	Low	Use game fish flesh as bait	$135.00
134	23-3-402	Low	Seine or trap fish without a license	$135.00
135	23-3-402	Low	Use of an illegal seine or net	$85.00

136	23-3-402	Low	Use of an illegal fish trap	$85.00
137	23-3-402	Low	Use of an illegal number of fish traps	$85.00
138	23-3-402	Low	Failure to tag fish traps with name	$85.00
139	23-3-402	Low	Possess game fish taken in fish trap or seine	$135.00
140	23-2-206(a)	Low	Take game fish w/spear gun while not submerged	$135.00
141	23-3-402	Low	Violate underwater fish regulations	$85.00
142	23-2-208	Low	Landowner fail to provide written statement for fish	$135.00
143	23-3-402	Low	Illegal transportation of live fish or eggs	$135.00
144	23-3-402	Low	Illegal tagging or marking of fish	$135.00
146	23-3-402	Low	Fail to remove ice fishing shelter	$235.00
147	23-3-402	Low	Conduct fishing contest without prior approval	$435.00
148	23-3-306(b)	High	Illegal use of artificial light for fishing	$135.00
149	23-3-402	Low	Use natural bait in artificial bait area	$135.00
150	23-3-402	Low	Violation of fishing regulations not listed elsewhere	$135.00
151	23-3-203(a)	Low	Place net, trotline, etc. across water	$135.00
152	23-3-402	Low	Take bait fish in closed area	$135.00
153	23-3-402	Low	Fail to immediately release fish during closure	$135.00
201	23-3-104	Low	Fail to tag big trophy game animal	$235.00
202	23-3-402	Low	Fail to tag carcass in visible manner	$135.00
203	23-3-113(a)	Low	Fail to wear fluorescent orange/pink clothing	$85.00
204	23-3-402	Low	Hunt big game/trophy game/wild bison during closed season	$805.00
205	23-3-402	Low	Hunt big game/trophy game/wild bison in wrong area	$235.00
206	23-3-402	Low	Take over limit big game/trophy game/wild bison	$435.00
207	23-3-102 (a)	High	Take big horn sheep without license	$2,525.00
208	23-3-102 (a)	High	Take mountain goat without license	$2,525.00
209	23-3-102 (a)	High	Take mountain lion without license	$805.00
210	23-3-102 (a)	High	Take grizzly bear without license	$3,525.00
211	23-3-102(a)	High	Take elk without license	$1,225.00
212	23-3-102(a)	High	Take moose without license	$1,775.00
213	23-3-102 (a)	High	Take deer without license	$805.00
214	23-3-102 (a)	High	Take antelope without license	$805.00
215	23-3-102 (a)	High	Take black bear without license	$805.00
218	23-3-106(a)	Low	Ship/transport game w/out game tag within Wyoming	$135.00
219	23-3-106(b)	Low	Ship/transport game w/out game tag outside Wyoming	$135.00
220	23-3-111(a)	Low	Illegal firearm for taking big or trophy game	$235.00

221	23-3-402	Low	Fail to retain evidence of sex, species, antler/horn development on big game/wild bison	$135.00
222	23-1-703(b)	Low	Apply/rec-moose, sheep, within 5 years	$435.00
224	23-3-303(a)	Low	Waste or abandon big game	$435.00
225	23-3-303(b)	Low	Fail to remove carcass within 48 hours	$235.00
226	23-3-303(c)	Low	Abandon game meat at meat processor	$235.00
227	23-3-403(a)	High	False statement to obtain antelope, deer, wolf, black bear, or mountain lion license	$805.00
228	23-3-403(a)	High	False statement to obtain mountain goat, sheep, or moose license	$2,525.00
229	23-3-402	Low	Purchase more than authorized number of licenses	$235.00
230	23-3-105(b)	High	Landowner's coupons-false claim for reimbursement	$435.00
231	23-3-105(b)	Low	Hunter turn coupon into wrong landowner	$435.00
232	23-3-402	Low	Hunt elk without special Management Stamp	$85.00
233	23-2-102(a)	Low	Violation of age limit for big or trophy game license	$135.00
234	23-3-402	Low	Take big game before or after legal hunting hours	$235.00
235	23-3-402	Low	Take trophy game before or after legal hunting hours	$235.00
236	23-3-402	Low	Take big or trophy game with wrong type of license	$235.00
238	23-3-402	Low	Fail to register black bear kill	$135.00
239	23-3-402	Low	Failure to leave evidence of sex on bear pelt	$135.00
240	23-3-402	Low	Fail to register mountain lion kill	$135.00
241	23-3-402	Low	Failure to leave evidence of sex on mountain lion pelt	$135.00
242	23-3-117	High	Fail to register bighorn sheep	$235.00
243	23-3-306(a)	High	Take or harass big game/trophy game/wild bison with or from vehicle	$435.00
244	23-3-402	Low	Fail to take or release treed lion	$435.00
245	23-2-107(a)	Low	Violation of age restriction to take wild bison	$135.00
246	23-1-703(c)	Low	Apply/rec-grizzly bear, mountain goat more than once per lifetime	$435.00
247	23-2-109	High	Multiple applications for limited licenses	$435.00
248	23-3-406	Variable	Attempt to take simulated wildlife decoy (refer to primary offense – species)	Variable
249	23-3-304(d)	High	Illegal baiting of big game	$435.00
250	23-3-402	Low	Violation of big game/trophy game/wild bison regulations not listed elsewhere	$235.00
251	23-3-102 (a)	High	Take gray wolf where classified as a trophy game animal/without license	$805.00

