

# For The Road



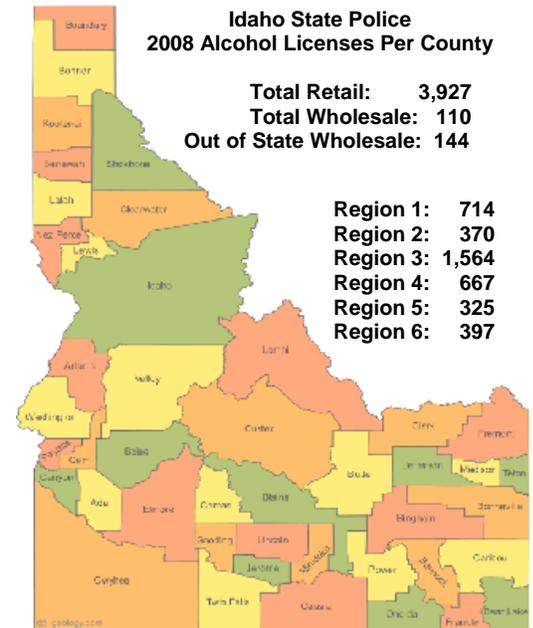
## Idaho Prosecuting Attorneys Association, Inc.

### ABC = Preventing Over-Consumption of Alcohol

By Jared Olson, Idaho TSRP

The cost of alcohol-related harm to society is enormous, both in human and economic terms. In 2007, approximately 100 more Idahoans' lives were lost due to alcohol impaired driving. At least 85,000 Americans die each year from alcohol-related causes, making it the third-leading cause of death in the United States (Mokdad, et al., 2004). Almost one in four victims of violent crime report the perpetrator had been drinking prior to committing the violence (Spunt, et al., 1995; Goldstein, et al. 1992; Greenfeld, 1998). Thirty-nine percent of accidental deaths (i.e. drowning, poisonings, falls and fires) and 29 percent of suicides in the U.S. are linked to alcohol consumption (Smith, et al., 1999).

The problems listed above are often associated with the over-consumption of alcohol in episodes of heavy drinking. Research suggests that 40 percent or more of drivers under the influence had their last drinks at licensed establishments (O'Donnell, 1985; Anglin, 1997; Gallup, 2000). Limiting the number of retail licenses and restricting serving practices that encourage patron intoxication are important



[Click Here to View Licenses by County](#)

strategies for reducing death and injury on Idaho's roads. This reveals the importance of Idaho State Police's Alcohol Beverage Control agency in the enforcement and adjudication of alcohol laws.

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### Web Sites

- Idaho TSRP  
[TSRP-Idaho.org](http://TSRP-Idaho.org)
- Idaho Prosecuting Attorneys Association  
[www.ipaa.cc](http://www.ipaa.cc)
- ITD Office of Highway Safety  
[itd.idaho.gov/ohs/](http://itd.idaho.gov/ohs/)
- Idaho POST Academy (includes DRE site)  
[www.idaho-post.org](http://www.idaho-post.org)
- National Highway Traffic Safety Administration  
[www.nhtsa.dot](http://www.nhtsa.dot)
- National Association of Prosecutor Coordinators  
[www.napcsite.org](http://www.napcsite.org)
- NDAA/APRI & NTLC  
[www.ndaa-apri.org](http://www.ndaa-apri.org)

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### Prosecuting the Impaired Driver — Register NOW!!

The IPAA is now taking applications for the *Prosecuting the Impaired Driver* course to be held on **May 21-23, 2008** in Moscow, Idaho. This course is a joint training for prosecutors and law enforcement officers and will be held at the Best Western University Inn.

This will be great "hands on" training for prosecutors and officers to work together through an alcohol impaired driving case. The course will cover from the initial stop to clos-

ing arguments and will be taught by an excellent faculty of national and local subject matter experts.

Space is limited to 40 participants, so register today! Registration fees, lodging and per diem are covered through a NAPC/NHTSA grant. The registration form and course agenda can be found by visiting [TSRP-Idaho.org](http://TSRP-Idaho.org). Please fax (208-884-7295) or email the completed form to [jared.olson@post.idaho.gov](mailto:jared.olson@post.idaho.gov).



