

Bills Committee on
Road Traffic Legislation (Amendment) Bill 2008

Introduction

At the meeting of the Bills Committee on 1 April 2008, Members requested for some additional information. This is set out below.

Penalties on causing death by dangerous driving

Sentencing statistics in the past five years

2. A summary of the sentencing statistics on the convicted cases of causing death by dangerous driving that were committed from 2003 to 2007 is in **Annex A**. Among the 81 convicted drivers, 63 (78%) were sentenced to imprisonment with periods ranging from 20 days to 5 years. The period of disqualification from driving ranged from 3 months to 12 years. 93% of the cases involved a disqualified period of two years or more.

3. We understand that the judges usually take into account the maximum penalty and all relevant circumstances before imposing a sentence. Hence, if the maximum penalty for a certain offence is raised, it would demonstrate the view of the legislature and the community on the seriousness of the offence. This will be drawn upon as reference by the court in handing down a sentence. We expect to see the revised maximum imprisonment term to be reflected in future sentences.

4. It is also worth noting that the offence of dangerous driving causing death may be tried either summarily or on indictment, which means that a defendant may be tried for the offence either at magistrates or district courts. In the past, most cases were tried at the magistracy level. Very few cases, usually the ones involving serious or exceptional circumstances, were heard in the district courts. By doubling the maximum sentence of dangerous driving causing death from 5 years to 10 years, these cases in future will more likely be tried in the High Court and district courts, instead of the magistrate courts, and

heavier penalties will more likely be imposed.

Penalties in overseas countries

5. In suggesting to double the maximum sentence of dangerous driving causing death from 5 years to 10 years, we have made reference to the penalties for the offence in overseas countries. The details are summarized in **Annex B**. At present, the maximum terms are 2 years for Australia (New South Wales), and 5 years for both Singapore and New Zealand. For Canada (Ontario) and the United Kingdom, the maximum term is 14 years. For the United States, the maximum term of the offence varies. In other words, by raising the imprisonment term from 5 to 10 years, Hong Kong will be broadly comparable to most overseas countries on the penalty of this offence. With the support of the Transport Panel of this Council and the Transport Advisory Committee in end 2006, we consulted the transport trades and the motoring associations and they also generally supported the proposal.

Drink Driving Offences and Screening Breath Tests

Studies on the effect of alcohol on driving

6. The effect of alcohol on driving is a subject of many overseas studies. The conclusions of these studies generally confirm that alcohol would impair the drivers' ability to drive. It is therefore our policy to discourage the public from driving after drinking alcohol. This policy of promoting "If you drink, don't drive" is in line with international practice. The findings of some of these overseas studies are summarized in **Annex C**.

Prescribed limits of alcohol concentration and penalties in overseas countries

7. The prescribed limits and penalties for drink driving offences in some overseas countries are summarized in **Annex D**. On the legal limit of Blood Alcohol Concentration (BAC), we note that many countries adopt 80 mg per 100 ml of blood. The prescribed level in Hong Kong (50 mg per 100 ml of blood) is more stringent.

8. The penalties on fines, imprisonment and traffic offence points in Hong Kong are comparable with overseas practices, but at present we do not disqualify the convicted from driving for the first offence. The minimum disqualification periods overseas mostly range from 6 to 12 months, but these places generally have less stringent prescribed limits on alcohol concentration than that in Hong Kong, and among the countries in **Annex D**, only Australia and New Zealand adopt RBT as a means to deter drink driving.

Proposal of imposing different levels of penalties for different alcohol concentration levels

9. There are many factors affecting the level of impairment to a person. A driver with lower alcohol concentration in his blood may not necessarily be impaired in a less extent than another driver with a higher alcohol concentration. As shown from the overseas studies (**Annex C**), a driver with BAC 50mg/100ml, which is the legal prescribed limit in Hong Kong, already suffers from significant impairments on driving. There is no established direct relationship between the level of alcohol concentration in the body of a driver and the way the driver drives his vehicle. A graded level of penalties may send a wrong message that slightly exceeding the prescribed limit is not a serious offence.

10. In cases of drink driving or dangerous driving offences, a judge will take into account all relevant circumstances before imposing a sentence. Each case has its specific circumstances (including the way the driver drove the vehicle, whether he was a repeat traffic offender, and whether there were casualties, etc.) that the judge has to consider. In fact, even though under the existing legislation, drivers on second or subsequent conviction of drink driving is liable to be disqualified from driving for not less than 2 years, there were a number of cases in which the court disqualified the drivers from driving for up to 3 years. This also applied to some cases without involving personal injuries.