252	23-3-402	Low	Violation of bear baiting regulations	$135.00
253	23-3-403(a)	High	False statement to obtain elk license	$1,225.00
254	23-3-403(a)	High	False statement to obtain grizzly bear license	$7,525.00
255	23-2-107(d)	High	Take wild bison without license	$3,025.00
256	23-1-304(d)(iii)	Low	Fail to report take of a wolf/predator area	$235.00
260	23-3-402	Low	Fail to tag wild bison	$235.00
261	23-3-402	Low	Illegal firearm for taking wild bison	$235.00
262	23-3-402	Low	Waste or abandon wild bison	$435.00
263	23-3-403(a)	High	False statement to obtain wild bison license	$3,025.00
264	23-3-402	Low	Take wild bison before or after legal shooting hours	$235.00
265	23-3-402	Low	Violation of archery equipment specifications for wild bison	$135.00
266	23-3-402	Low	Take wild bison with wrong type of license	$435.00
267	23-3-402	Low	Fail to return wild bison harvest card	$135.00
268	23-3-402	Low	Fail to wear fluorescent orange/pink clothing while hunting wild bison	$85.00
270	23-1-304 (d)(iv) & (v)	Low	Fail to report/register gray wolf kill/trophy game area	$235.00
271	23-3-115(c)	Low	Damage—fail to notify killing gray wolf	$235.00
272	23-3-402	Low	Fail to surrender gray wolf tracking device	$235.00
275	23-2-107(f)	Low	Violation of wild bison license issuance	$435.00
276	23-3-402	Low	Take wrong species of big game animal	$235.00
301	23-2-407(a)	23-2-417	Outfitting without a license	$1,515.00
302	23-2-407(a)	23-2-417	Professional guide without a license	$805.00
303	23-2-415	23-2-417	Failure of a professional guide or outfitter to report a violation	$535.00
304	23-2-401(a)	23-2-417	Non-resident hunting without guide in wilderness	$135.00
305	23-3-403(a)	High	False statement to procure commercial license	$435.00
306	23-2-410(c)(v)	23-2-417	Outfit without area authorization	$135.00
307	23-2-304(a)	Low	Fur dealer operating without license	$435.00
308	23-3-402	Low	Failure to keep fur dealer records	$435.00
309	23-3-401	Low	Taxidermist operating without license	$435.00
311	23-3-402	Low	Taxidermist-fail to keep records	$435.00
312	23-3-401	Low	Live bait dealer operating without license	$435.00
313	23-3-402	Low	Live bait dealer-fail to provide receipt	$85.00
314	23-3-401	Low	Game bird farm operating without license	$435.00
315	23-3-402	Low	Game bird farm-no certification of origin	$435.00
316	23-3-402	Low	Game bird farm-no disease-free certification	$435.00
317	23-3-402	Low	Game bird farm-no notice of disease infection	$435.00

318	23-3-402	Low	Game bird farm-fail to release minimum number of birds	$235.00
319	23-3-402	Low	Game bird farms-fail to keep/provide records	$435.00
320	23-3-402	Low	Game bird farm-fail to dispose of birds	$435.00
321	23-5-102	Low	Game bird farm-release game birds without permit	$235.00
322	23-3-401	Low	Fishing preserve operating without a license	$435.00
323	23-5-204	Low	Fish preserve-fail to provide proper receipt	$435.00
324	23-2-304(d)	Low	Fur dealer removing tag, tattoo or mark	$235.00
325	23-3-402	Low	Failure to provide copy of fur dealer license by employee	$135.00
326	23-2-305	Low	Prop./Domest. of furbearers without license	$435.00
327	23-4-102(d)	Low	Fish hatchery-operating without license	$435.00
328	23-4-102(a)	Low	Fish hatchery-no inspect. prior to planting	$435.00
329	23-4-102(e)	Low	Fish hatchery-fail to provide certificate of sale	$435.00
330	23-4-102(g)	Low	Fish hatchery-ship fish/eggs without interstate game tag	$435.00
331	23-3-402	Low	Commercial or scientific use of collection of wildlife without permit	$435.00
332	23-2-304(b)	Low	Fur dealer-fail to keep records for cloven hoofed animal hides	$435.00
333	23-3-404(a)	Low	Tannery-delivery/receipt of game specimens without tag	$235.00
334	23-5-107	Low	Fail to provide receipt for game birds	$135.00
335	23-5-108	Low	Take birds on bird farm out of season	$135.00
336	23-2-418(a)	23-2-417	Compensation of person not licensed as professional guide/outfitter	$805.00
337	23-3-402	Low	Fail to submit license report in timely manner	$235.00
338	23-2-302(f)	Low	Taxidermist-fail to submit records in timely manner	$435.00
339	23-3-402	Low	Fur dealer-fail to submit records in timely manner	$435.00
340	23-3-402	Low	Game bird farm-fail to submit records in timely manner	$435.00
341	23-3-402	Low	Live bait dealer-fail to keep records	$435.00
342	23-3-402	Low	Live bait dealer-fail to submit records in timely manner	$435.00
343	23-3-402	Low	Live bait dealer-fail to maintain records at business location	$435.00
344	23-3-402	Low	Game bird farm – Violation of sage grouse regulations	$435.00
345	23-3-402	Low	Tannery-fail to keep records	$435.00

346	23-3-402	Low	Tannery-fail to submit records in timely manner	$435.00
350	23-3-402	Low	Violation commercial regulations not listed elsewhere	$435.00
391	23-2-410(a)(ii)	23-2-417	Violation state outfitter board rules and regulations	$135.00
392	23-2-412(a)(i)	23-2-417	Violation of age requirements for guide's license	$135.00
393	23-2-412(a)(ii)	23-2-417	Outfitter employment requirements for professional guide	$135.00
394	23-2-416(a)(i)	23-2-417	Fraud or misrepresentation in obtaining outfitter/guide license	$435.00
395	23-2-416(a)(ix)	23-2-417	Endangering health and safety of client	$135.00
396	23-2-416(a)(v)	23-2-417	Unethical conduct by outfitter or guide	$135.00
397	23-2-416(a)(vi)	23-2-417	Substantial breach/contract by outfitter or guide	$135.00
398	23-2-416(a)(vii)	23-2-417	Violation of terms of license by outfitter or guide	$135.00
399	23-2-416 (a)(viii)	23-2-417	Inhumane treatment/animal by outfitter or guide	$135.00
401	23-3-103(c)	Low	Take game birds without license	$135.00
402	23-3-402	Low	Take game birds during closed season	$135.00
403	23-3-402	Low	Take over limit of game birds	$135.00 plus $20.00 per game bird
404	23-3-402	Low	Fail to retain evidence of sex or species on a game bird	$135.00
405	23-3-403(a)	High	False statement to procure game bird license	$235.00
406	23-3-303(a)	Low	Waste or abandon edible portions of game bird	$135.00 plus $20.00 per game bird
407	23-3-306(a)	High	Take or harass game bird with or from a vehicle	$235.00
408	23-3-402	Low	Fail to obtain waterfowl stamp prior to hunting	$85.00
409	23-3-108(a)	Low	Destroy nest or eggs of non-predaceous bird	$135.00
410	23-3-110 (a)or(b)	Low	Illegal caliber/gauge or unplugged firearm for bird hunting	$135.00
411	23-3-402	Low	Hunt birds before or after legal hours	$135.00
412	23-3-402	Low	Fail to use non-toxic shot for waterfowl or in restricted areas	$135.00
413	23-2-102(c)	Low	Violation of age limit to hunt game birds	$135.00
414	23-3-104	Low	Fail to tag turkey	$135.00
415	23-3-116	Low	Fail to notify and/or mark game birds	$135.00
416	23-3-116	Low	Fail to provide disease free certification	$135.00
417	23-3-116	Low	No permit for private source game birds	$135.00
418	23-3-402	Low	Fail to wear fluorescent orange/pink clothing while bird hunting	$85.00

