

不能安全駕駛罪之實務運作檢討 與修法建議

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摘 要

不能安全駕駛罪自 1999 年入罪化及近年來重刑化政策下，本文指出：假釋中再犯酒駕是否出現不公平現象？對機車執法密度及刑罰結果竟高於汽車？酒駕後拒絕警方酒測竟比接受酒測更為有利而是否應新增「拒絕駕駛檢查罪」？酒駕防制對策是否宜區分酒癮者及問題性飲酒者？是否應仿效國外採取汽車酒精鎖之配套措施？

本文以為，刑法第 185 條之 3 不能安全駕駛罪宜修法恢復拘役或單科罰金之刑度，賦予法官個案裁量空間以解決假釋中再犯之不公平現象。對於危害程度不同的汽車與機車，警方、檢察官及法院於查緝、起訴、量刑及執行標準上，均應訂定具合理差別的執法密度及處罰強度。為有效降低酒駕犯罪，對於臨檢後拒絕酒氣或毒品檢查者應立法新增「拒絕駕駛檢查罪」，並參考引進成癮精神科學有關問題性飲酒者與酒癮者之矯正處遇模式，及研議採行汽車酒精鎖等配套措施。

Reviews and the Proposal of the Amendment of an Offence of Unsafe to Drive

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Abstract

Since legislation of the unsafe driving offence enacted in 1999 and penal populism has become criminal policy for the past few years, the article indicates that whether it is unfair for a parolee who committed an unsafe driving offence in the parole? Whether enforcement density and penalty size applied to a motorcyclist are higher than the ones applied to a motorist? Whether the penalty for a person who refused to cooperate with an alcohol test after drinking is more favorable than the penalty for a person who accepted to receive an alcohol test? Is it necessary to amend an offence of refusal to cooperate with an alcohol test? Is it appropriate to differentiate an alcoholic from a problem drinker while legislating against drunk driving? Whether it should follow the example of complementary measures adopted by the other countries and formulate similar regulations, such as installing an ignition interlock? The article argues that the unsafe driving offence under Article 158-3 of the Criminal Law should reinstate a punishment of short-term imprisonment or fine, which gives judges case-by-case discretion to solve the problem of unfair phenomenon in parole recidivism cases. The police, prosecutors and judges should formulate reasonably different enforcement density and penalty size in investigating, prosecuting, sentencing and enforcing standards for cars and motorbikes. For the purpose of reducing crime of drunk driving, we suggest it should enact a new provision of refusal to cooperate with an alcohol test against people who refuse to take an alcohol or drug test after pulling over, introduce corrections and treatment of problem drinkers and alcoholics related to addiction science, and consider adopting complementary measures, such as an ignition interlock's installation in necessity.