

**For Discussion
15 December 2006**

Legislative Council Panel on Transport

Measures to Enhance Road Safety

Purpose

This paper seeks Members' views on the proposed measures to further combat drink driving and enhance road safety.

Measures to Further Combat Drink Driving

Raising Penalties

2. Under section 39/39A of the Road Traffic Ordinance (Cap. 374), a person who drives with an alcohol concentration exceeding the prescribed limit¹ will be liable to a maximum fine of \$25 000 and 3 years' imprisonment. The offender will be disqualified from driving for not less than 2 years for a second or subsequent conviction and incur 10 driving-offence points (DOPs) under the Road Traffic (Driving-Offence Points) Ordinance (Cap. 375).

3. Although the number of drink driving accidents and casualties have not been particularly high and have remained stable over the past five years, the percentage of killed and serious injuries over total casualties (the KSI rate) for drink driving accidents has been relatively high².

¹ The existing prescribed limit is -

- 50 milligrams of alcohol per 100ml of blood; or
- 22 micrograms of alcohol per 100ml of breath; or
- 60 milligrams of alcohol per 100ml of urine.

² From 2001 to 2005, the average number of drink driving accidents was 86 per year, accounting for 0.57% of all accidents. There was an average of 145 casualties per year in drink driving accidents, but among them, 38 persons were killed or seriously injured. The KSI rate was 26.2%.

4. To send a clear message to motorists that drink driving is not in any way tolerated in Hong Kong, we propose that drink driving offenders should be disqualified from driving for not less than 3 months on first conviction. The recommendation is based on the following considerations –

- (a) Overseas practices³;
- (b) The proposal is commensurate with the levels of disqualification periods imposed on other traffic offences⁴.
- (c) The court can impose longer or shorter disqualification periods depending on the circumstances of each case.

5. We also propose that drivers convicted of drink driving offences will be required to attend Driving Improvement Courses on a mandatory basis.

Random Breath Tests

6. Random Breath Tests (RBTs) are roadside screening breath tests conducted on a purely random basis, without the need for any reasonable suspicion. Currently, the Police do not have the power to carry out RBTs. They can only conduct roadside screening breath tests if there is reasonable suspicion that the person has alcohol in his body, or if the person is involved in a traffic accident, or commits a moving traffic offence. In view of the public concern over drink driving and the strong support of this Council for RBTs, we propose to empower the Police to conduct RBTs.

³ For Australia (New South Wales), which has the same prescribed limit with Hong Kong, the minimum disqualification period is 3 to 6 months. For those places having less stringent prescribed limit than that in Hong Kong like Singapore, Canada (Quebec), the United Kingdom, New Zealand and the United States (Arizona), their minimum disqualification periods on first conviction mostly range from 6 to 12 months.

⁴ Comparison on disqualification periods of other traffic offences –

| Offences | Minimum Disqualification Periods | |
|--|----------------------------------|----------------------------|
| | 1 st conviction | 2 nd conviction |
| Dangerous driving causing death (Cap 374, s36) | 2 years | 3 years |
| Dangerous driving (Cap. 374, s37) | 6 months | 18 months |
| Drink driving (Cap 374, s39, s39A) | 3 months (proposed) | 2 years |
| Accumulating 15 DOPs (Cap. 375, s8) | 3 months | 6 months |

7. We note that there is no consensus in overseas countries in the adoption of RBTs⁵. We are also aware of the concern about police power, public acceptability of RBTs, the likely impact on traffic flow and possible conflicts between the Police and the public. To ensure proper exercise of such power and avoid unnecessary congestions or complaints, the Police will draw up administrative procedures and guidelines, including the location, timing and the need for the presence of supervisory staff, to facilitate RBTs to be carried out smoothly.

Mandatory Requirement for Traffic Offenders to Attend Driving Improvement Courses (DICs)

8. DICs are courses that are specially designed for drivers to instill in them a stronger sense of road safety and a better understanding of good driving behaviour. Currently, under section 72A of the Road Traffic Ordinance, the court has the discretionary power to order drivers who have committed traffic offences carrying 5 or more DOPs⁶ to attend DICs. We propose that in addition to the above category of offenders, a person should also be required to attend DICs if he belongs to either of the following categories –

- (a) Repeat traffic offenders who has accumulated 10 DOPs within two years; and
- (b) Offenders of the following traffic offences that incur 10 DOPs:
 - Causing death by dangerous driving
 - Dangerous driving
 - Driving under the influence of drink or drugs
 - Driving with alcohol concentration above prescribed limit
 - Driving in excess of speed limit by more than 45 km/hour
 - Driving in a motor race or speed trial on a road

⁵ At present, RBT is practised in Australia, France, Belgium, Sweden, the Netherlands and New Zealand, but not in the United States, Singapore, Japan, Germany, Canada and the United Kingdom.