419	23-3-402	Low	Hunt pheasant without special management stamp	$85.00
420	23-3-402	Low	Hunt pheasant without special permit as required on Springer and Glendo	$85.00
421	23-3-402	Low	Fail to obtain HIP Stamp prior to hunting	$85.00
450	23-3-402	Low	Violation of game bird regulations not listed elsewhere	$135.00
501	23-2-105(c)	Low	Take/export falcon without license or permit	$435.00
502	23-3-402	Low	Take falcon during closed season or in wrong area	$435.00
503	23-3-403(a)	High	False statement to procure falconry license	$435.00
504	23-3-402	Low	Fail to comply with facility and equipment requirements	$135.00
505	23-3-402	Low	Failure to mark raptors	$235.00
506	23-3-402	Low	Illegal transfer of raptors	$435.00
507	23-3-402	Low	Illegal sale of raptors	$435.00
508	23-3-402	Low	Illegal possession of raptor parts	$435.00
509	23-3-402	Low	Illegal possession of raptor eggs	$435.00
511	23-2-105(b)	Low	Hunt with falcon without a license	$135.00
512	23-3-402	Low	Hunting with falcon during closed season	$135.00
514	23-3-108(a)or(c)	High	Destroy eagle nest or eggs	$805.00
550	23-3-402	Low	Violation of falcon regulation not listed elsewhere	$135.00
601	23-2-102(b)	Low	Take small game without license—age limits	$135.00
602	23-3-402	Low	Take over limit of small game	$135.00 plus $20.00 per animal
603	23-3-402	Low	Take small game out of season	$135.00
604	23-3-103(c)	Low	Take furbearer animal without a license	$435.00
605	23-2-303(d)	Low	Fail to check steel-jawed leghold traps within 72 hours	$235.00
606	23-2-303(d)	Low	Failure to tag traps and/or snares	$135.00
607	23-3-304(b)	High	Use game parts for bait	$435.00
608	23-3-304(a)	High	Take game animal with pit, trap, etc.	$435.00
609	23-3-402	Low	Fail to tag Bobcat pelt	$135.00
610	23-3-403(a)	High	False statement to procure small game license	$235.00
611	23-3-403(a)	High	False statement to procure trap, furbearer license	$235.00
612	23-3-402	Low	Take furbearer out of season	$435.00
613	23-3-303(a)	Low	Waste or abandon small game	$135.00 plus $20.00 per animal
614	23-3-306(a)	High	Take or harass small game or furbearer with or from vehicle	$235.00
615	23-2-303(d)	Low	Fail to check snare or quick kill body grip trap at least once each week	$135.00

616	23-2-303(d)	Low	Set trap or snare within 30' of exposed bait or carcass over 5 lbs in weight	$135.00
618	23-2-303(d)	Low	Snare without a break-away lock	$235.00
619	23-2-303(d)	Low	Snare with break-away lock over 295 lbs	$235.00
620	23-2-303(d)	Low	Snare set with loop in excess of 12"	$135.00
621	23-2-303(d)	Low	Fail to immediately remove wildlife caught in any trap/snare	$135.00
622	23-2-303(f)(i)	Low	Unlawful tampering or removal of a trap or snare	$235.00
623	23-2-303(f)(ii)	Low	Unlawful release or removal of a furbearer or predator from a trap or snare	$235.00
624	23-3-402	Low	Fail to immediately report non-target wildlife caught in trap/snare	$435.00
650	23-3-402	Low	Violation of small game/furbearer regulations not listed elsewhere	$135.00
701	23-2-104(c)	Low	Take game during special archery pre-season without a license	$135.00
702	23-2-104(d)	High	Archer use firearm during special archery season to take big or trophy game	$235.00
703	23-2-104(e)	Low	Violation of archery equipment specifications	$135.00
704	23-3-403(a)	High	False statement resident archery license	$235.00
750	23-3-402	Low	Violation of archery regulations not listed elsewhere	$135.00
801	23-6-205 (a)or(b)	Same as Principal	Accessory before/after the fact (aid/abet)	Same as principal
802	23-6-103(a)	Low	Fail to appear on bondable offense	$235.00
804	23-3-305(a)	Low	Hunt/shoot/kill wildlife from highway	$235.00
805	23-3-305(b)	Low	Hunt, trap, fish or collect antlers/horns on private land without permission	$435.00
806	23-3-305(c)	Low	Shooting from/across or along roadways	$235.00
807	23-3-305(d)	Low	Shooting from/across enclosed lands without permission	$235.00
808	23-3-305(e)	Low	Hunting on private land at night without permission	$435.00
809	23-3-306(b)	High	Take wildlife with artificial light	$535.00
810	23-3-402	Low	Possess protected species or any part thereof	$135.00
811	23-3-402	Low	Violations of non-game regulations	$135.00
812	23-2-106(c)	Low	Violation of hunter mentor (hunter safety) program	$85.00
813	23-3-302	Low	Sale of game meat or game fish	$435.00
814	23-3-301 (a)or(b)	Low	Import/sell game animals/wildlife/possess live wildlife	$435.00
815	23-2-306(a)	Low	Fail to purchase conservation stamp	$85.00
816	23-2-306(a)	Low	Fail to produce conservation stamp	$85.00
817	23-3-402	Low	Fail to sign conservation stamp	$85.00

818	23-2-106(a)	Low	Fail to demonstrate proof of hunter safety course completion	$85.00
819	23-2-106(a)	Low	Fail to take hunter safety course	$85.00
820	23-3-402	Low	Transfer of license, stamp, tag or coupon	$435.00
821	23-3-308(a)	Low	Fail to stop at established check station	$85.00
822	23-2-101(c)	Low	Landowner signature on license as proof of permission	$135.00
823	23-3-403(a)	High	False statement to procure game tag	$435.00
824	23-3-402	Low	Fail to obey regulatory sign on department land	$135.00
830	23-6-204(c)	Low	Take any wildlife not prescribed by act and no separate penalty	$235.00
831	23-3-112(a)	High	Take any wildlife by use of an automatic weapon	$535.00
832	23-3-307(a)	Low	Hunting while under influence of drugs or alcohol	$805.00
833	23-6-206(b)	High	Procure, purchase or possess another license while under suspension	$805.00
834	23-3-405(a)	Low	Interfere with the lawful taking of wildlife	$235.00
835	23-3-405(c)	High	Fail to obey peace officer in reference to 23-3-405(a)	$435.00
837	23-3-109(a)	Low	Use of dog to hunt/run/harass big or trophy game	$235.00
838	23-3-109(c)	Low	Dog(s) chasing big game	$135.00
839	23-3-402	Low	Violation concerning live wildlife or exotic animal, chapter 10	$235.00
841	23-3-115(b)	Low	Damage--fail to notify killing bear, lion, bobcat	$135.00
842	23-3-204(b)	High	Allowing refuse or other substance to pass into public water	$435.00
843	23-3-402	Low	Take wrong sex of animal	$235.00
844	23-3-402	Low	Apply for preference points while under suspension	$435.00
845	23-3-402	Low	Apply for preference points within 5 year waiting period	$435.00
846	23-3-402	Low	Violation of Chapter 23 Regulations Governing Uses of Lands and Waters Administered by the WGF Commission	$135.00
847	23-3-402	Low	Alteration of license	$235.00
848	23-3-403(a)	High	Resident Lifetime License (fishing, game bird and small game only)	$435.00
849	23-3-403(a)	High	Resident Lifetime License (combination licenses)	$805.00
851	36-2-107(b)(ii)		Closed/off road violation	$235.00
852	36-2-107(b)(iv)		Violation of fire rules on state land	$235.00
853	36-2-107(b)(v)		Camping violation on state land	$235.00
854	23-3-306(a)	High	Take or harass nongame with or from a vehicle	$235.00

