

August 28, 1997

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**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Family Law License Suspensions

Dear Ms. Castagne:

This letter is in response to your inquiry concerning the proper charge when a person drives while his or her license is suspended under the provisions of the Family Law Suspension Statute. You asked whether the proper charge is driving without a license, in violation of Idaho Code § 49-301, or driving without privileges, in violation of Idaho Code § 18-8001.

Our research has failed to yield a definitive answer to this question, and it will no doubt ultimately be resolved by the courts. It appears, however, that the sounder course may be to charge these offenses as driving without a license under Idaho Code § 49-301.

The Family Law License Suspension statute, passed in 1996, provides for the suspension of a wide variety of state-issued licenses as a means of effective enforcement of child support orders. Idaho Code §§ 7-1401, *et seq.* Under this new statute, either the court or the department of health and welfare can order the suspension of a license for (1) nonpayment of child support; (2) failure to obey a subpoena in a paternity or child support proceeding; or (3) failure to comply with a court order for visitation. Idaho Code § 7-1403.

The new law does not discriminate among the types of licenses that may be suspended, and includes, within the definition of "license," professional, recreational, and driver's licenses. Idaho Code § 7-1402(5).

Relevant here, the statute contains a "penalties" provision which states, "[a] person who continues to engage in the activity after an order of suspension has become final shall be subject to the same penalties as any person engaging in the activity without a license." Idaho Code § 7-1415 (emphasis added).

The emphasized language is significant in the case of the suspension of a driver's license. It gives rise to the question whether a person "engaging in the activity [in this case, operating a motor vehicle] without a license" may be charged with the crime of driving without privileges (DWP), or the less serious crime of driving without a valid license. It seems clear that, but for the language in the Family Law License Suspension penalty section, a person driving while suspended, regardless of the reason for the suspension, would be subject to prosecution for DWP. However, because the statute provides that the penalty will be the same as for "engaging in the activity without a license," there is a strong argument that the legislature intended that the penalty be limited to that imposed for driving without a valid license, in violation of Idaho Code § 49-301.

Ordinarily, a person who drives while his privileges are suspended is subject to prosecution for the crime of DWP, in violation of Idaho Code § 18-8001(1). That statute makes it a crime for anyone to drive with knowledge "that his driver's license, driver's privileges or permit to drive is revoked, disqualified or suspended" The penalty for first time DWP includes a two-day mandatory jail term; a fine up to \$500; and a mandatory six-month suspension of driving privileges. Idaho Code § 18-8001(3) The penalties are enhanced for additional violations within five years; a third offense is a felony, carrying a mandatory thirty-day jail sentence. Idaho Code § 18-8001(4), (5).

By comparison, I.C. § 49-301 prohibits a person from driving "unless the person has a valid Idaho license." A violation of that statute carries the general misdemeanor penalty; up to six months' jail, and a fine up to \$300. Idaho Code §§ 18-113, 49-236. The further suspension of driving privileges is not an authorized penalty for this offense.

Two principles of statutory construction must be considered. The first is the "rule of lenity." That rule holds that criminal statutes must be strictly construed in favor of the accused. State v. Barnes, 124 Idaho 379, 380, 859 P.2d 1387, 1388 (1993); State v. Mills, 128 Idaho 426, 429, 913 P.2d 1196, 1199 (Ct. App. 1996).

The other rule of construction has been stated as follows: "It is incumbent upon the court to interpret the statute in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute." State v. Coleman, 128 Idaho 446, 449, 915 P.2d 28, 31 (Ct. App. 1996). "In construing a statute, the court may examine the language used, the reasonableness of proposed interpretations and the policy behind the statute." Umphrey v. Sprinkel, 106 Idaho 700, 682 P.2d 1247 (1983). These rules, and particularly the rule of lenity, may weigh in favor of imposing punishment for only the less serious crime of driving without a license.

Research into the legislative history of the Family Law License Suspension statute has not been particularly helpful. That research reveals that the law was passed in the

form introduced, with only slight amendments from the original senate bill, which are not relevant here. The discussion in the committees centered on whether the legislation was needed, what the procedure would be for suspending licenses, and whether the suspension law would be supported by the public in general. There is no report that driver's licenses, in particular, were ever discussed.

We have also asked other prosecutors whether they have confronted this problem and which charge they would use in such cases. The prosecutors consulted did not recall prosecuting anyone for driving after a license was suspended under the Family Law License Suspension statute. The Boise City Attorney's Office indicated that they would probably charge the offense as a DWP, leaving the "penalties" aspect for the judge to deal with at sentencing. A deputy prosecutor for Ada County who deals with traffic cases seemed to disagree, stating that, given the language in the Family Law License Suspension statute's penalty provision, his office would likely charge the offense as driving while invalid, under Idaho Code § 49-301.

The stated purpose of the Family Law License Suspension statute is to coerce compliance with the court's orders for child support, visitation of minors, and compliance with subpoenas in paternity and child support cases. Idaho Code § 7-1401. Thus, there is an argument that harsher penalties will result in greater compliance. Further, under the statute's provisions, it is clear that the transportation department is required to "suspend" the license, as opposed to merely invalidating it. Thus, a person driving with privileges in this status is driving while those privileges are suspended. These arguments would weigh in favor of a charge of DWP.

However, the stronger argument seems to be that the plain meaning of Idaho Code § 7-1415 requires that, if a person drives after being suspended pursuant to the Family Law License Suspension statute, the penalty is limited to that for driving without a valid license, in violation of Idaho Code § 49-301, and that the driver is not subject to the harsher penalties for DWP under Idaho Code § 18-8001.

I hope that this information will be of some assistance. If we hear of any cases raising this issue, we will be sure to contact you. Please contact us if we can be of any further help.

Sincerely,

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Researched by:

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