

Drinking and Driving: Possibilities of Escaping from Legal Proceedings

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Abstract

The objective of this research is to study the behaviors of drivers with blood alcohol concentration exceeding the legal limit and to study the efficiency and suitability of the Alcoholic Beverage Control Act 2008 enforcement using a qualitative approach by researching documents, police records, and in-depth interviews from 12 main informants. Content analysis was applied to analyze the data. It was found that drivers with blood alcohol concentration exceeding the legal limit problems are still present in Bangkok despite various campaigns and check points during holiday periods. However, there is no record regarding escape from legal proceedings due to various reasons, such as the officer's discretion, insufficient manpower, evidence gathering process, and inadequate alcohol measurement equipment. Regarding the enforcement effectiveness of the Alcoholic Beverage Control Act 2008, serious enforcement of the Alcoholic Beverage Control Act 2008 will help reducing legal loopholes in the Road Traffic Act 1979 and reduce a considerable amount of road accidents resulting from drinking alcoholic beverages. The recommendations from the study is to combine the Alcoholic Beverage Control Act 2008 and the Road Traffic Act 1979 and establish a special law specifically for penalizing drivers under the influence, e.g., intoxicated drivers. The penalties should be determined according to the risk posed.

Keywords: Law Enforcement, Drunk Driving, Escape from Legal Proceedings

Introduction

Drinking before/while driving is an issue that many countries are focusing on. From the World Health Organization (WHO)'s Global Status Report on Alcohol and Health, distributed in 2014, the alcohol consumption per person in Canada was 13.2 liters in 2010 (WHO, 2015). And in 2012, 18.6% of the road accidents in Canada was associated with alcohol consumption (WHO, 2016). The same report stated that in the United Kingdom, the alcohol consumption per person was 13.2 liters in 2010 (WHO, 2015) and 23.3% of the road accidents in the United Kingdom in 2010 was associated with alcohol consumption (WHO, 2016). In the Thai society, drinking before/while driving issue is still critical, especially during holiday periods. Although the government and private sector alike are emphasizing on the issue, as seen from established policies and consistent promotions in various media, the issue is not improving. The relevant

laws include the Alcoholic Beverage Control Act 2008 article 31(7) and the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012. Although fine and jail penalties are stated in article 42 of the Alcoholic Beverage Control Act 2008 and are considered criminal penalties, they can also be substituted with equivalent fine penalty according to the fine scale. In articles 37-39 of the Criminal Procedure Code, once the fine penalty is applied, the criminal case proceeding will be terminated. In addition, despite the police check points and alcohol content check points, the measure is not quite successful. The Alcoholic Beverage Control Act 2008 was proposed in the 8th National Legislative Assembly meeting on 14 February 2007 (The National Legislative Assembly, 2007), of which the objective was to control alcoholic beverage consumption by controlling and reducing access to alcoholic beverages (The National Legislative Assembly, 2007). Criminal penalty for violators was defined, which is an important guideline for preventive punishment (Tibbetts, 2015). Nevertheless, drunk driving is a serious issue in the Thai society (Bangkok Business Online, 2015), but there is no sufficient study in Thailand (Biggins, 2013; Pattanasiri, 2012) compared to other countries in which the matter has been studied thoroughly in the aspects of alcohol consumption knowledge sharing (Drinkaware, 2016b), effects on the consumers' cerebral system (Walls and Brownlie, 1985), an experiment on the effects of alcohol on driving (Arnedt et. al, 2001) and the guideline for using legislative measures to control the behaviors of drivers under the influence of alcohol. Examples include England (Drinkaware, 2016a), Canada (Criminal Code, 1985) and Japan (Road Traffic Act, 1960) (Saito et. al, 2015; Nagata et. al, 2008) which are developed countries and have strictly enforced relevant laws. Due to the aforementioned reasons, it is crucial to study the problems in order to improve the law enforcement to fully support the law itself.

Research Objectives

To study the efficiency and suitability of the enforcement process of the Alcoholic Beverage Control Act 2008, the accident statistics, and the escape from court proceedings of alcohol consuming drivers.