855	23-3-402	Low	Violation of antler collection regulation	$435.00
859	36-2-107(b)(vi)	Low	Violation of antler hunting regulation on State Lands	$435.00
865	23-4-203(b)	High	Fail to Stop at AIS check station	$85.00
866	23-4-204(b)	High	Fail to purchase an AIS program decal	$135.00
867	23-4-204(a)	High	Improper display/wrong AIS decal	$135.00
868	23-4-203(a)	High	Violation of AIS regulation not listed elsewhere	$435.00
869	23-4-202	High	Launch watercraft without an AIS inspection	$435.00
870	23-3-303(a)	Low	Illegal possession of big game parts from wasted animal	$435.00
871	23-3-301(c)	High	Import/possess wildlife taken illegally out of state	$435.00
872	23-3-112(c)(i)	High	Use of silencer/take big/trophy game without a license	$805.00
874	23-3-112(c)(iii)	High	Use of silencer/trespass/take big or trophy game animal	$805.00
875	23-3-112(c)(iv)	High	Use of silencer/take big/trophy game animal out of season	$805.00
876	23-3-402	Low	Violation of human presence closure on Wildlife Habitat Management Area	$235.00
901	41-13-102		Operate unnumbered boat	$135.00
902	41-13-104(a)		Fail to display identification number on boat	$85.00
903	41-13-104(a)		Fail to produce certificate of number for inspection	$85.00
904	41-13-104(a)		Improper numbering on watercraft	$85.00
905	41-13-203		Careless operation of watercraft	$235.00
909	41-13-210		Riding on bow or gunwales of watercraft	$85.00
910	41-13-211(b)		Operate watercraft in restricted area	$85.00
911	41-13-208		Overloading watercraft	$85.00
912	41-13-209(a)		Operate overpowered watercraft	$85.00
913	41-13-212(a-e)		Water-skiing violations	$85.00
914	41-13-213		Fail to provide life jackets	$135.00
915	41-13-213		Fail to provide fire extinguisher	$85.00
916	41-13-213		Operate boat at night without lights	$85.00
917	41-13-209(b)		No muffler or noise suppression devices on watercraft	$85.00
918	41-13-219		Allow operation of watercraft by underage person	$135.00
919	35-10-403		Watercraft for hire without personal floatation devices	$135.00
921	41-13-213		No sound producing devices on watercraft	$85.00
922	41-13-218		Violation of watercraft numbering rules	$85.00
923	41-13-216(c)		Operation of watercraft while privilege to operate is denied	$435.00
924	41-13-105(a)		Fail to stop or render aid	$135.00

925	41-13-105(b)		Failure to file USCG accident report with the department within 10 days	$135.00
926	41-13-218		Personal watercraft-wake jumping	$135.00
927	41-13-218		Personal watercraft-no kill switch	$85.00
928	41-13-218		Watercraft creating wake within 100 feet of vessel or persons in the water	$135.00
929	41-13-218		Failure to require children 12 and under to wear a life jacket	$135.00
940	41-13-218		Violation of watercraft regulations not elsewhere	$85.00
941	41-13-105(b)		Failure of operator to immediately report accident	$235.00
942	41-13-111(a)		Altering HIN or Motor serial number	$235.00
943	41-13-111(b)		Giving false information on accident report	$235.00
944	41-13-209		Motorboat equipped with exhaust system cutout	$85.00
945	41-13-211		Failure to operate watercraft in accordance with buoys or markers	$85.00
946	41-13-220(a)		Failure to stop for enforcement officer	$235.00
947	41-13-220(b)		Emergency lights on unauthorized watercraft	$85.00
948	41-13-213		Failure to provide throwable flotation device	$85.00
949	41-13-213		Failure to provide an orange skier down flag	$85.00
5. LIVESTOCK OFFENSES				
Animal Welfare				
	6-3-203(b)		Failing to provide food, drink or protection	$535.00
Predatory Animals				
	11-1-103		Importation of domestic animals (Chapter 8 Rules)-1st offense	D
	11-1-103		Importation of domestic animals (Chapter 8 Rules)-2nd offense	E
	11-6-210(a)		Failure to pay predator animal control fee on bovine and ovine at time of brand inspection	D
	11-6-210(f)		Failure to pay predator animal control fee on bovine and ovine/commercial feedlot	D
Livestock Board and State Veterinarian				
	11-18-103(a)(v)		Violations of agency rules and regulations	D
	11-18-112		Refusal to provide assistance to Federal or State authorities	C

Contagious and Infectious Diseases Among Livestock				
	11-19-101(b)		Failure to comply with order of State Veterinarian, turning loose infected animal	E
	11-19-102		Duty of public to report diseases to State Veterinarian	D
	11-19-111		Violations of agency rules and regulations	D
Tuberculin Test of Dairy Cattle				
	11-19-215		Interference/refusal to gather and test dairy cattle	C
Tuberculosis Modified Accredited Area				
	11-19-304		Prohibition of importation of cattle	C
	11-19-306		Violation of agency rules and regulations	C
Brucellosis Test of Cattle				
	11-19-401		Failure to tag, brand & dispose of reactor cattle	C
Regulation and Inspection of Sheep				
	11-19-501(a)		Notice of Importation	C
	11-19-501(b)		Violation of agency rules and regulations	C
	11-19-502		Unloading sheep in transit	C
	11-19-503		Importing infected sheep	C
	11-19-504		Refusal to give information	C
	11-19-505		Owner liability, when arrest necessary, service of summons and complaint	C
Branding and Ranging				
	11-20-102		Stock running at large to be branded	C
	11-20-110		Recorded brand; bill of sale; when title vests	C
	11-20-114		Use of unrecorded or abandoned brand	D
	11-20-117(a)		Claiming ownership/identifying livestock with unrecorded brand	D
	11-20-118		Drover's stock to be kept separate; return commingled livestock to owner	C
	11-20-119		Drover's stock, liability for injury to property	C
	11-20-120		Driving cattle from home range	C
Inspection for Brands and Ownership				
	11-20-202		Duties of board; enforcement of provisions; rules and regulations	C
	11-20-203		Inspection of brands at time of delivery or removal from county; certificate required	D
	11-20-204		Brand inspector not to inspect his own livestock	C
	11-20-205(d)		Removal of strays from county	C
	11-20-206(a)		Certificate of inspection in possession of carrier	C
	11-20-206(b)		Failure to exhibit certificate of inspection upon demand	C

