

FOR THE ROAD

Idaho Prosecuting Attorneys Association



INVESTIGATING THE VALIDITY OF FOREIGN DRIVERS' LICENSES

By Jared Olson, Idaho Traffic Safety Resource Prosecutor

What should an Idaho officer do when handed a foreign driver's license on a traffic stop?

First, ask the driver if they have their International Driving Permit (IDP). In the United States, a driver from a country that participates in the UN treaty is allowed to use their driver's license while visiting the U.S. However, each individual state can pass laws requiring the driver to have an IDP - most states, including Idaho do not require this. But it is possible they will be carrying one anyway.

An IDP will be issued by their home country and basically translates the DL for use in the visiting country. Visitors may drive in Idaho on their out-of-state DL while visiting for up to 1 year. Those with a work visa or school visa may drive longer, but they must be carrying their visas with the necessary information.

Anyone moving to Idaho is required to apply for an Idaho Driver's License within

90 days of residing in Idaho, whether the out-of-state license is expired or not. If they have a Commercial Driver's License (CDL) they are required to be licensed in the State of Idaho within 30 days of residing in the State. Keep these numbers in mind when questioning the driver on the traffic stop.

Click on the links below for helpful resources when encountering a foreign driver's license:

- [The International Driver's Permit by the Regional Organized Crime Info Center.](#)

- [Foreign Reciprocity Resource Guide by AAMVA](#)

- [Resource Card re: Foreign Drivers](#)

Do not hesitate contacting me if I can be of any assistance! -- **Jared Olson, TSRP**

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THE 2014 IDAHO LEGISLATIVE UPDATE

Click on the Bill Headings To View the Full Bill Information & Background

The Idaho Legislature wrapped up a 74-day session on March 20, 2014. This was one of the shortest sessions in history, but not surprising with elections on the horizon and campaigns needed to be ran. However, hundreds of bills were introduced, including a number related to traffic safety and enforcement. Here are a few of the bills discussed in the January 2014 edition of *For The Road* that made their way through the legislature:

House Bill 404 - Ignition Interlock for Repeat Offenders -- This bill was to bring Idaho into compliance with the passage of the federal highway act known as MAP-21, defining "repeat offender" and making it mandatory for a 1-year installation of an ignition interlock system. Definitions were updated and the legislation passed. Governor Otter signed it on March 11, 2014 and it will become effective July 1, 2014.

House Bill 434 - Increase the maximum penalty amount for infractions -- This bill increases the current limitation on infraction penalties from \$100 to \$300. The stated purpose of the statute is to change penalties for certain misdemeanors to infraction violations where appropriate. The legislation passed and was signed by Governor Otter on March 26, 2014. It will become effective July 1, 2014.

House Bill 457 - Failure to wear seat belt, limit on use of evidence -- This bill seeks to modify the law that prevents a jury from learning a plaintiff in a personal injury action stemming from a car crash failed to wear a seat belt. This bill passed the legislature and was sent to the Governor's office on March 18, 2014. It has not been signed.

House Bill 461 -- 24/7 Sobriety and Drug Monitoring Program -- This bill creates a voluntary, statewide 24/7 Sobriety and Drug Monitoring program to be administered by the Idaho Attorney General. The Attorney General is granted rulemaking authority to administer the program. Offenders in the program are required to be tested twice per day to ensure they are abstinent from alcohol and other drugs. This legislation passed and was signed by the

Governor on March 26, 2014. The law will become effective on July 1, 2014. The next step will be the Attorney General to draft rules to develop and administer this optional statewide program.

House Bill 349 - Revise Schedule III & IV Uniform Controlled Substances -- This bill amended existing law to revise the lists of Schedule III and IV controlled substances. The Board of Pharmacy is statutorily obligated to update and republish the schedules annually. A number of controlled substances will be added to the schedules. The legislation passed and was signed by the Governor on March 6, 2014. The changes will become effective July 1, 2014.

Senate Bill 1379 - Uniformed Controlled Substances - Schedule I -- This bill amends existing law in reference to a number of "designer" drugs. Federal legislation has scheduled 9 "2C" compounds, 3 "NBOMe" compounds and 2 "substituted amphetamine" drugs. Additional dangerous substances have not been scheduled. This legislation specifically controls all currently known and any yet to be developed drugs within the "2C" class, the "25 NBOMe" class and the "substituted amphetamine" class. This legislation easily passed the Senate and House. It was sent to Governor Otter's office on March 24, 2014 and is awaiting his signature.