## Don't Be Fooled! Underage Drinking ... It's no joke.

**April 1, 2008 - Tuesday**  
Bishop Kelly High School, Boise  
6:45 pm – Cafeteria  
Information and Panel for Q and A  
Sponsored by BK Senior Class Parents

**April 1, 2008 - Tuesday**  
Meridian Middle School Auditorium  
Open House 6:30 to 7:00 p.m.  
Presentation 7:00 – 8:00 p.m.  
Sponsored by Meridian Mayor's Anti-Drug Coalition

**April 2, 2008 – Wednesday**  
Venddome, Weiser  
7 p.m. Presentation/Program  
Sponsored by Weiser High School  
Chapter of SADD

**April 5, 2008 – Sunday**  
Idaho Hispanic Cultural Center, Nampa  
1 p.m. to 3 p.m.  
Sponsored by the Idaho Hispanic Commission

**April 7, 2008 – Monday**  
Council Elementary School, Council  
6:30 p.m. Dinner and Presentation  
Sponsored by Washington Adams  
County Substance Abuse Coalition

**April 8, 2008 – Tuesday**  
Rimrock Jr Sr High School,  
Bruneau/Grandview  
5:00 p.m. to 7:30 p.m.  
Sponsored by Rimrock's FHLA Chapter,  
IDFY i2i, Region 3, H & W/  
Substance Abuse – RAC

**April 24, 2008 – Thursday**  
Cloverdale Church of God (3755 S.  
Cloverdale Road, Boise)  
6:30 p.m. to 8:30 p.m.  
Sponsored by Treasure Valley Alcohol  
Drug Coalition

**April 26, 2008 – Saturday**  
Emmett Junior High, Emmett  
3 p.m. Program, Resources, and Refreshments – in conjunction with Youth Appreciation Day. Sponsored by the Emmett Valley Anti Drug Coalition and the Emmett Rec. District

## ABC = Prevention of Over-Consumption (From Page 1)

Prohibiting the sale and service of alcohol to intoxicated people will effectively reduce the highway carnage, yet enforcement of these laws is often given a low priority relative to the magnitude of the problems resulting from over-service. There are at least three factors contributing to this lack of adequate enforcement: (1) alcohol enforcement agencies face diminishing budgets and resources; (2) there is an absence of public and government support for the enforcement of such laws; and (3) in the case of laws governing sales to intoxicated people, the statutes are difficult to enforce and adjudicate.

Idaho has not escaped these three factors and certainly has not escaped the resulting public harm. Most glaring is the disparity between the number of Alcohol Beverage Control (ABC) officers compared to the number of alcohol licenses. Currently, Idaho has two ABC officers to monitor over 4,000 alcohol licenses. No state has fewer ABC officers than does Idaho. For example, Utah has 12 enforcement officers for 1,600 alcohol licenses. Vermont has a comparable 3,500 alcohol licenses, yet has 18 ABC officers.

Besides Idaho, the number of agents per State ranges from 3 to 260, with a median of 34. The national average ratio is one State ABC officer responsible for monitoring the activities of approximately 268 licensed establishments. This would require Idaho to hire 13 additional ABC officers to monitor 268 alcohol licenses. The Washington State Liquor Control Board conducted their own study and concluded the ideal ratio is actually one officer per every 160 licenses. Washington is doubling the number of ABC officers in order to reach this ratio.

Despite the lack of staffing, Idaho's ABC office is making a difference. In 2007, there were 162 administrative actions taken with 34 being over-service violations. This year there have already been 10 over-service violations. Because of the lack of staffing it has been important for ABC to partner with local law enforcement agencies and prosecutors. The Boise City Police Department, Boise City Attorney's Office and the Attorney General's office is just one example of a great partnership formed with ABC. Local law enforcement agencies, like Boise PD, are able to provide more staffing resources and a more specific understand-

ing of the alcohol-related problems in their communities. They help ABC pinpoint problem establishments, provide backup and provide evidence at adjudication hearings. However, many local law enforcement agencies usually do not have the resources or expertise to handle these responsibilities on their own and cannot substitute for an effective State Alcohol Beverage Control agency.