	11-20-208		Furnishing false proof of ownership	D
	11-20-209		When inspection not required	C
	11-20-210		When inspection not required; certain importations; compliance with health and quarantine regulations required	C
	11-20-211		When inspection not required; contiguous range	C
	11-20-212		Intrastate accustomed range permits	C
	11-20-214(a)		Brand inspector may inspect at his discretion; voluntary inspections	C
	11-20-216		Truck-fleet shipment permit	C
	11-20-217(b)		Certificates and agreements in lieu of inspection (G Form)	C
	11-20-218		Certificates and agreement in lieu of inspection; furnishing; numbering (G Form)	C
	11-20-219(a)		Certificates and agreements in lieu of inspection, filing distribution and display (G Form)	C
	11-20-219(b)		Certificates and agreements in lieu of inspection, failure to deliver at destination (G Form)	C
	11-20-219(c)		Certificates and agreements in lieu of inspection, failure to exhibit upon demand (G Form)	C
	11-20-220		Diverted shipments	D
	11-20-221		Common carriers not to receive livestock for transportation without certificate	D
	11-20-222		Unbranded calves; inspection at request of stockman	C
	11-20-223(a)		Interstate accustomed range permit; rules and regulations	C
	11-20-224		Permanent brand inspection certificate (L Form)	C
	11-20-225(a)		Annual brand inspection certificate (H Form)	C
	11-20-226		Certificates to be signed and in possession (L and H Forms)	C
	11-20-227		Fraudulent use of certificate and movement permit	C
Transporting Animals and Poultry by Vehicle				
	11-21-102		Display of permit to peace officer; written statement in lieu of permit	C
	11-21-104		Prohibited acts (false statement, false or forged permit, refuse or neglect to exhibit)	C
Livestock Markets				
	11-22-102		Violations of agency rules and regulations	D
	11-22-104		Market license requirement	E

	11-22-106(a)		Market license; cancellation	C
	11-22-107(a)		$25,000.00 bond required	C
	11-22-107(b)		$25,000.00 bond statement required	C
	11-22-108		Market license posting	C
	11-22-110		Sanitation; veterinarian supervision required	C
	11-22-111		Scales; inspection and testing	C
	11-22-112		Records of receipts and sales	C
	11-22-113(a)		Health inspection on livestock prior to sale at livestock auction; brand inspection on livestock before leaving livestock auction	C
	11-22-113(b)		Report of branded/unbranded livestock sold at livestock auction	C
	11-22-114		Removal of livestock from establishment	C
	11-22-115		Removal of veterinarian	C
	11-22-116		Warrant of title; disposition of proceeds from sale	C
	11-22-117		Dispersal sales at livestock markets; same requirements	C
Hides and Carcasses				
	11-23-101		Sale of carcass without inspection	C
	11-23-102(a)		Only inspected livestock to be slaughtered; record of cattle slaughtered	C
	11-23-102(b)		Record of cattle slaughtered	C
	11-23-103		Purchase of unstamped carcass prohibited	C
	11-23-104		Exhibition upon demand of hides or certificates of beef cattle	C
	11-23-106(d)		Cold storage locker plant; stamp on tag; certificate in lieu of stamp; filing and inspection of certificate	C
	11-23-107(a)		Killing of horses for meat; produce un-mutilated hide or certificate of inspection	C
	11-23-108(a)		Hide mutilation of equine, bovine, caprine, swine, ovine	C
Purchases, Sales and Transportation; Brand Inspections				
	11-23-202		Hide buyer; bill of sale required; contents; copy to seller	C
	11-23-203		Hide buyer; record of purchases to be kept; contents	C
	11-23-204		Hide buyer; inspection for interstate commerce; certificate	C
	11-23-206		Hide inspection for stock killed by transportation company	C
Transportation of Carcasses to Rendering Plants				
	11-23-301		Removal of carcasses intrastate	C

	11-23-302		Removal of carcasses interstate; inspection	C
	11-23-303		Hide inspection certificate	C
	11-23-304		Inspection fee collection; disposition	C
Estrays				
	11-24-103		Taking up estrays	C
	11-24-105(a)		Permit required to gather unclaimed equine	C
	11-24-105(b)		Disposal of unclaimed equine	C
	11-24-108(a)		Stock at large or picketed on public highways	E
Swine, Goats or Elk Running at large				
	11-26-101(a)		Swine, goats, elk, or exotic livestock prohibited to run at large	C
Feeding Untreated Garbage to Swine				
	11-27-104(a)		Feeding permit required	C
	11-27-105		Violation of agency rules and regulations	C
	11-27-106		Treatment of garbage before feeding	C
	11-27-107		Violation of agency rules and regulations	C
Fences and Cattle Guards				
	11-28-103(a)		Construction of unlawful wire fence-1st offense	A
	11-28-103(a)		Construction of unlawful wire fence-subsequent offense	C
	11-28-103(b)		Reconstruct unlawful wire fence within thirty days-1st offense	A
	11-28-103(b)		Reconstruct unlawful wire fence within thirty days-subsequent offense	C
	11-28-104		Fences across roads	C
	11-28-107		Leaving open, destroying lawful fence	C
Protection of Domestic Animals				
	11-29-103		Impounded animals to be fed	C
	11-29-106		Interference with Livestock Board officer or agent	D
Offenses Concerning Livestock and Other Animals				
	11-30-106(a)		Removing skins for carcasses	C
	11-30-106(b)		Preserving skins from carcasses by railroad company/employees	C
	11-30-108		Desertion and abandonment of sheep by herder	D
	11-30-109		Taking horses and equipment without consent of owner	C
	11-30-110		Appropriation of horse or mule on open range without permission	C
	11-30-112		Abuse or negligent treatment by bailee	C
	11-30-114(a)		Tampering or sabotaging exhibition livestock prohibited	C