Research Methodology

A qualitative approach was applied to study the problems in the Bangkok area.

1. The data was collected from documentary research, including laws, ideations, theories, books, academic articles, electronic media, and other relevant Thai and foreign documents. The data was analyzed and expressed using the descriptive and analytical approach to find the conclusion and suitable and efficient recommendations.
2. Records of road accidents over 12 months were collected from 89 police stations in Bangkok using the documentary research approach.
3. In-depth interviews were conducted with 12 informants including judges, prosecutors, probation officers, academicians, and lawyers specializing in alcohol consumption behavior control.

The researchers used a qualitative method - descriptive and analytical approach to derive the conclusion and suitable and efficient recommendations.

Research Results

From the Traffic Police Division, Metropolitan Police Bureau's records of road accidents resulting from drunk driving during 1 January 2015 - 30 September 2016, it was found that the total recorded cases during 1 January 2016 - 30 September 2016 was less than that of 2015.

Further study revealed that accidents related to alcoholic beverage consumption and intoxication during 1 January 2016 - 30 September 2016 had decreased from 2015 as well, as shown in Table 1.

Table 1 Road accidents related to drunk driving

Period	Number of cases recorded	Cause of accident
1 January 2015 - 31 December 2015	26,675	Intoxication - 554 cases
1 January 2016 - 30 September 2016	20,846	Intoxication - 124 cases

Source: Traffic Police Division, Metropolitan Police Bureau

Data on alcohol concentration check points obtained from 89 police stations in Bangkok revealed that during October 2015 - January 2016, there is a significant amount of check points in comparison to the period of February 2016 onwards. However, the numbers of arrested intoxicated drivers in both periods did not differ much. During November 2015 - January 2016, there were more arrests due to the New Year holiday. In April 2016, the number of arrested intoxicated drivers was not high despite the Songkran festival. This was due to the data being collected from Bangkok police stations. During the said period, most people headed outside Bangkok. As a consequence, the number of arrests was not very high. The details are presented in Table 2.

Table 2 Number of check points and drunk driving arrests

Month/year	Number of check points	Number of drunk driving arrests
October 2015	118	118
November 2015	110	292
December 2015	105	350
January 2016	108	246
February 2016	51	112
March 2016	27	142
April 2016	26	127
May 2016	26	67
June 2016	76	81
July 2016	26	87
August 2016	27	96
September 2016	26	84

Source: 89 police stations, October 2015 - September 2016

However, more data was collected from the Office of Public Health Emergency, including the statistics of road accidents during 1 October 2015 to 30 September 2016. The data was categorized into 2 groups: alcohol consumers over and under 20. It was found that April saw the greatest number of nationwide injuries and deaths related to alcohol consumption of 11,126 cases, among which 9,150 were over 20 and 1,976 were under 20. The second and third highest records were in January and December, with 5,719 and 5,718 cases respectively. The details are shown in Table 3.

Table 3 Injuries and deaths related to alcohol consumption during 1 October 2015 - 30 September 2016

Month/year	Number of alcohol consumers	Number of alcohol consumers under 20
1-31 October 2015	399	83
1-30 November 2015	512	120
1-31 December 2015	4780	938
1-31 January 2016	4759	960
1-29 February 2016	1263	179
1-31 March 2016	1290	224
1-30 April 2016	9150	1976
1-31 May 2016	1428	198
1-30 June 2016	1685	222
1-31 July 2016	1943	312
1-31 August 2016	1817	291
1-30 September 2016	1885	309

Source: Office of Public Health Emergency

As for the efficiency and suitability of the enforcement of the Alcoholic Beverage Control Act 2008 and other relevant laws, the researchers studied the objective of the Alcoholic Beverage Control Act 2008 stated in the 67th National Legislative Assembly Meeting Minutes, dated 28 November 2007, and found that the Alcoholic Beverage Control Act 2008 was established with the objective to control alcoholic beverage consumption. Alcoholic beverages are to be sold and consumed in designated areas in order to control and limit the access to alcoholic beverages. This is to prevent any damage caused by alcohol consumption, especially among teenagers and new consumers. In addition, article 31(7) states that the Prime Minister, who is in charge of executing the Act, has the authority to determine alcohol free areas in addition to what is already stated in article 31. Today, the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012 has been announced, stating that alcohol consumption on the road while driving or riding a vehicle is prohibited.

