

Bills Committee on Road Traffic (Amendment) Bill 2010

Provision of “causing grievous bodily harm by dangerous driving”

Introduction

The information requested by Bills Committee on Road Traffic (Amendment) Bill 2010 on 3 July 2010 on the provision of “causing grievous bodily harm by dangerous driving” is provided in the ensuing paragraphs.

Rationale for a new provision to cater for cases where victims live but sustain serious bodily injury

2. At present, a driver who drives dangerously on the road may either be charged with dangerous driving (DD), or causing death by dangerous driving (DDCD) as the case may warrant. The maximum imprisonment terms of the offences are 3 years and 10 years respectively. If a driver drives dangerously and causes grievous bodily harm to another person, the driver concerned may be convicted for dangerous driving with an imprisonment sentence only up to 3 years. In other words, the existing legislation does not provide for a sentence which reflects fully the seriousness of physical injuries sustained by victims in traffic accidents. Taking into account the gap in penalty terms between DD and DDCD, the physical impairments and psychological trauma suffered by such victims and their families as a result of the dangerous driving behaviour, we consider it appropriate to allow the court additional sentencing options over and above the penalty terms for DD. It is therefore proposed to fill the existing gap by introducing a new offence of “causing grievous bodily harm by dangerous driving” (DDCGBH), which provides heavier penalties to reflect the more serious nature of the offence and to achieve a stronger deterrent effect.

3. The penalty terms proposed for the new offence of DDCGBH are to be set between DD and DDCD as follows-

	<u>DD</u>	<u>DDCD</u>	<u>Proposed DDCGBH</u>
Maximum Fine	\$25,000	\$50,000	\$50,000
Maximum Imprisonment	3 years	10 years	7 years

Minimum Disqualification	Driving	<u>DD</u>	<u>DDCD</u>	<u>Proposed DDCGBH</u>
- First Offence		6 months	2 years	2 years
- Subsequent Offence		18 months#	3 years*	5 years

Proposed to be amended to 2 years.

* Proposed to be amended to 5 years.

Practice of Overseas Jurisdictions

4. The provision of DDCGBH is rather commonplace in overseas jurisdictions. Some overseas jurisdictions, e.g. Australia (New South Wales) and USA (California) have dedicated provisions in their law to deal with DDCGBH. Details are at **Annex A**. While some overseas jurisdictions do not have dedicated provisions to deal with DDCGBH, they have provisions within the same section to cater for both DD and dangerous driving causing/involving injury or grievous bodily injury. Examples are Australia (Queensland), Northern Ireland, New Zealand and Mainland China. Details are at **Annex B**.

Concluding Remarks

5. The main objective of the Bill is to introduce a package of measures to combat drink driving and other inappropriate driving behaviour with a view to enhancing road safety. DDCGBH is clearly an inappropriate driving behaviour of concern. The existing penalty terms for DD fail to reflect the seriousness of cases involving grievous bodily harm. We therefore consider it appropriate to introduce a new provision against DDCGBH in the current Bill.

**Transport and Housing Bureau
September 2010**

Annex A

Overseas Jurisdictions with Dedicated Provisions on Causing Grievous Bodily Harm by Dangerous Driving

Penalty Terms		Australia (New South Wales)¹	United States (California)²
Maximum Fine		A\$110,000	US\$1,000
Maximum Imprisonment		7 years	6 months
Minimum Driving Disqualification	First conviction	3 years	No provision
	Second or subsequent conviction	5 years	

Note :

1. The offence concerned is “Dangerous driving occasioning grievous bodily harm” in New South Wales.
2. The offence concerned is “Reckless driving causing great bodily injury” in California, United States.

Annex B

Overseas Jurisdictions with Provisions to Cater for Dangerous Driving Causing Death or Injury

Penalty Terms		Australia (Queensland)¹	Northern Ireland²	New Zealand³	Mainland China⁴
Maximum Fine		A\$44,000	Unlimited (indictment) 5,000 pounds (summary)	NZ\$20,000	No provision
Maximum Imprisonment		10 years	5 years (indictment) 6 months (summary)	5 years	3 years
Minimum Driving Disquali- fication	First conviction	6 months	No provision	1 year	No provision
	Second or subsequent conviction	1 year			

Note :

1. The offence concerned is “Dangerous operation of a vehicle” causing the death of or grievous bodily harm to another person in Queensland.
2. The offence concerned is “Causing death or grievous bodily injury by careless or inconsiderate driving” in Northern Ireland.
3. The offence concerned is driving recklessly “causing an injury to or the death of another person” in New Zealand.
4. The offence concerned is “Driving causing serious injuries or death” in Mainland China. Under the legislation, if other related offences are committed (e.g. avoiding arrest), the imprisonment terms is from 3 to 7 years. A person who avoids arrest and causes death, the minimum imprisonment term is 7 years.