	11-30-114(b)		Using unapproved drugs on exhibition livestock prohibited	C
Dogs and Cats				
	11-31-104		Poisoning or killing with ground glass	C
	11-31-108		Running livestock	C
	11-31-213		Registration; vaccination certificate	C
Animals Running at Large				
	11-31-301(c)		Animal running at large or has attacked a person-1st offense	B
	11-31-301(c)		Animal running at large or has attacked a person-2nd offense	C
	11-31-301(e)		Dog which has attacked a person	C
	11-31-301(h)		Failure to purchase county license or tag	A
Poultry				
	11-32-102		Violation of agency rules and regulations	C
	11-32-103(a)		Labeling of shipments	C
	11-32-103(b)		Labeling of shipments	C
	11-32-104		Agency rules and regulations	C
6. STATE PARKS AND HISTORIC SITES Violations of Agency rules and regulations				
Bail (which includes $20.00 court costs plus $25.00 court automation fee plus $10.00 civil legal services fee) may be forfeited for the following offenses: (penalty 36-4-115)				
24001	5		Abandoned property	B
24002	6(a)		Aircraft; Aircraft landing prohibited	C
24003	6(b)		Aircraft; Air delivery prohibited	C
24004	6(e)		Aircraft; Sailplanes, gliders, parasailing, hot air balloons, body kites and hang gliders prohibited	C
24005	7(a)		Camping; Designated areas only	C
24006	7(b)		Camping; 14 day maximum	C
24007	7(c)		Camping; Permit required	C
24008	7(d)		Camping; Digging prohibited	C
24009	71(e)		Camping; Quiet hours	C
24010	7(f)		Camping; Saving sites prohibited	C
24011	7(h)		Camping; Maximum occupancy	C
24012	11()(b)()7(i)		Camping; Prohibited at Bear River, Edness K. Wilkins and Hot Springs State Parks	A
24013	7(k)		Camping; Prohibited on docks, beaches, parking lots and day use areas	C
24014	7(l)		Camping; Disabled sites reserved for eligible persons	C
24015	7(m)		Camping; Occupancy of sites reserved for another prohibited	C

24016	7(p)		Camping; Nightly occupancy required	C
24017	8(b)		Closures; Failure to abide by posted signs	C
24018	8(d)		Closures; Exceeding capacity limits	C
24019	9(a)		Conduct; Disorderly conduct	C
24020	9(b)		Conduct; Use of park land or facilities under the influence	D
24021	9(c)		Conduct; Interfere with park employee	C
24022	9(d)		Conduct; Noise disturbance	A
24023	9(e)		Conduct; Possess container in excess of 2 gallons of alcohol	A
24024	9(g)		Conduct; Fireworks	C
24025	9(h)		Conduct; Nudity prohibited	A
24026	10(a)		Pets; Must be on leash	A
24027	10(b)		Pets; Prohibited in public eating places	A
24028	10(e)		Pets; Grazing prohibited	A
24029	10(f)		Pets; Unattended over one hour	C
24030	11(a)		Fires; Confined to fire rings	B
24031	11(b)		Fires; Unattended fires	B
24032	11(c)		Fires; Fire ban	C
24033	12(b)		Fishing; Fishing in closed areas	B
24034	12(c)		Fishing; Within 20 yards of boat ramp, boat dock, mooring area or designated beach area prohibited	B
24035	12(d)		Fishing; Fishing from motor vehicle bridge prohibited	B
24036	12(e)		Hunting; Hunting within 400 yds	C
24037	13(b)		Permits; Camping	A
24038	13(c)		Permits; Daily Use	A
24039	13(d)		Permits; Special use	A
24040	14		Picnicking	A
24041	15(a)		Preservation; Destruction, injury or defacement prohibited	C
24042	15(b)		Preservation; Gathering or possession of fruits and berries for purpose of sale prohibited	C
24043	15(c)		Preservation; Use of metal detector without permission prohibited	C
24044	158(d)		Preservation; Destroying, digging or cutting of live plants prohibited	C
24045	15(e)		Preservation; Removal of dead timber for purpose of sale is prohibited	C
24046	15(f)		Preservation; Tampering with state vehicles prohibited	C
24047	16(a)(i)		Public safety; Possession of explosives on park lands prohibited	C
24048	16(a)(ii)		Public safety; Use or display of weapon prohibited	C

24049	16(a)(iii)		Public safety; Discharge of firearm	D
24050	16(b)		Public safety; Glass beverage containers prohibited	C
24051	17(b)		Sanitation; Dumping refuse or wastes prohibited	C
24052	17(c)		Sanitation; Bathing at hydrants prohibited	C
24053	17(d)		Sanitation; Polluting or contaminating watershed or water supply prohibited	D
24054	17(e)		Sanitation; Placing trash in comfort station prohibited	C
24055	17(f)		Sanitation; Urinating or defecating other than at comfort stations prohibited	C
24056	17(g)		Sanitation; Dumping private property garbage or trash in government container prohibited	C
24057	18(a)		Trail use; Bicycle and equestrian use prohibited where posted	B
24058	18(b)		Trail use; Fail to yield to equestrian riders	B
24059	18(c)		Trail use; Motorized vehicles prohibited	C
24060	18(d)		Trail use; Riding or hitching animals in campgrounds prohibited	B
24061	18(f)		Trail use; Pedestrians frightening or interfering with animals	B
24062	18(g)		Trail use; Damaging trails	B
24063	19(a)		Solicitation; Commercial solicitation prohibited	A
24064	19(b)		Solicitation; Unauthorized signs or advertising prohibited	A
24065	19(c)		Solicitation; Begging and hitchhiking prohibited	A
24066	21(a)		Vehicle (off road)	D
24067	21(b)		Vehicle (speed limit)	B
24068	21(c)		Vehicle (campground)	A
24069	21(e)		Vehicle (exhibition driving)	C
24070	21(f)		Vehicle (careless driving)	D
24071	21(g)		Vehicle (registration, driver's license, and insurance)	B
24072	21(h)		Vehicle (ORV decal)	B
24073	21(i)		Vehicle (ORV driver's license)	B
24074	22(b)		Water sports; Fires on designated beach areas prohibited	A
24075	22(c)		Water sports; Glass containers on designated beach areas prohibited	C
24076	22(d)		Water sports; Fishing on designated beach areas prohibited	B
24077	22(e)		Water sports; Nudity on designated beach prohibited	A