House Bill 396 - Uniform Controlled Substances Prescription Database -- This bill amends existing law to provide that certain prescribers shall register for online access to the Controlled Substances Prescription Database, otherwise know as the prescription monitoring program. This legislation passed and was signed by the Governor on March 13, 2014. It will become effective July 1, 2014.

Senate Bill 1284 - Increased Speed Limit on certain interstate highways -- This bill amends certain Idaho statutes to give the

Idaho Transportation Board the ability to increase maximum speed limits on the Interstate to 80 MPH, and 70 MPH on state highways. With an engineering and traffic study this can now be a reality, as the bill was passed by the legislature and signed by Governor Otter on March 18, 2014. The law becomes effective July 1, 2014.

Senate Bill 1357 - Criminal Justice Reform -- This bill is also known as the "justice reinvestment" approach wherein Idaho's criminal justice system is being assessed to reduce the prison population and increase probation, parole and supervision programs. This bill was passed by the legislature and signed by the Governor on March 19, 2014. Sections 4, 6, 9, 14, 15, 16 and 17 become effective on March 1, 2015; Section 20 becomes effective on January 1, 2016 and all other sections become effective on July 1, 2014.

This article is not an exhaustive list of legislation introduced and/or passed during the 2014 Legislative Session. For a complete list of the bills and whether they were signed into law is available at the following link: www.legislature.idaho.gov.



Idaho Capitol Building

Idaho Traffic Law Update

State v. Glenn, (2014):

Glenn appeals his Felony DUI conviction arguing his prior Felony DUI could not be used as a sentencing enhancement because it was set aside based on I.C. § 19-2604(1). The Idaho Supreme Court disagreed holding that I.C. § 18-8005's plain language controls and I.C. § 19-2604(1)'s relief does not apply. Idaho Code § 18-8005 provides sentencing enhancement for any person who "pled guilty or has been found guilty" of more than one DUI within a specified amount of time, which applies when there is a determination of guilty by a conviction or a plea. The Court reasoned that the focus of I.C. § 18-8005 is not on performance during probation, but instead on the instant the finding of guilt is made either by the jury or the defendant's plea.

Furthermore, the Court held that I.C. § 19-2604 is a completely different statute that never states that a guilty plea or judgment disappears, only that the plea or conviction is "set aside" and the case dismissed. Thus, I.C. § 18-8005's language of "notwithstanding the form of the judgment(s) or withheld judgment(s)" indicates that this statute includes a dismissed judgment, as it plainly states the judgment's form does not matter. The Court stated that I.C. § 19-2604 does not erase the fact that a defendant pled guilty or was found guilty of a previous DUI. Withdrawing a guilty plea and dismissing the case does not change the fact that Glenn pled guilty or was found guilty. Glenn's Felony DUI conviction was upheld.

State v. Trusdall, (Ct.App.2014):

Trusdall was driving a Polaris Ranger in a church parking lot, spinning the vehicle in circles, with a .169/.164 BrAC, a half-empty beer in the cup holder and 6 child passengers not wearing helmets. Trusdall argued her DUI charge should be dismissed because the Polaris Ranger did not qualify as a "motor vehicle" under the DUI statute because it is a utility type vehicle (UTV). The magistrate judge held the UTV was a "motor vehicle" but on appeal the district court disagreed with the reasoning that a UTV is not a motor vehicle under the DUI statute and the UTV-Specific DUI statute precluded the State from charging Trusdall

under the general DUI statute. The State appealed.

The Idaho Court of Appeals reversed the district court holding a UTV is a "motor vehicle" for purposes of the Idaho DUI statute. The Court relied on *State v. Barnes*, 133 Idaho 378 (1999) explaining it is still good law. Trusdall argued I.C. § 49-123(2) had been amended after *Barnes* and based on the amendment a UTV is not a motor vehicle because it does not meet the federal motor vehicle safety standards. The State argued the plain language of the statute indicates this only narrows the definition of "motor vehicle" for titling and registration purposes. The Court agreed holding the plain language of I.C. § 49-123(2) continues to define motor vehicles as every vehicle which is "self-propelled." The requirement that a vehicle meet the federal standards applies only for the purpose of titling and registration.