Idaho prosecutors must also play their part in prosecuting over-service cases. Enforcement is designed to increase the perceived likelihood that a violation will be detected, a key component of deterrence. Prosecution addresses the remaining two deterrence variables – the certainty and swiftness of a penalty being imposed and the extent of that penalty. Deterrence-based penalty structures need to ensure that the costs of violating the law significantly outweigh the benefits obtained. If the penalties assessed are not sufficiently served and are seldom imposed, then a simple cost-benefit analysis may result in a calculation by the licensee that the assessed penalties are just an operating cost of doing business.

Policy makers, prosecutors, law enforcement officers and community advocates need to have a clear understanding of the importance of Idaho's Alcohol Beverage Control agency to public health efforts in preventing alcohol-related problems. Improving the rates of compliance with alcohol service laws is a promising strategy for reducing alcohol-related harm, including drinking and driving. Without better staffing and resources, it is unlikely the goal of "Zero Deaths" on Idaho's highways will ever become a reality.

To learn more about promising strategies of the role of ABC officers and the studies relied on in writing this article please visit [www.TSRP-Idaho.org](http://www.TSRP-Idaho.org) or [Click Here](#).



**Click on the Advertisement above to learn about very unique and important alcohol-related training coming to Boise July 2008. Register Today!**

## Case Law Update:

***State v. Anderson, --- Idaho --- (2008)***: The Idaho Supreme Court reversed the District Court and Court of Appeals holding the State presented sufficient evidence to support the jury's verdict finding Anderson guilty of driving with an alcohol concentration of 0.20 or more. In this case, Anderson submitted three breath tests registering respectively 0.22, 0.19 and 0.24. According to police procedure, a third test was necessary because the deviation between the first two tests was greater than 0.02.

Anderson argued under *State v. Mills*, 128 Idaho 426 (Ct.App.1996) the State is barred from prosecuting defendants under I.C. § 18-8004C(1), as a matter of law, who register any alcohol concentration under 0.20. In *Mills*, the defendant had given tests of 0.10 and 0.09. (Note: The *per se* level at that time was 0.10, instead of the current 0.08.) The court found that any single result constitutes "a test" for purposes of I.C. § 18-8004(2). Therefore, any test registering under 0.10 was unprosecutable as a matter of law.

Anderson believed the same reasoning should apply to the enhanced DUI statute and the Court of Appeals agreed. However, I.C. § 18-8004C(1) does not have a provision similar to I.C. § 18-8004(1). No portion of the excessive DUI statute expressly forbids prosecution of a person who returns a test with an alcohol concentration level under 0.20. Therefore, the Idaho Supreme Court found under the enhancement statute, I.C. § 18-8004C(1), conflicting tests go towards the weight of the State's evidence and not its admissibility. In this case, the evidence presented was sufficient for a rational jury to make a finding of guilt beyond a reasonable doubt.

The opinion also discusses issues of discovery sanctions, laying the proper foundation for admitting a breath test result, defective complaint and defective verdict form. Each of these issues were ultimately found for the State. To review these issue [click here](#).

***State v. Bryan, --- Idaho --- (Ct.App.2008)***: Bryan was convicted of three misdemeanor violations of operating a commercial vehicle in excess of allowable weight limits. Bryan appealed arguing the state violated his right against double jeopardy by subjecting him to multiple criminal punishments for the same offense. The court held the 3 separate fines for the 3 weight violations did not violate Bryan's right against double jeopardy. The court rejected Bryan's contention his registered gross weight violation per I.C. § 49-438 was a separate offense from each of the axle weight violations per I.C. § 49-1001.

Multiple fines do not offend the right against double jeopardy if, pursuant to *Blockburger*, 284 U.S. 299 (1932), each weight violation required proof of one element that was not required for the other violation *or if*, pursuant to *Hunter*, 459 U.S. 359 (1983), the legislature clearly intended to authorize cumulative punishment for the violations. First, in this case, I.C. § 49-438 requires the state to prove Bryan had exceeded the weight at which he registered his tractor-trailer. I.C. § 49-1001 does not

require the state to prove the registered weight. Second, under I.C. § 49-4013(3) the legislature clearly intended to authorize cumulative punishments for multiple violations of I.C. § 49-1001, by authorizing a full penalty for the primary violation and a lesser penalty for each additional misdemeanor or infraction. Therefore, based on both the *Blockburger* and *Hunter* analysis, Bryan was not subjected to double jeopardy.