24078	22(f)		Water sports; Dressing or undressing on designated beach prohibited	A
24079	22(g)		Water sports; Animals on designated beach prohibited	A
24080	23(d)		Water sports; Boat launch area	A
24081	24(a)(i)		Curt Gowdy State Park; No swimming	A
24082	24(a)(ii)		Curt Gowdy State Park; No vehicle or debris on ice	A
24083	24(a)(iv)(a)		Curt Gowdy State Park; Permit for alcohol in Amphitheater, Hynds Lodge	B
24084	24(a)(v)		Curt Gowdy State Park; No pets in reservoirs	A
24085	24(b)(i)		Hot Springs State Park; No bicycles on sidewalks	A
24086	24(b)(ii)		Hot Springs State Park; No camping	A
24087	24(b)(iii)		Hot Springs State Park; Quiet hours	A
24088	24(b)(iv)		Hot Springs State Park; Open alcohol container	A
24089	24(b)(v)		Hot Springs State Park; Alcohol permits	A
24090	24(b)(vi)		Hot Springs State Park; No diving into Big Horn River	A
24091	24(b)(viii)		Hot Springs State Park; Removing mineral water	A
24092	24(b)(ix)		Hot Springs State Park; No skateboards on streets	A
24093	24(b)(x)		Hot Springs State Park; School zones	A
24094	24(b)(xi)		Hot Springs State Park; Snow emergency	A
24095	24(b)(i)		Hot Springs State Park; No bicycles on sidewalks	A
24096	24(c)(i)		E.K. Wilkins State Park; Pets prohibited	A
24097	24(c)(ii)		E.K. Wilkins State Park; Dog training areas restricted	A
24098	24(c)(iii)		E.K. Wilkins State Park; Motorized watercraft prohibited	A
24099	24(c)(iv)		E.K. Wilkins State Park; Ponds closed to fishing	A
24100	24(d)		Sinks Canyon State Park; Trail use restrictions	A
24101	24(e)(iv)		Bear River State Park; Use of game calls prohibited	A
24102	24(e)(vi)		Bear River State Park; Tractor trailers prohibited	A
24103	24(f)		Guernsey State Park; Watercraft launch from boat ramps only	A
24104	24(g)(i)		Ft. Bridger State Historic Site; Camping prohibited	A
24105	24(g)(ii)		Ft. Bridger State Historic Site; Alcohol consumption prohibited	A

24106	24(g)(iii)		Ft. Bridger State Historic Site; Motorized vehicles prohibited on trails	A
7. NATRONA COUNTY PARKS				
	18-9-201(a)(i)		Alcova	B
	18-9-201(a)(i)		Pathfinder	B
	18-9-201(a)(i)		Gray Reef	B
	18-9-201(a)(i)		Hell's Half Acre	B
	18-9-201(a)(i)		Vista West Park	B
	18-9-201(a)(i)		Poison Spider Rifle Range	B
	18-9-201(a)(i)		Beartrap Meadow Park	B
	18-9-201(a)(i)		Casper Mountain Park (includes cross country ski trails)	B
	18-9-201(a)(i)		Archery Range	B
	18-9-201(a)(i)		Ponderosa Park	B
	18-9-201(a)(i)		Rotary Park	B
	18-9-201(a)(i)		Crimson Dawn	B
	18-9-201(a)(i)		Bridal Trail	B
	18-9-201(a)(i)		Centennial (Alcova)	B
8. MISCELLANEOUS				
	14-3-302		Sales or delivery of tobacco to minors-1st offense	$65.00
	14-3-304		Purchase of tobacco by minors	$65.00
	14-3-305(a)		Possession or use of tobacco by person under the age of eighteen (18)	$65.00

The above revised bail deposit and forfeiture schedule shall become effective **July 1, 2018.**

APPENDIX OF FORMS

Form 1. [Abrogated].

Editor's notes. — This form, being a criminal complaint, was abrogated by order of the Supreme Court, effective March 24, 1992. See Rule 58.

Form 2. Criminal warrant.

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

Before .....

CRIMINAL WARRANT
Criminal Action No. .....

THE STATE OF WYOMING }
COUNTY OF ..... } ss:

To the Sheriff of said County, Greeting:

Whereas Richard Roe has this day complained to me, on oath, that John Doe did on or about the ..... day of ....., (year), in the county and state aforesaid

(Describe the offense charged in the complaint.)

and prayed that the said John Doe might be arrested and dealt with according to law. Now, therefore, in the name of the State of Wyoming, you are hereby commanded forthwith to apprehend the said John Doe and bring ..... before me to be dealt with according to law.

Given under my hand this ..... day of ....., (year)

.....
Judge

(Amended December 2, 2002, effective January 6, 2003.)

Form 3. Information.

IN THE DISTRICT COURT

THE STATE OF WYOMING } ss:
COUNTY OF ..... }

..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

INFORMATION

Criminal Action No. .....

Comes Now A.B., County and Prosecuting Attorney of the County of ..... and State of Wyoming, and in the name and by the authority of the State of Wyoming informs the court and gives the court to understand that John Doe late of the county aforesaid, on the ..... day of ....., (year), in the County of ..... in the State of Wyoming, did unlawfully

(A definite statement of the essential facts, act or omissions constituting the crime or offense charged, in plain, ordinary and concise language. Also state for each count the official or customary citation of the statute, rule or regulation or other provision of the law which the defendant is alleged therein to have violated.)

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming.

.....
County and Prosecuting Attorney of
the County of ..... , State
of Wyoming

THE STATE OF WYOMING }
COUNTY OF ..... } ss:

I, ..., County and Prosecuting Attorney of the County of ....., State of Wyoming, do solemnly swear that I have read the above and foregoing information by me subscribed, that I know the contents thereof, and that the facts therein stated are true (or that I have been reliably informed and verily believe the facts therein stated to be true.) So help me God.

.....
County and Prosecuting Attorney of
the County of ....., State
of Wyoming

Sworn to before me and signed in my presence this ..... day of ....., (year), and I do hereby so certify.

.....
Clerk of the District Court

Defendant pleads .....
Dated this ..... day of ....., (year)

.....
JUDGE

Form 4. Summons.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

SUMMONS

Criminal Action No. .....

TO JOHN DOE:

You are hereby summoned to appear before the District Court for the ..... Judicial District, State of Wyoming, County of ....., at the courthouse thereof in the City of ....., on the .....
day of ....., (year), at ..... o'clock ..... M. to answer to (Describe the offense charged in the complaint or information.)

Dated this ..... day of ....., (year)

.....
Clerk of the District Court

Form 5. Motion by defendant to dismiss information.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

MOTION BY DEFENDANT TO DISMISS INFORMATION

Criminal Action No. .....

The defendant moves that the information be dismissed on the following grounds:

1. The court is without jurisdiction because the offense, if any, is cognizable only in the District Court of the ..... Judicial District ..... County, State of Wyoming.

2. The information does not state facts sufficient to constitute an offense against the State of Wyoming.

(Any other grounds upon which the defendant desires to move that the information be dismissed.)

Dated this ..... day of ....., (year)

.....
Attorney for the Defendant

Form 6. Subpoena.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

SUBPOENA

Criminal Action No. .....

To the Sheriff of ..... County, Wyoming, Greeting:

You are hereby commanded to notify ..... to be and appear at a term of the District Court of the ..... Judicial District of the State of Wyoming, to be held in the City of ....., County of ....., in said state, on the ..... day of ....., (year), at ..... o'clock .... M., then and there to testify as a witness on behalf of ..... in a cause now pending in said court, wherein the State of Wyoming is plaintiff, and John Doe is defendant and this you are not to omit under penalty of the law.