Furthermore, the Court held the prosecutor had discretion whether to charge Trusdall under I.C. § 18-8004 or I.C. § 67-7114. As in *Barnes*, the statutes are in harmony because they are specific in different respects. Idaho Code § 67-7114 is specific to the types of motor vehicles a driver is prohibited from operating while intoxicated, and I.C. § 18-8004 is specific to where the vehicle is operated and what constitutes intoxication. Furthermore, this latter statute includes showing of intoxication with a BAC of 0.08, whereas the former statute does not. The prosecutor had discretion to charge Trusdall under I.C. § 18-8004.

State v. Daniels, (Ct.App.2014):

Daniels was convicted upon a jury verdict of Felony DUI, DWP, Providing False Info, and open container. He was acquitted of possession of a controlled substance. Daniels filed a petition for post-conviction relief, asserting he received ineffective assistance of appellate counsel. Daniels argued that appellate counsel provided ineffective assistance by failing to challenge the denial of his suppression motion on appeal.

Daniels failed to demonstrate reversible error. First, he failed to demonstrate that an appellate challenge to the denial of his

motion to suppress was "clearly stronger" than the challenge to his sentence due to his extensive prior DUI record. Second, Daniels was unable to demonstrate he was prejudiced by his appellate counsel's failure to challenge his suppression motion. The Court found the search of Daniel's vehicle incident to arrest would have been unsuccessful. Daniels failed to show a reasonable probability, but for the attorney's deficient performance, the outcome of his trial would have been different.

State v. Torrez, (Ct.App.2014):

Torrez was charged with Aggravated DUI after his passenger was injured when their vehicle hit a tree and rolled numerous times during a police pursuit. Torrez and his passenger had been contacted by an officer and told not to drive. The officer was calling a taxi for them, when they left and were later involved in a hit and run crash. Torrez entered an Alford plea to the Aggravated DUI. At a restitution hearing he was ordered to pay for medical services, the bulk owed to Ada County Indigent services, on behalf of the passenger.

Torrez argued the restitution amount should be reduced pursuant to principles of comparative negligence based on the passenger's voluntary act of riding in a vehicle with a person he knew to be intoxicated. The Court of Appeals held the district court did not abuse its discretion in the restitution it ordered Torrez to pay. The Court explained that a court must taken into consideration the factors discussed in I.C. § 19-5304(7) when ordering restitution, including "other factors as the court deems appropriate." The court is allowed, under its broad discretion, to apply comparative negligence-type principles as part of its consideration of the "other factors" in determining if restitution is "appropriate and desirable." However, whether to apply comparative negligence principles is in the discretion of the court and is not strictly required as asserted by Torrez. In this case, the district court's restitution order was deemed appropriate.

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WEB SITES

Idaho TSRP
www.TSRP-Idaho.org

Idaho Prosecuting Attorneys
Association
www.IPAA-prosecutors.org

ITD Office of Highway Safety
<http://itd.idaho.gov/ohs/>

Idaho POST Academy
www.post.idaho.gov

National Highway Traffic
Safety Administration
www.nhtsa.gov

National Association of
Prosecutor Coordinators
www.napc.us

NDAA's National Traffic Law
Center (NTLC)
www.ndaa.org

Idaho State Police Forensics
www.isp.idaho.gov/forensics/

Alcohol Beverage Control
www.isp.idaho.gov/abc/



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Peck v. ITD, (Ct.App.2014):

Peck appeals the Idaho Transportation Department's order suspending his commercial driver's license (CDL) after his breath test exceeded the illegal limit and he was arrested for a DUI in a non-commercial vehicle. Peck claims his procedural due process rights were violated because he was not given notice of the CDL disqualification provisions of I.C. § 49-335; therefore, Peck asserts the breath test was performed without implied consent, violating his constitutional rights to be free from unreasonable search and seizure.

The Court of Appeals had previously held in Peck's ALS suspension that due process did not require an officer to inform a driver of the consequences that a failed BAC test would have on a CDL proceeding. See Peck v. ITD, 153 Idaho 37 (Ct.App.2012). Therefore, the Court held in this case Peck did not have a statutory or due process right to challenge the validity of the evidentiary testing in both his ALS and CDL proceedings. Peck's procedural due process challenge regarding whether he received proper notice lacks merit.