***State v. Mead, --- Idaho --- (Ct.App.2008)***: The court held "a scraped toe" is a sufficient injury to require a person to remain at the scene and provide aid and information to the injured person per I.C. § 18-8007. In this case, Mead challenged the sufficiency of the evidence to support his conviction arguing the injury suffered, a scraped toe, is below the level of injury contemplated by the statute. The Court rejected this argument holding the statute is clear that a driver involved in an injury accident must do more than simply stop. The driver must also provide his contact information, insurance, registration and inquire into the nature and extent of the injuries. In this case, Mead did not remain at the scene, nor provide the required information after striking a bicyclist with his vehicle. His own admissions to hitting the bicyclist were evidence he knew or reasonably should have known she suffered an injury. (Note: There are more facts to this case wherein Mead was charged with attempted rape and battery w/ intent to commit a serious felony, but was acquitted by the jury of these two charges. To review facts [click here](#).)

***State v. Willoughby, --- Idaho --- (Ct.App.2008)***: The Court upheld the magistrate's decision finding there was no reasonable, articulable suspicion to justify the officers' seizure of Willoughby through the use of their vehicles' overhead emergency lights. In this case, officers responded with lights and sirens to a "fight in progress" call at an apartment building parking lot. The first arriving officer observed a vehicle stopped behind some parked cars with 4 or 5 individuals inside. A second officer arrived within seconds and both parked within 15 feet of the stopped vehicle. Both officers left their overhead lights on. Meanwhile, Willoughby got out of the stopped car and the officers asked him where the fight was. During this conversation they noticed Willoughby had "glassy droopy eyes, a long face and was relaxed." Officers could also smell the odor of an alcoholic beverage coming from Willoughby. He admitted to driving, was further investigated for DUI, and ultimately arrested.

Under the totality of circumstances in this case, the Court held a reasonable person would not have felt free to leave or disregard the overhead lights. The court relied on the fact the overhead lights remained activated while the officers interviewed Willoughby about the reported fight. The officers did not see a fight upon their arrival. They did not deactivate their emergency lights, nor did they tell Willoughby he was free to drive away from the scene. Furthermore, the officers had no information about the person who called in the fight or whether a vehicle was even involved. This case is instructive of when overhead lights are a factor in whether or not a person is seized under the 4th Amendment, as well as what information should be sought by dispatchers when similar reports are called in.



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**Idaho Transportation Department**

**WE ARE ON THE WEB!!**  
**[WWW.TSRP-IDAHO.ORG](http://WWW.TSRP-IDAHO.ORG)**

## **UPCOMING TRAININGS & CONFERENCES NOTICE**

- [Breath Testing Specialist Training for FC20](#) — April 3, 2008, Meridian, Idaho.
- [2008 Lifesavers Conference](#) — April 13-15, 2008, Portland, Oregon.
- [Idaho DRE In-Service Training](#) — April 15-16, 2008, Meridian, Idaho.
- [2008 Highway Safety Summit](#) — May 13, 2008, Boise, Idaho.
- [IPAA's Prosecuting the Impaired Driver](#) — May 21-23, 2008, Moscow, Idaho.
- [NAPC Summer Conference](#) — July 15-17, Tucson, Arizona.
- [Northwest Alcohol Conference](#) — July 17-18, Boise, Idaho.

## **Last Call:**

April is alcohol-awareness month, and as you can see from the various conferences and trainings there is much to be offered in the next few months on alcohol-related issues. I encourage all prosecutors and officers to take advantage of these trainings. In fact, click below to learn about the 2008 Highway Safety Summit. Hope to see you there!— **Jared Olson, Idaho's TSRP**



**Doubletree Hotel Riverside • Boise, Idaho • May 13, 2008**

**Disclaimer:** This newsletter is a publication of the Idaho Prosecuting Attorneys Association, Inc. Readers are encouraged to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Idaho, IPAA, or the Idaho Department of Transportation. Please send comments, suggestions or articles to Jared Olson at [jared.olson@post.idaho.gov](mailto:jared.olson@post.idaho.gov).