Arrangements for conducting random breath test (RBT) by the Police

11. The Police have drawn up some arrangements for exercising the power to conduct RBT. These are set out in **Annex E**.

Traffic accidents involving drink driving and the use of hand-held mobile phone while driving

12. The number of traffic accidents involving drink driving and drivers using hand-held mobile phone while driving from 2003 to 2007 is shown in **Annex F**. Both the number and percentage of traffic accidents involving drivers using hand-held mobile phone while driving were significantly lower than those involving drink driving. The average percentage of fatal and serious accidents involving drivers using hand-held mobile phone was 0.02%, which was also significantly lower than the 1.06% of that involving drink driving.

Probationary driving licence scheme

Restrictions imposed by overseas jurisdictions on novice drivers

13. Some forms of restrictions are applicable to novice drivers in many countries. A summary of some overseas practices is in **Annex G**.

Transport and Housing Bureau
3 April 2008

**Statistics on sentences on conviction of
causing death by dangerous driving
(as at end February 2008)**

	2003 to 2007
Number of Convicted Cases ¹	81 ²
Number of Imprisonment Sentence	63
Range of Imprisonment Period	20 days to 5 years
No. of Cases with Disqualification from Driving Imposed	80
Period of Disqualification from Driving	3 months to 12 years
No. of Cases with Fines Imposed	9
Range of Fines	\$2,500 to \$20,000
No. of Community Service Orders Made	16
Period of Community Service	81 to 240 hours

¹ The information on the convicted cases refer to those committed during the period of 2003 to 2007.

² One case committed in 2006 and 16 cases committed in 2007 are still pending for trial.

Summary of penalties for dangerous driving causing death offences in overseas countries

		Hong Kong	Australia (New South Wales)	New Zealand	Singapore	Canada (Ontario)	UK	USA (New York)
Dangerous Driving Causing Death								
Fine (maximum)		HKD50,000	AUD3,300 (HKD25,400)	NZD20,000 (HKD138,000)	N.A.	NA	unlimited	USD5,000 (HKD39,000)
Imprisonment (maximum)		5 years	2 years	5 years	5 years	14 years	14 years	3 ~ 25 years
Disqualification	1st conviction	≥2 years	≥1 year	≥1 year	unlimited	≤1 year	≥2 years	unlimited
	2nd conviction	≥3 years	≥2 years	≥1 year	unlimited	≤3 years	≥2 years	unlimited
Driving offence points		10	N.A.	N.A.	N.A.	N.A.	11	N.A.

Findings of Overseas Studies on Impact of Alcohol on Driving

1. Alcohol usage can result in a depression of brain mechanisms which normally moderates behaviour. Even very small doses of alcohol can affect various behavioural and cognitive capabilities, such as those relating to driving performance. Alcohol affects driving ability in three major ways :
 - (a) It reduces drivers' ability to do more than one thing at a time, such as observing and responding to road conditions.
 - (b) It increases drivers' confidence and makes them less inhibited so they are more likely to take risks.
 - (c) It relaxes drivers so they are more likely to fall asleep while driving.
2. Significant impact on performance of drivers were observed from various studies (*European Transport Safety Council 1995*). From the studies, the majority of drivers with BAC at or below 50mg/100ml were found to show drowsiness, divided attention, impaired visual functions, perception and vigilance. At BAC between 50 to 69 mg/100ml, most drivers showed impairments in tracking, cognitive tasks, psychomotor skills and tracking. The situation gets worse with more alcohol in the body.
3. There are also studies showing the relationship between alcohol and traffic accidents :
 - (a) Drivers who had consumed alcohol had a higher risk of involvement in traffic accidents than those with a zero BAC (*USA 1964 & 1994*).
 - (b) The risk of traffic accident involvement was 1.83 times greater at a BAC of 50 mg/100ml than at a BAC of zero (*Australia 1981*). The relative risk of traffic accident involvement starts to increase significantly at a BAC level of 40 mg/100ml (*USA 2000*). As BAC levels increased above 50mg/100ml, the relative probability of a traffic accident increases exponentially (*USA 1998 & Canada 2002*).

- (c) Motorcyclists who had consumed alcohol were associated with five times the risk of involvement in traffic accidents relative to a zero BAC (85) (*Australia 2003*).
- (d) In USA, 24% of killed drivers were found to have BAC above 10mg/100ml (*USA 2004*).
- (e) In low-income countries, alcohol was present in between 33% and 69% of killed drivers in traffic accidents (*Australia 1995*).
- (f) Alcohol was a factor in over 47% of killed drivers in traffic accidents (*South Africa 1996*).