Discussion

Behaviors of drivers whose blood alcohol concentration exceeds the legal limit and their escapes from legal proceedings

According to the information on alcohol content check points obtained from 89 police stations, it was found that over the period of 12 months (October 2015 - September 2016), a different number of check points was arranged every month. During October 2015 - January 2016, there were more check points in comparison to the period of February 2016 - September 2016. Notably, the arrest records during November 2015 - January 2016 were higher due to the New Year holiday. However, in April 2016, the number of arrested intoxicated drivers was not very high despite the Songkran holiday. This was due to the data being collected from Bangkok police stations. During the said period, most people headed outside Bangkok for vacation or returning to their hometowns. As a consequence, the number of arrests was not very high. It could be concluded that intoxicated drivers with alcohol concentration higher than the legal limit was still an issue in Bangkok, although there had been campaigns and established check points during

various holiday periods. However, there is no record regarding escape from legal proceedings due to various reasons, such as the officer's discretion, insufficient manpower, evidence gathering process, and inadequate alcohol measurement equipment. In this case, comparing to England and Canada's guidelines for blood alcohol content measurement, it was found that England's Road Traffic Act 1988 specifies that the driver, attempting driver, or the person in charge of driving a vehicle on the street or public venue is deemed guilty if the alcohol content in his/her breath, blood, or urine exceeds a predetermined threshold. The traffic police has the authority to request an alcohol test. If the driver refuses to test, he/she is considered guilty as well. The police officer shall conduct a screening breath test on the road using a breathalyzer. If the driver refuses to cooperate or the officer determines that he/she has a difficulty driving, the driver will be brought to the police station to be tested for 2 more times with a more accurate equipment. If the alcohol content exceeds the legal threshold, the driver may request a blood or urine test. If the result shows a high alcohol content, he/she will be prosecuted. The Canadian law states that the peace officer has the right to suspect one's alcohol content in body system and also has the authority to request a breathing test for analysis using an appropriate or certified equipment. Any driver who refuses without a legitimate reason will be considered guilty according to article 254 of the Canadian Criminal Code.

The Traffic Police Division, Metropolitan Police Bureau's records of road accidents resulting from drunk driving during 1 January 2015 - 30 September 2016 suggested that the accidents were consequences of driving while intoxicated. And during the period of 1 January 2016 - 30 September 2016, the number had decreased from that of 2015. However, according to the data collected from the Office of Public Health Emergency on road accidents involving alcohol consumers over and under 20 during 1 October 2015 to 30 September 2016, April saw the highest number of nationwide injuries and deaths related to alcohol consumption of 11,126 cases, among which 9,150 were over 20 and 1,976 were under 20. The second and third highest records were in January and December, with 5,719 and 5,718 cases respectively.

In addition, the driver's blood alcohol concentration is always measured after each road accident, especially severe ones. If the alcohol concentration exceeds the legal limit, the driver will be charged with drunk driving, according to the Road Traffic Act 1979. However, it was found that in fact, the blood alcohol measurement did not take place in every case due to various limitations, including the lack of serious enforcement of the Alcoholic Beverage Control Act 2008. This is another gap that causes escape from legal proceedings.