⁶ Between 2002 and 2006, 406 drivers were ordered by the court to attend DICs.

9. The current maximum penalties for non-compliance of the court order for attending DICs are a fine of \$3 000 and one-month imprisonment⁷. To deter non-compliance, we propose to raise the penalties by –

- (a) raising the maximum fine from \$3 000 to \$5 000; and
- (b) empowering the Commissioner for Transport not to re-issue drivers with their driving licences after the disqualification period if they fail to comply with the DIC requirement.

Penalties for the Offence of Causing Death by Dangerous Driving

10. Under Section 36 of the Road Traffic Ordinance, a person who causes the death of another person by driving a motor vehicle on a road dangerously⁸ can be charged with the offence of causing death by dangerous driving. A person convicted of this offence is liable to a maximum fine of HK\$50 000 and 5 years' imprisonment. The convicted would be disqualified from driving for a period of not less than 2 years for a first conviction and for not less than 3 years for a second or subsequent conviction.

11. We propose to raise the maximum imprisonment term for dangerous driving causing death from 5 to 10 years. In coming up with this proposal, we have taken into consideration the following factors:

- (a) Views of the community – We are mindful of the general public view that the maximum imprisonment term and the sentences for dangerous driving causing death are not commensurate with the severity of the offence. Many also consider that heavier penalties should be imposed not only for punitive purposes, but also to achieve stronger deterrent effect to reduce fatal traffic accidents.

⁷ Since the introduction of DIC in September 2002, 127 drivers were convicted for failing to comply with the court orders. The fines imposed range from \$50 to \$3 000 but mostly at the range of \$1 000 to \$1 500. In view that the current fee for a DIC is about \$650, raising the maximum fine can allow the court to hand down a wider range of fines.

⁸ Under section 36(4) of the RTO, a person is to be regarded as driving dangerously if (a) the way he drives falls far below what would be expected of a competent and careful driver; and (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

- (b) No change in the maximum imprisonment term since 1982 – We note that the maximum imprisonment term has not changed for over 20 years. When the penalties for this offence were last revised in 2000⁹, we raised the level of maximum fine from Level 4 (\$25 000) to Level 5 (\$50 000). We also lengthened the duration of disqualification and extended this penalty to first convictions. However, there was no increase in the maximum imprisonment term.
- (c) The obiter dictum of the Court of Appeal in a recent case¹⁰; and
- (d) Overseas practices¹¹.

Summary of Recommendations

12. To recap, we propose the following additional measures to combat drink driving and further enhance road safety –

- (i) to disqualify drink driving offenders from driving for not less than three months on a first conviction;
- (ii) to mandate drink driving offenders to attend DIC;
- (iii) to empower the Police to conduct random breath tests;

⁹ In 2000, we raised the penalties when we abolished the offence of “reckless driving causing death” and replaced it with “dangerous driving causing death” to instill more objectivity in the test of the driving behaviour or standard.

¹⁰ In *SJ v Poon Wing-kay & Liu Chun-pong* CAAR2/2006 & CACC 536/2005, Hon MA CJHC remarked that there must be considerable merit in increasing the maximum sentence for the offence of dangerous driving causing death.

¹¹ The maximum imprisonment terms for dangerous driving causing death in overseas countries are –

- Australia (New South Wales) 2 years
- New Zealand 5 years
- Singapore 5 years
- Canada (Ontario) 14 years
- United Kingdom 14 years

- (iv) to mandate repeat traffic offenders (those accumulating 10 DOPs) and offenders of serious traffic offences to attend DICs;
- (v) to raise the penalties for failure to comply with the mandatory DIC requirement by increasing the maximum fines from \$3 000 to \$5 000 and allowing the Commissioner for Transport not to re-issue the suspended driving licences if the drivers fail to comply with the DIC requirement; and
- (vi) to raise the maximum imprisonment term for the offence of causing death by dangerous driving from 5 years to 10 years.

Next Steps

13. We intend to consult the motoring associations and transport trades on the above proposals, and thereafter start to draft the relevant legislation.

Advice Sought

14. Members are requested to give their views on the proposals in paragraph 12 above.

Environment, Transport and Works Bureau
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