Summary of Penalties for Drink Driving Offences

Country/State /Province & Prescribed Limits	Penalties for first offence					Penalties for second offence				
	Fine		Imprisonment	Licence suspension	Demerit points	Fine		Imprisonment	Licence suspension	Demerit points
	Local Currency	HKD				Local Currency	HKD			
Hong Kong										
BAC: ≥ 50 mg/100ml of blood	\leq \$25,000	\leq \$25,000	≤ 3 years	N.A. (<i>current proposal : ≥ 3 months</i>)	10	\leq \$25,000	\leq \$25,000	≤ 3 years	≥ 2 years	10
New South Wales (Australia)										
BAC : 50 to 80 mg /100ml of blood	\$1,100	\$7,500	N.A.	3 to 6 months	3	\$2,200	\$15,000	N.A.	≥ 6 months	3
BAC : 80 to 150 mg /100ml of blood	\$2,200	\$15,000	≤ 9 months	≥ 6 months		\$3,300	\$22,500	≤ 1 year	≥ 1 year	
BAC : ≥ 150 mg /100ml of blood	\$3, 300	\$22,500	≤ 18 months	≥ 1 year		\$5,500	\$37,500	≤ 2 years	≥ 2 years	
Singapore										
BAC : ≥ 80 mg /100ml of blood	\$1,000 to \$5,000	\$5,300 to \$26,500	≤ 6 months	≥ 1 year	N.A.	\$3,000 to \$10,000	\$15,900 to \$53,000	≤ 1 year	≥ 1 year	N.A.
Quebec (Canada)										
BAC : ≥ 80 mg /100ml of blood	\geq \$600	\geq \$4,700	≤ 5 years	1 to 3 years	N.A.	N.A.	N.A.	14 days to 5 years	3 to 5 years	N.A.
UK										
BAC : ≥ 80 mg /100ml of blood	\leq £5,000	\leq \$80,000	≤ 6 months	≥ 1 year	3 to 11	\leq £5,000	\leq \$80,000	≤ 6 months	≥ 3 years	3-11

Annex D
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Country/State /Province & Prescribed Limits	Penalties for first offence					Penalties for second offence				
	Fine		Imprisonment	Licence suspension	Demerit points	Fine		Imprisonment	Licence suspension	Demerit points
	Local Currency	HKD				Local Currency	HKD			
New Zealand										
BAC : ≥ 80 mg /100ml of blood (Note 1)	$\leq \$4,500$	$\leq \$26,100$	≤ 3 months	≥ 6 months	N.A.	$\leq \$4,500$	$\leq \$26,100$	≤ 3 months	≥ 6 months	N.A.
Arizona (USA)										
BAC : 80 to 150 mg /100ml of blood	$\geq \$250$	$\geq \$2,000$	≥ 10 days	≥ 3 months	8	$\geq \$500$	$\geq \$4,000$	≥ 3 months	1 year	8
BAC : ≥ 150 mg /100ml of blood			≥ 1 month			$\geq \$500$	$\geq \$4,000$	≥ 4 months	≥ 1 year	
Japan										
BAC: ≥ 34 mg /100ml of blood	≤ 0.3 M yen	$\leq \$21,300$	≤ 1 year	≤ 2 years	6 to 13	Information not available				
Seriously Impaired (Driving while drunk)	≤ 0.5 M yen	$\leq \$35,500$	≤ 3 years	2 years	25					

Note 1 : The fines imposed in other countries, but shown in Hong Kong dollars, are provided for general reference only. They are subject to fluctuations with the exchange rates.

Note 2 : In New Zealand, there are separate offences with more stringent BCA limit (BAC: > 30 mg/100ml of blood) for persons younger than 20 years of age.

Police's arrangements for conducting random breath test (RBT)

1. The arrangements for exercising the power to conduct RBT drawn up by the Police comprises of the following six measures :
 - (a) RBT will initially be restricted to traffic officers already trained in handling drink-driving cases. Traffic officers have the requisite knowledge and experience to conduct such checks whilst ensuring both their own and the public's safety.
 - (b) As the proposed revision retains the existing three criteria for drink-driving checks¹, RBT will not normally be targeted against vehicles in motion. For the safety of the officers concerned, and to ensure that the check can be carried out with the minimum of inconvenience to the driver and other motorists, RBT will normally be conducted during roadblock operations or as part of other traffic enforcement checks.
 - (c) Use of a quick and simple hand-held pre-screening device is being considered to speed up the RBT checking process and avoid undue delay/inconvenience to motorists. If the pre-screening device indicates that a driver has consumed alcohol, the existing drink-driving devices will continue to form the basis for any prosecution.
 - (d) RBTs conducted will be monitored for a trial period after introduction, to determine their success and gauge whether undue inconvenience is being caused to road users.
 - (e) Limitations on RBT checks by time or location will not be applied as this would defeat the 'random' nature of the checks. It is this 'random element' which creates the deterrent effect.

