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# CRIMINAL LAW

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## DISCLAIMER

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The information on this page is intended for educational purposes only. **It is not legal advice.** If you have specific questions, or are experiencing a situation where you need legal advice, you should contact an attorney.

Student Legal Services makes every effort to ensure the accuracy of the information on this page. However, the law changes frequently and this site should not be used as a substitute for legal advice. It is highly recommended that anyone accessing this page consult with an attorney licensed in the state of Wyoming prior to taking any action based on the information provided on this page.

## COURT APPOINTED ATTORNEY (PUBLIC DEFENDER)

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**Individuals going through the criminal justice system—whether encountering it for the first time, or not—should utilize the services of an attorney whenever possible.**

Court appointed attorneys—more commonly known as public defenders are an excellent resource for individuals who qualify for their services.

Generally, court appointed attorneys are available to anyone charged with a crime that faces the possibility of jail time who cannot afford to hire a private attorney.

In Wyoming, almost everyone charged in state court faces the possibility of jail time and are therefore eligible for a court appointed attorney if they meet the income requirements.

In Laramie, individuals charged with a crime in municipal court only face the possibility of jail time if they are charged with one of three crimes:

- 1) Driving Under the Influence (DUI) under ordinance 10.24.010;
- 2) Driving While Licenses Suspended, Cancelled, or Revoked under ordinance 10.28.250;
- or
- 3) Failure to Maintain Liability Insurance under ordinance 10.20.190.

Individuals who want a court appointed attorney should ask the court. The court will tell an individual if they are not eligible.

## FIRST OFFENDER TREATMENT

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Simply put, First Offender Treatment is gives someone a chance at a do-over. First Offender Treatment allows a person who has not been charged previously with a felony or certain misdemeanors the chance to enter a into an agreement with the prosecutor that allows the person charged with the crime to keep the crime off their record by completing probation.

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## TYPES OF FIRST OFFENDER TREATMENT

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The Wyoming statutes offer two types of First Offender Treatment. The two types are very similar to one another, though not identical.

### WYOMING STATUTE §7-13-301—GENERAL FIRST OFFENDER

First Offender Treatment under Wyoming Statute §7-13-301 is often referred to as a “301.” 301 treatment is available to people most people who have been charged with a felony or misdemeanor in Wyoming. There are situations where people cannot receive 301 treatment.

301 treatment is not available for individuals:

- with a prior felony conviction(s);
- with a prior conviction(s) for DUI;
- with a prior conviction(s) for domestic battery or domestic assault;
- charged with murder;
- charged with first- or second-degree sexual assault;
- charged with first- or second-degree arson;
- charged with assault and battery.

301 treatment can be applied in a number of ways. However, 301 treatment is often entered into as part of a plea agreement with the State. In those situations, 301 treatment works as follows:

- The person eligible for 301 treatment must ask the prosecutor to agree to recommend 301 treatment.
- If the prosecutor agrees, then the person seeking 301 treatment will go to court and plead guilty or no contest.
- The court will look at the case and if the court agrees that the person charged is a good candidate for the 301 treatment then they will set the guilty plea aside and sentence the person to probation.
- Probation can last for up to 36 months.
- While on probation the person must:
  - Report to the court not less than twice in each year at times and places determined by the court in its order;
  - Conduct himself or herself in a law-abiding manner;
  - Not leave the state without consent of the court;
  - Pay restitution to each victim in accordance with the Wyoming statutes (Wyoming Statutes § 7-9-101, § 7-9-103–115);

- Conform his or her conduct to any other terms of probation that the court imposes.
- If the court finds that the person has successfully completed their probation then the court can discharge the person and dismiss the proceedings.
  - This means that the guilty plea is not entered and instead is dismissed so the charge is never entered as a conviction on the person’s record.
  - The court may discharge the person and dismiss the proceedings at the end of 36 months, or any time after one year from the date of the original probation.
- If the person violates a term or condition of probation at any time before the person is discharged, then the court may:
  - Enter the person’s guilty plea and proceed to sentencing, or
  - Order a trial on the original charge if the person has not previously pleaded or been found guilty.