The Court of Appeals goes on to explain that even if they did address Peck's procedural due process challenge, his challenge would fail. Citing additional Idaho case law, the Court stated, "A holder of a CDL is presumed to have knowledge of the laws governing CDLs." There is no legal requirement for a police officer to provide notice of consequences to a CDL pursuant to a failed evidentiary test.

Peck next contends his substantive due process rights were violated because the CDL disqualification bears no rational relationship to a legislative purpose that was not already accomplished through the ALS suspension. Additionally, Peck argues his disqualification is arbitrary because his underlying conduct had no relation to operating a commercial vehicle. Peck failed in his arguments, as the Court held the State has a legitimate interest in ensuring the roadways are protected from intoxicated drivers. That interest is rationally related to a CDL disqualification for driving offenses occurring while driving a non-commercial vehicle. ALS proceedings do not accomplish the same purpose as the CDL proceedings. The commercial vehicle industry is highly regulated due to the size and weight of commercial vehicles, which pose a heightened and unique danger to the public should they be misused. Peck's substantive due process rights were not violated and his CDL disqualification was affirmed.

Atwood v. ITD, (CT.App.2014):

In this case, two officers were involved in the administration of the breath test. The officer who signed the sworn statement relied on information from the other officer who conducted the breath test. Atwood contends the plain language of I.C. § 18-8002A(4) and (5)(b) requires the officer performing the evidentiary test to submit the sworn statement to ITD. The Court of Appeals disagreed holding the statute does not require the officer performing the evidentiary test to submit the sworn statement nor does the statute limit the officer to swearing only to events that the officer had direct personal knowledge of. The statute only requires that a peace officer submit a sworn statement, indicating the legal cause and the evidentiary test results.

Training & Conferences Notice

(Click on Course Names for More Information)

- Idaho 2014 Highway Safety Summit — April 14-15, Boise, Idaho
- National Lifesavers Conference — April 27-29, Nashville, Tennessee
- Idaho Driver Education Conference — May 2-3, Boise, Idaho
- NAPC-TSRP National Training — July 15-16, Denver, Colorado

LAST CALL

What can a prosecutor do to build a stronger DUI case? This is a question I often ask as I look to strategies and programs to be effective in my profession. Recently, I was asked to help moderate discussions between 13 different states attending a No-Refusal Workshop hosted by MADD through a NHTSA grant. We met for 2-days in Seattle and discussed what we could do to collect some of the strongest evidence.

The No-Refusal program is an enforcement strategy that allows jurisdictions to obtain search warrants for blood samples from suspected impaired drivers who refuse breath tests. Warren Diepraam, a Texas prosecutor pioneered this program, and his results have been impressive.

In its purest form, No-Refusal dates are chosen wherein prosecutors and judges make themselves available to streamline the warrant acquisition process and help build solid cases. The enforcement event is highly publicized to let the public know that their chances of being caught, arrested and convicted increase during these efforts. It is a solid program to be replicated.

I am grateful to MADD for hosting this valuable workshop and to NHTSA for making it possible. The workshop led me to reflect on other strategies to build stronger DUI cases. Here is my Top 10:

1. Identify your resources - You are not alone, contact TSRPs for help.
2. Ride-a-longs - There is much to be learned by observing.
3. Develop strong visuals - Jurors brains learn best with pictures.
4. Medical Records - Know how to get them, know thy HIPPA.
5. Take a Breath Test - A Friday field trip to your local breath instrument is worth the effort.
6. Meet with your Toxicologist - Learn the science, but also learn the challenges your lab faces.
7. Get booking photos - The photo may be just what you need when the defendant shows up in court well-groomed.
8. SFST Refresher - Go to the same training as the officers and actually get involved. Don't be a wall flower.
9. Visit the Scene - Don't be the only one who has never been there.



No Refusal Toolkit

10. No-Refusal - What other crime would we walk away without procuring the best evidence. Get it!

Now is not the time to take steps backwards in our DUI prosecutions. If you haven't streamlined your warrant process, contact me. I will be happy to help. Together we can move Idaho **Towards Zero Deaths!** --- *Jared Olson*



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Idaho Transportation Department

WE ARE ON THE WEB!!
WWW.TSRP-IDAHO.ORG