¹ Currently, the Police are empowered to require a person to provide a specimen of breath for the screening test if (i) he is involved in a traffic accident, or (ii) commits a moving traffic offence or (iii) is suspected of drink driving.

- (f) No rank restrictions will be placed on the use of RBT power. Currently, all police officers are vested with considerable powers which they exercise in a responsible manner.
2. Once RBT has been introduced, the Police will closely monitor their effectiveness, including any undue inconvenience caused to road users. Experience gained from early results will be taken into account when considering the future scope of RBT enforcement actions.

Traffic accidents involving drink driving and drivers using hand-held mobile phone while driving

Year	All traffic accidents		Traffic accidents involving drink driving				Traffic accidents involving drivers using hand-held mobile phone while driving			
	Number		Number		% over all traffic accidents		Number		% over all traffic accidents	
	Fatal & Serious	Total	Fatal & Serious	Total	Fatal & Serious	Total	Fatal & Serious	Total	Fatal & Serious	Total
2003	2,847	14,436	36	106	1.26%	0.73%	1	3	0.04%	0.02%
2004	2,679	15,026	31	97	1.16%	0.65%	1	5	0.04%	0.03%
2005	2,643	15,062	26	89	0.98%	0.59%	0	1	0%	0.01%
2006	2,450	14,849	21	99	0.86%	0.67%	1	2	0.04%	0.01%
2007	2,529	15,315	26	104	1.03%	0.68%	0	0	0%	0%
2003 ~ 2007 (5-year average)	2,630	14,938	28	99	1.06%	0.66%	0.6	2.2	0.02%	0.01%

Overseas practice regarding restrictions on novice drivers

Overseas	Vehicle classes with restrictions on new drivers	Probationary period	Restrictions
Australia (Victoria)	Low powered vehicles (no clear definition on vehicle classification by weight)	3 years	<ul style="list-style-type: none"> • Display “P” plate • Zero tolerance of alcohol concentration in drivers’ blood
Australia (New South Wales)	Vehicles of weight below 4.5 tonnes (e.g. private cars, light trucks and motor cycles)	Progressive learning in two stages : P1: 12 months P2: 24 months	<ul style="list-style-type: none"> • Display “P” plate • Alcohol concentration in drivers’ blood should not exceed specified limit • Maximum speed limit of 90 km/hr • Cannot accumulate more than 3 demerit points All above restrictions, except: <ul style="list-style-type: none"> • Maximum speed limit of 100 km/hour • Cannot accumulate more than 6 demerit points
Singapore	Vehicles of unladen weight with less 3 tonnes	1 year	<ul style="list-style-type: none"> • Display “P” plate • Cannot accumulate more than 12 demerit points
United Kingdom	Vehicles of weight below 3.5 tonnes (e.g. private cars, vans and motor cycles)	2 years	<ul style="list-style-type: none"> • Cannot accumulate more than 6 demerit points

Overseas	Vehicle classes with restrictions on new drivers	Probationary period	Restrictions
USA (Michigan)	Private cars, light trucks and vans (no clear definition on vehicle classification by weight)	3 years	<ul style="list-style-type: none"> • The last 10 months of the probation period must be without any “at-fault” crash
USA (Wisconsin)	Private cars, light trucks and motor cycles (no clear definition on vehicle classification by weight)	2-3 years	<ul style="list-style-type: none"> • Zero tolerance of alcohol concentration in drivers’ blood • Demerit points doubled for every traffic offences after first conviction • Cannot drive between midnight and 5 a.m. • Must be accompanied by a licenced supervisor when driving
Canada (British Columbia)	Vehicles of weight below 4.6 tonnes (e.g. private cars, vans and trucks)	2 years	<ul style="list-style-type: none"> • Display “N” plate • Zero tolerance of alcohol concentration in drivers’ blood • Must be accompanied by a licenced supervisor when driving • Night time driving restriction
New Zealand	Vehicles of weight below 4.5 tonnes (e.g. private cars and vans)	0.5 to 1.5 years	<ul style="list-style-type: none"> • Cannot drive alone between 10 p.m. and 5 a.m. • Must not carry passengers unless accompanied with a supervisor • For drivers under 20 years of age, the limit of alcohol concentration in drivers’ blood should not exceed 30 mg per 100 ml of blood. • For drivers over 20 years of age, the limit of alcohol concentration in drivers’ blood should not exceed 80 mg per 100 ml of blood.