

**Bills Committee on
Road Traffic (Amendment) Bill 2010**

Introduction

At the meeting of the Bills Committee on 4 November 2010, Members requested the Administration to consider limiting the proposed offence of Dangerous Driving Causing Grievous Bodily Harm (DDCGBH) to circumstances of drink driving and drug driving; consider imposing a different imprisonment term under summary conviction for DDCGBH, and to advise on the common law definition of “grievous bodily harm”. The Administration’s response is given in the ensuing paragraphs.

Confining application of DDCGBH to circumstances of drink driving and drug driving

2. The proposed DDCGBH offence is to address the public’s concern about the gap in terms of penalties between the Dangerous Driving Causing Death (DDCD) and Dangerous Driving (DD) offences. Apart from drink driving and drug driving, dangerous driving behaviour include all inappropriate driving behaviour such as driving in an opposite direction of the traffic, red light jumping, speeding and road racing, etc., which may result in serious traffic accidents and casualties. If we are going to limit the application of DDCGBH only to drink driving and drug driving circumstances, the existing legal gap will continue to exist for all other driving misbehaviour. This will send out a wrong signal to the community, and is not supported on ground of road safety considerations.

Imprisonment term under summary conviction for DDCGBH

3. The existing and proposed penalties for DD, DDCGBH and DD offences are summarized in the following table –

	DDCD	DDCGBH	DD
On conviction on indictment			
Maximum imprisonment period	10 years	[7 years]	3 years
Maximum fine	Level 5, i.e. \$50,000	[Level 5], [i.e. \$50,000]	Level 4, i.e. \$25,000
On summary conviction			
Maximum imprisonment period	2 years	[2 years]	12 months
Maximum fine	Level 4, i.e. \$25,000	[Level 4], [i.e. \$25,000]	Level 3 i.e. 10,000

[] Penalty levels proposed under the Road Traffic (Amendment) Bill 2010.

4. Under the existing provisions, there is a substantial gap in terms of maximum imprisonment penalty for persons convicted of DDCD and DD on indictment. There is a need to narrow the gap by providing for a heavier penalty for a driver who causes grievous bodily harm by dangerous driving in order to achieve a stronger deterrent effect. On the other hand, the gap in terms of maximum imprisonment penalty in case of summary conviction is minimal. Taking into account that the impact on the victims and their families arising from DDCGBH may not be less than that of DDCD, we suggest to align the penalty terms (both imprisonment and fine) of DDCGBH with those of DDCD in case of summary conviction.

Grievous Bodily Harm

5. We propose not to explicitly define the phrase “grievous bodily harm” in the law, and to rely on the common law definition so that the possibility of acquittals based on sheer technicalities could be minimized.

6. The phrase “grievous bodily harm” has been considered by the courts in the following cases –

DPP v Smith (1961) AC290, HL; R v Cunningham [1982] AC 566 HL

- ‘Grievous bodily harm’ should be given its ordinary and natural meaning of really serious bodily harm, and it is undesirable to attempt any further definition of it.

R v Ashman (1858) 1 F&F88

- It is not necessary that grievous bodily harm should be either permanent or dangerous.

R v Ireland; R v. Burstow [1988] AC 147 HL

- Bodily harm includes psychiatric injury.

HKSAR v Liu Man Kuen [2000] 3 HKLRD 395

- “Bodily harm” needs no explanation and “grievous” means no more and no less than “really serious”.
- There is no definitive list of the kind of injuries that may be considered "really serious".
- “...whether or not the injuries suffered by a victim amount to grievous bodily harm. It is a question of fact in each case. And whereas common sense tells us that some injuries will always be considered as amounting to “grievous bodily harm” and some, obviously minor ones, will not, in the vast majority of cases it is left to the tribunal, properly directed, to come to its own conclusion.
- Previous cases citing the nature of the injury are no more than exemplars of a tribunal's finding on this issue, and not definitions

**Transport and Housing Bureau
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