The efficiency and suitability of the enforcement of the Alcoholic Beverage Control Act 2008

From the study, it was found that problems related to drivers under the influence of alcoholic beverages can be categorized as follows:

- 1) Driving while intoxicated
- 2) Driving while consuming alcohol, including the passengers

The cases are justified by the driver's blood alcohol concentration. If the driver has more than 50 mg-percent, he/she will be considered intoxicated, according to the 16th Ministerial Regulations (1994), issued under the Road Traffic Act 1979. According to Japan's Vehicle Operation under the Influence of Alcohol Control law, which states that the driver's alcohol concentration in blood shall not exceed 0.03%, it is considered driving under the influence of alcohol. The penalty is 3 years (or less) imprisonment or 500,000 yen (or less) fine. If the driver drives while drunk, which is alcohol content of more than 0.15 mg-liter or 0.03%, he/she will be guilty of drunk driving. The penalty is 5 years (or less) imprisonment or 1,000,000 yen (or less) fine (Saito et al,

2015). However, regarding driving while the driver and passengers are consuming alcohol, article 31(7) appurtenant to the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012, issued by virtue of articles 4 and 31(7) of the Alcoholic Beverage Control Act 2008, states that it is prohibited to consume alcoholic beverages on the road while driving or riding a vehicle. The terms 'road' and 'vehicle' are defined in the road traffic laws. The objective is to penalize drivers and passengers who consume alcoholic beverages in the vehicle, which is a legally prohibited area. It is not mentioned about whether the driver must be intoxicated.

Studying the intention of the laws by means of documentary research, in-depth interviews, and interpretation, it can be concluded that the provision in article 31(7) of the Alcoholic Beverage Control Act 2008 is applied when the driver and passengers consume alcohol while driving regardless of whether they are intoxicated. Therefore, the intention of the Alcoholic Beverage Control Act 2008 is different from that of the Road Traffic Act 1979. It aims to avoid risks related to alcohol consumption while driving. Drivers have different levels of intoxication. Some are intoxicated with less than 50 mg-percent of alcohol in the blood and that already poses a risk of road accidents. However, they are not considered intoxicated drivers due to the alcohol level being lower than the legal limit. Some drivers are practically but not legally intoxicated and therefore cannot be charged according to the Road Traffic Act 1979. This is a gap in the enforcement of the said law, which corresponds to the information obtained from the in-depth interviews that each drinker has a different level of intoxication depending on various factors such as the metabolic rate and absorption process, gender, age, and weight. The researchers' comment is that the Alcoholic Beverage Control Act 2008 should be seriously enforced to close the gap regarding the Road Traffic Act 1979, which will contribute to alcohol-related road accident reduction.

However, there are many reasons for the gap in enforcing article 31 (7) of the Alcoholic Beverage Control Act 2008 and contribute to the wrongdoers' escapes from legal proceedings. The details are as follows:

1. Article 31 (7) of the Alcoholic Beverage Control Act 2008 only applies when the driver and passengers are consuming alcoholic beverages while driving the vehicle. If there is no drinking upon arrival at the check point, it is not considered a violation of the law. And if the alcohol content from the breath test does not exceed 50 mg-percent, it is not considered a violation either. In case the drinker is easily intoxicated even with less than 50-mg percent of alcohol, he/she will not be charged according to the Road Traffic Act 1979 because the alcohol level does not exceed the limit. And if he/she is not drinking on the vehicle, the Alcoholic Beverage Control Act 2008 will not be applied.
2. The Alcoholic Beverage Control Act 2008 is appurtenant to the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012, which is a secondary law, in which criminal penalties for offenders are stated. Therefore, there is a problem in finding the evidence. A clear evidence of alcohol consumption is required to convict the driver or passengers. Practically, it is difficult to find an evidence to this because it must be proven that the drinking takes place while driving the vehicle. Most private cars have car window tint installed which makes it hard to see inside, especially at night when people are likely to drink.
3. Another problem regarding law enforcement is that alcohol concentration check points do not cover all areas. This is a factor that enables offenders of the Alcoholic Beverage Control Act 2008 to escape from legal proceedings. The manpower and measurement tools and equipment are insufficient. In addition, despite the fact that serious law enforcement will definitely reduce such behaviors, it can also have an adverse consequence. In the Thai society, it is usually viewed

that this is only a small, insignificant issue. According to the in-depth interviews, check points are often arranged close to entertainment spots that sell alcoholic beverages. However, there are frequent complaints from the owners. The police end up having to avoid those areas. This is another issue in the law enforcement. The police has to rearrange the check points to avoid consequences on the business while maintaining effective law enforcement. During holidays such as the New Year or Songkran, the law enforcement becomes more serious regarding the traffic discipline and driving while drinking or intoxicated. However, this seems to be only a seasonal practice.

