
Interdisciplinary research on the criminal charge of dangerous driving causing death or serious injury

1. Background and goals

Dangerous driving causing death or serious injury is the formal crime for when drivers intentionally drive dangerously and the death or serious injury of another person or persons results. It is a natural reaction, from a certain point of view, to debate whether drivers should be charged with the same crime when tragic traffic accidents occur. Furthermore, in recent years, whether drivers can be charged with the crime when driving under the influence of alcohol, driving with diseases that potentially cause disturbances of consciousness, or driving without a driver's license has also become a major social problem when the death or serious injury of others results. A new bill is under preparation to include acts that have not previously been considered to constitute dangerous driving causing death or serious injury.

Such legislative response is certainly timely, but to properly proceed with the new bill without making penalties too strict, the law should be interpreted in line with the legal consciousness and the concept of justice among citizens. It is also necessary to scientifically investigate the adverse effects on driving of alcohol or drug use or diseases with potential disturbances of consciousness and publish the data to promote public awareness of dangerous driving.

2. Research content

Prior to the drafting of the above amendment, we conducted a study to deepen fundamental understanding of dangerous driving causing death or serious injury. Specifically, items related to the amendment were examined and analyzed. In addition, we studied case research conducted overseas to develop measures against habitual offenders. Here, we introduce some of our research findings.

2-1. Inspection of the amendment to include no entry roads and other types of roads

There is currently a movement to include “driving backwards on one way streets” in the amendment bill, due to extremely hazard posed. We think this is reasonable and is worth our support.

A similarly dangerous moving violation is to overtake and pass vehicle by traversing to the right across a no-passing center line. However, because many drivers must inevitably pass to the right to avoid illegally parked vehicles, it may be unwarranted to punish this act with no regard for the circumstances. Therefore, it was practical that this act was not included in the amendment as a punishable offence.

Entering residential roads closed to non-residents or entering time-dependent no-entry roads is

considered as dangerous as driving backwards on one-way streets, but this can happen accidentally and inadvertently. Therefore, drivers committing this type of violation should be punished after careful consideration of whether the drivers knew the corresponding traffic rules and regulations (negligent or intentional) before the act was committed.

2-2. Inspection of driving without a license by type (including the case of driving without an international driving permit)

The amendment is also considering a heavier punishment for drivers who cause moving violations equivalent to dangerous driving causing death or serious injury while driving without a license. We can support this directionality because the act of causing moving violations must be regarded as equally illegal to dangerous driving causing death or serious injury, and thereby the responsibility of the drivers considered comparably heavy.

Of course, because each case is different, drivers driving without a license need to be handled carefully after fine-grained investigation of their individual circumstances. For example, some drivers may not have a valid international driving permit in Japan because of failure to convert their license from overseas. When dangerous driving causing death or serious injury is committed by these drivers, their criminal intent to drive without a license may be denied for the exceptional reason of driving without knowledge of Japanese Law (no possibility of intentional violation).

2-3. Measures against drivers operating vehicles while intoxicated: Korea

An example of overseas measures against drivers driving while impaired (DWI) is shown below.

- DWI drivers are charged with dangerous driving causing death or serious injury if their blood alcohol content exceeds 0.1%.
- When suspended, DWI drivers are generally required to take traffic safety classes.
- DWI drivers may be sentenced to community service (40–200 hours).
- If a violator receives a DWI after having received two previous DWIs, their drivers' license will be revoked even if the moving violation itself would amount for license suspension under ordinary circumstances.
- Although it was possible for authorities to confiscate vehicles from habitual DWI offenders in the past, vehicle confiscation tends to be less frequent in recent years because confiscating vehicles and sentencing offenders to a fine is considered to be a double punishment, which may violate the Constitution.

2-4. Measures to promote social rehabilitation of drivers operating vehicles while impaired: the United States

Another example of measures against DWI is the driving while impaired court (DWI court) in the United States specifically for handling DWI offenders. The establishment of these courts started around 2003 because of the special measures required to handle DWI offenders who engaged in repeated dangerous driving due to alcohol dependency.

To understand the current situation surrounding DWI courts, we investigated the DWI court in Charlotte, North Carolina. The major findings are as follows:

- The DWI court handles only drivers who have been found guilty and are hardcore DWI offenders. ⁽¹⁾
- The DWI court forms teams of professionals to convict each driver with a comprehensive and proper sentence.
- Although physicians are not actual members of the team, they provide appropriate external medical opinions and recommendations.
- Under the direction of probation officers on the team, drivers convicted of DWIs are randomly subject to alcohol and drug testing 3–4 times a week. In addition, probation officers randomly inspect the drivers' home for alcohol or drugs.
- DWI drivers may be ordered to wear a secure continuous remote alcohol monitor (SCRAM, Fig. 1) on their ankle. This device scans the driver's skin to monitor and record the presence of alcohol.
- In recent years, the use of ignition interlock devices (IIDs, Fig. 2) is increasing. When DWI drivers start a vehicle equipped with an IID while intoxicated, their probation officer will be immediately informed.
- In addition, DWI drivers are ordered to use a breathalyzer at home or to install an IID in their vehicle. IIDs prevent an equipped vehicle from being started when the device detects alcohol in the breath of the driver.



Figure 1. Secure continuous remote alcohol monitor
(Source: <http://blog.aacriminallaw.com/dwi/scram-bracelet-works/>)



Figure 2. Ignition interlock device

(Source: <http://www.lifesafemca.com/interlock-video-en/>)

The recidivism rate of drivers who graduate from DWI court is considerably low compared with drivers who are sent to prison immediately after the sentencing. Another example is the program offered at the DWI court in the State of Georgia, in which 79% (an extremely high rate) of program attendants finish. The recidivism rate of drivers who attend the program offered by the DWI court (regardless of completion) is 15%, while the rate is 35% for drivers who do not attend.

(1) Hardcore DWI offenders: Drivers operating a vehicle with a blood alcohol content of 0.15 or above, or drivers operating a vehicle under the influence of alcohol after having been convicted of a DWI.

3. Conclusions

The intent of the above amendment as a measure against dangerous driving causing death or serious injury is tenable, and this review investigated the actual factors (mechanisms underlying dangerous driving and the cultivation of public awareness on prevention of dangerous driving) that could serve as the foundation of the bill. In this study, we also investigated advanced measures used overseas to respond to dangerous driving, such as DWI courts and IIDs. These measures merit attention in terms of proper punishment of and social rehabilitation for drivers who are convicted of dangerous driving causing death or serious injury.

4. Future outlook

To effectively utilize the present findings to reduce traffic accidents in the real world, it is essential to design and develop feasible measures. We plan to investigate multidirectionally whether a similar interlocking device or DWI court program may be applicable in the context of the Japanese legal system.