WITNESS the clerk of said court, and the seal thereof, this ..... day of ....., (year).

.....
Clerk of the District Court

Form 7. Appearance bond; justification of sureties.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

APPEARANCE BOND

Criminal Action No. .....

KNOW ALL MEN BY THESE PRESENTS, that we, John Doe as principal, and (John Brown) (Mary Brown) ..... AND ....., as sureties, are held and firmly bound unto the State of Wyoming, in the penal sum of ..... Dollars ($.....) for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors and assigns, jointly, severally and firmly by these presents.

The condition of this bond is that the defendant is to appear in the District Court of the ..... Judicial District, in the City of ....., County of ....., State of Wyoming, in accordance with all orders and directions of the court relating to the appearance of the defendant before the court in the above entitled case; and if the defendant appears as ordered, then this bond to be void, but if the defendant fails to perform this condition or appear as ordered, payment of the amount of the bond shall be due forthwith. If the bond is forfeited and the forfeiture is not set aside or remitted, judgment may be entered upon motion in the said district court against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Wyoming Rules of Criminal Procedure and by other laws of the State of Wyoming.

WITNESS our hands and seals this ..... day of ....., (year)

(Seal)

.....
Principal

(Seal)

.....
Surety

(Seal)

.....
Surety

I approve the sufficiency of the above bond this ..... day of ....., (year)

.....
Clerk of the District Court

Justification of Sureties

I, the undersigned surety, on oath say that I reside at .....; and that my net worth is the sum of ..... Dollars ($.....).

I further say that (A statement of additional justification if the commissioner or court so directs.) .....
.....

.....
Surety

Sworn and subscribed to before me this ..... day of ....., (year), at .....

.....
Clerk of the District Court

I, the undersigned surety, on oath say that I reside at .....; and that my net worth is the sum of ..... Dollars ($.....).

I further say that (A statement of additional justification if the commissioner or court so directs.) .....
.....

.....
Surety

Sworn and subscribed to before me this ..... day of ....., (year), at .....

.....
Clerk of the District Court

Form 8. Motion in arrest of judgment.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

MOTION IN ARREST OF JUDGMENT

Criminal Action No. .....

The defendant moves the court to arrest the judgment for the following reasons:

1. The information does not state facts sufficient to constitute an offense against the State of Wyoming.

2. This court is without jurisdiction of the offense, in that the offense, if any, was not committed in this county or district.

Dated this ..... day of ....., (year)

.....
Attorney for the Defendant

Form 9. Motion for new trial.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

MOTION FOR NEW TRIAL

Criminal Action No. .....

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.
5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.
6. The court erred in charging the jury and in refusing to charge the jury as requested. (Set out instructions.)
7. The court erred in denying the defendant's motion for a mistrial.

(Any other grounds relied upon for a new trial.)

Dated this ..... day of ....., (year)

.....
Attorney for the Defendant

Form 10. Search warrant.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

SEARCH WARRANT

Criminal Action No. .....

To: (Name and Title of Officer):

Affidavit having been made before me by ..... that he has reason to believe that on the premises known as ..... Street, in the City of ....., County of ....., State of Wyoming, there is now being concealed certain property, namely, (Describe with particularity the property and in conformance with the rule on search warrants), and as I am satisfied that there is probable cause to believe that the said property is being concealed on the premises above described. (State the grounds of probable cause.)

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search .....*, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this ..... day of ....., (year)

.....
Title of Officer Issuing Search Warrant

*See Rule 41(c) for time of search.

Form 11. Motion for return of seized property and suppression of evidence.

IN THE DISTRICT COURT

THE STATE OF WYOMING }
COUNTY OF ..... } ss:
..... JUDICIAL DISTRICT

THE STATE OF WYOMING,
Plaintiff,
vs.
JOHN DOE,
Defendant.

MOTION FOR RETURN OF SEIZED PROPERTY AND SUPPRESSION OF EVIDENCE

Criminal Action No. .....

John Doe hereby moves this court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on the ..... day of ....., (year), at the premises known as ..... Street, in the City of ....., in the County of ....., State of Wyoming, was unlawfully seized and taken from him by a Deputy Sheriff of the County of ....., State of Wyoming, (Give name of deputy, if known, and if unknown, so state) be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

Defendant further moves that any and all testimony in regard to said property, and testimony or evidence based upon said unlawful search and seizure be likewise suppressed as evidence against him.

Dated this ..... day of ....., (year)

.....
Attorney for Petitioner

Form 12. Criminal Rules Translation Table.

CRIMINAL RULES TRANSLATION TABLE

Former Rule (Prior to 1992 Revision)	Present Rule
Rule 1	Rule 1
Rule 2	Rule 2
Rule 3	Rule 3
Rule 4	Rule 4
Rule 5	Rule 5
Rule 6	Rule 44
Rule 7	Rule 5.1
Rule 8	Rule 3.1
Rule 9	Rule 7
Rule 10	Rule 9
Rule 11	Rule 8
Rule 12	Rule 13
Rule 13	Rule 14
Rule 14	Rule 10
Rule 15	Rule 11
Rule 16	Rule 12
Rule 16.1	Rule 12.1
Rule 16.2	Rule 12.3
Rule 17	Rule 15
Rule 18 (except for (c))	Rule 16

Rule 18(c)	Rule 26.2
Rule 19	Rule 17.1
Rule 20	Rule 17
Rule 21	Rule 18
Rule 22	Rule 20
Rule 23(a) to (c)	Rule 21
Rule 23(d) and (e)	Rule 21.1
Rule 24	Rule 23
Rule 25	Rule 24
Rule 26	Rule 25
Rule 27	Rule 26
Rule 28	Rule 27
Rule 29	Rule 28
Rule 30	Rule 29
Rule 31	Rule 30
Rule 32	Rule 31
Rule 33(a) to (e)	Rule 32
Rule 33(f)	Rule 39
Rule 34	Rule 33
Rule 35	Rule 34
Rule 36	Rule 35
Rule 37	Rule 36
Rule 38	None (see note under present Rule 38)

Rule 39	None (see note under present Rule 39)
Rule 40	Rule 41
Rule 42	Rule 43
Rule 43	Rule 45
Rule 44	Rule 47
Rule 45	Rule 48
Rule 46	Rule 49
Rule 47	Rule 50
Rule 48	Rule 51
Rule 49	Rule 52
Rule 50	Rule 53
Rule 51	Rule 54
Rule 52	Rule 57
Rule 53	Rule 58
Rule 54	Rule 59
Rule 55	Rule 60
Rule 56	Rule 61