4. Most police officers focus on the driving while intoxicated behavior, as stated in the Road Traffic Act 1979, lacking enforcement of the Alcoholic Beverage Control Act 2008 due to the difficulty in finding the evidence as mentioned. Moreover, if the driver drinks while driving, both laws may be applied. Drinking while driving itself falls under article 31(7) of the Alcoholic Beverage Control Act 2008. And if the blood alcohol concentration exceeds 50 mg-percent, the Road Traffic Act 1979 is also violated and the driver will be charged with driving while intoxicated. In such cases, a single act violates multiple laws. Article 90 of the Penal Code states that if a single act violates multiple laws, the law with the highest penalty is to be enforced. As a result, only the Road Traffic Act 1979 is enforced by police officers and prosecutors alike, and the Alcoholic Beverage Control Act 2008 is not applied. In addition, from the conversation with police officers who have worked at the check points, some of them are not aware of or do not have a good understanding of article 31(7) of the Alcoholic Beverage Control Act 2008, appurtenant to the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012.

Conclusion and Recommendations

Consuming alcoholic beverages while driving is considered a crime. In order to find an appropriate solution for reducing and controlling alcoholic beverage consumption while driving behaviors, an important criminological ideation has been suggested by Cesare Beccaria on the three principle components of law enforcement and penalization that will contribute to reducing crimes (Tibbetts, 2015).

1. Swiftness in law enforcement and penalization: The evidence is still present and clear. And this will also be an example and warning to future offenders.

2. Certainty in law enforcement and penalization: This is the most important component. Future offenders will be scared to violate the laws. Arranging check points is one of the practices that reflects certainty.

3. Severity in penalization: The penalties applied to offenders must be severe enough to counterbalance the desire to violate the laws. As a result, they will not dare to violate the laws.

From the study of law enforcement regarding driving while drinking and possibilities to escape from legal proceedings, there are many problems that contributed to escapes from legal proceedings as mentioned. The following items are the researchers' recommendations:

1) Using multiple laws regarding alcohol consumption while driving results in different directions in law enforcement, despite the objectives of the laws. The Road Traffic Act 1979 intends to penalize intoxicated drivers, who are likely to cause road accidents which are harmful to themselves and other drivers alike. The Alcoholic Beverage Control Act 2008's objective is to limit the area permitted for alcohol consumption, including the prohibition to drink in vehicles, which applies to drivers and passengers, regardless of blood alcohol concentration. The laws intend to penalize intoxicated and drinking drivers. Therefore, they should be combined to form

a special law to penalize drivers under the influence of alcohol, including intoxicated drivers and drinking drivers. The penalties should be arranged by tiers with respect to the road accident risk posed by the acts.

2) Educate police officers and relevant agencies about laws related to driving under the influence of alcohol by providing working manuals. This is to clarify the matter and ensure everything is in the same direction.

3) Make changes to the presumption, specifically on the violation of article 31(7) of the Alcoholic Beverage Control Act 2008, appurtenant to the Notification of the Office of the Prime Minister on Alcoholic Prohibited Areas 2012 to presume the driver and passengers guilty if any unfinished or recently finished alcoholic beverage container is found. However, the driver should be given a chance to explain or prove that he/she is not drinking any alcoholic beverage while driving. This is to aid the police officers in case an alcoholic beverage is consumed in the vehicle but the alcohol concentration remains below the legal limit.

4) A working plan focusing on sustainable solutions should be established. Also, educate the youths with examples of non-drinkers to figure out the reasons to avoid alcohol beverages and ways to say no.

5) Construct a center for the body of knowledge in the form of a 'think tank'. In the Thai society, each individual has his/her own perception of alcohol. If the thoughts could be centered in a precise data base, it would be much more convenient for further study and education. Lack of such data base results in each network establishing their own policies according to their understandings. The outcome is therefore not as powerful as it should be and will eventually become a routine without direction.

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