**The prosecutor must agree to first offender treatment under Wyo. Stat. § 7-13-301.**

**WYOMING STATUTE § 35-7-1037—DRUG SPECIFIC FIRST OFFENDER**

First offender treatment under Wyoming Statute § 35-7-1037 is officially called “Probation and Discharge of First Offenders.” First offender treatment under § 35-7-1037 works similarly to first offender treatment under § 7-13-301. First offender treatment under this section of the Wyoming Statutes is **not available to anyone who has a prior drug related conviction.** The drug specific first offender treatment can be used by people charged with:

- possession of a controlled substance under Wyoming statutes §§ 35-7-1031(c) or 35-7-1033(a)(iii)(B)
- being under the influence of a controlled substance under Wyoming statute § 35-7-1039.

While similar, first offender treatment under Wyoming Statute §35-7-1037 works slightly differently than 301 First Offender treatment. Under §35-7-1037:

- A person pleads guilty or is found guilty of possession of a controlled substance.
- The court defers further proceedings and places the person on probation.
- The person found guilty of possession of a controlled substance must consent to the use of the first offender treatment.
- When the court defers further proceedings, it sets aside the guilty judgment.
- The person must follow all probationary terms.
- If the person successfully completes probation, the court will discharge the person from probation and dismiss the charges.
- When the court dismisses the charges, it is without adjudication of guilt—meaning there is no conviction on the person’s record.
- If the person does not successfully complete probation, the court can enter the adjudication of guilt and proceed to sentencing.

The most significant differences between first offender treatment under this section, § 35-7-1037 and first offender treatment under Wyoming statute § 7-13-301 are that § 35-7-1037:

- is only for certain drug-specific crimes, and
- it does **not** require prosecutorial consent.

It is important to note that, even though this option exists, an individual can still use § 7-13-301 for the drug specific crimes listed in the statute.

## EXPUNGEMENT

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Expungement is the process of removing a criminal record from public access under certain circumstances. These records **DO NOT** disappear when a record is expunged; the record is simply removed from public access and sealed. This process does not automatically take place, as you must file a Petition for Expungement. Seeking the assistance of an attorney to file the petition so may be in your best interest.

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### MISDEMEANOR:

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In order to have a misdemeanor conviction expunged from your public record, you must meet the following requirements:

- The requisite amount of time has passed since the individual completed any sentence imposed by the court—including probation and the completion of any programs ordered by the court. The requisite amount of time varies based on the type of offense:
  - One year for status offenses.
    - A status offense is an offense that is a crime for minors, but not for adults.
    - An example of a status offense is a curfew violation.
    - Underage consumption of alcohol likely does not count as a status offense because the statute says the word “adult” and underage consumption of alcohol is illegal for some adults (individuals between the ages of 18 and 21).
  - Five years have passed for a non-status offense.
- The misdemeanor or misdemeanors must not have involved the use or attempted use of a firearm.

It is important to note that an individual can only expunge a conviction under this law once.

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### FELONY:

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In order to have a misdemeanor conviction expunged from your public record, you must meet the following requirements:

- At least ten years have passed since:
  - the expiration of the sentence imposed by the court, including probation,
  - the completion of any program order by the court, and
  - any restitution ordered by the court has been paid in full.

- There must not be any felony convictions prior to the felony or felonies for which you are seeking expungement
- The felony or felonies shall not have involved the use or attempted use of a firearm
- Must not be a violent felony (see Equal Justice Wyoming Handout for more information).

[Equal Justice Wyoming](#) created a helpful handout explaining the expungement process, including a list of crimes for which expungement is not available.

It is important to note that an individual can only expunge a conviction under this law once.