



Republic of the Philippines
KAGAWARAN NG KATARUNGAN
Manila

ADVISORY OPINION NO. 03

30 May 2011

DEPARTMENT OF JUSTICE ADVISORY
FOR MOTORISTS REGARDING ROAD SAFETY

I. INTRODUCTION

This Department of Justice (“DOJ”) Advisory for Motorists (“Advisory”) seeks to give guidance to the public on a pressing concern plaguing our roads and highways: reckless driving. This Advisory is issued on the premise that keeping our roads safe by instilling discipline in motorists is the most effective way of preventing unnecessary injuries and loss of innocent lives caused by reckless driving.

II. FACTUAL BACKGROUND

According to the Department of Health (“DOH”), accidents are one of the leading causes of death among Filipinos. Of the fatal accidents recorded annually, road crashes are the second most frequent, next only to drowning.¹

Data from the Metro Manila Development Authority (“MMDA”) show that the overwhelming cause of road crashes can be attributed to drivers, and vehicle defects account for only a fraction of recorded incidents.² These human causes, in turn, invariably involve lack of discipline and recklessness.

Road user behavior is the single most important contributory factor of road accidents. A previous study found that the traffic violations are committed more frequently by drivers when they see others committing violations, and when traffic enforcers are not present. If this behavior of drivers can be modified, road accidents can be squarely addressed.³

¹ Dr. Ernie V. Vera, “Making Road Safety a Public Health Priority” (Report presented during the Department of Health 9th National Health Sector Meeting).

² Metro Manila Development Authority, “Metro Manila Accident Reporting and Analysis System (MMARAS): Traffic Incident Report January-December 2009”.

³ Dr. Aurora Corpuz-Mendoza, “Applications of Psychology to the Understanding and Modification of Road User Behavior” (Report presented during the Automobile Association of the Philippines 5th Road Safety Conference).

ROAD SAFETY IS THEREFORE A MATTER OF PERSONAL DISCIPLINE MORE THAN ANYTHING ELSE.

III. IMPORTANT DEFINITIONS

1. **Reckless Driving** – the act of operating a motor vehicle without reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or so as to endanger the property or the safety or rights of any person, or so as to cause excessive or unreasonable damage to the highway.
2. **Driving Under the Influence of Alcohol/“Drunk Driving”** – the act of operating a motor vehicle while in a state of intoxication. The most commonly-accepted indicator of drunk driving is having a Blood Alcohol Content Level of 0.06%.
3. **Distracted Driving** – the act of operating a motor vehicle while, at the same time, focusing one’s attention on other activities not related to driving.

III. SUMMARY OF THE LAW

A. What is Reckless Driving?

Under Republic Act No. 4136 (“R.A. 4136”), otherwise known as the Land Transportation and Traffic Code, reckless driving is a punishable act. Under Section 48, a person is considered a **reckless driver** when he operates a motor vehicle **without reasonable caution**:

- (1) considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or
- (2) so as to endanger the property or the safety or rights of any person, or
- (3) so as to cause excessive or unreasonable damage to the highway.

The above definition of reckless driving is broad enough to cover any act which can be described as wanting in “reasonable caution”, with regard to surrounding circumstances, and which puts at risk the safety of persons, both motorists and pedestrians. **In a nutshell, everytime a person operates a motor vehicle in violation of traffic rules, at the risk of harming others and with less than the full attention, focus and skill**

required of every driver, he is driving recklessly. Below are some of the more common forms of reckless driving that every motorist should guard against:

1. Over-speeding

Section 35 of R.A. 4136 prescribes maximum allowable speeds for different types of roads, which take into account their width, the flow of traffic in them and the fact that they pass through high-risk zones. The proper speed prescribed by the law can be described as: (1) a speed that is careful and prudent, not greater or less than what is reasonable and proper considering traffic, road and other existing conditions, (2) a speed that will not endanger the life, limb and property of any person, and (3) a speed that will permit a driver to bring his vehicle to a stop within the assured clear distance ahead.

Blatant disregard of this basic traffic rule has led to many accidents on the road. Over-speeding, especially in roads and highways where traffic is fast-moving and traffic enforcers are less able to run after violators, has in fact caused some stretches to be called “killer highways” because of the sheer number of accidents that have been recorded in them.

2. Drunk driving

Intoxication diminishes a person’s alertness and ability to focus. Thus, under the definition in R.A. 4136, the mere act of driving a motor vehicle while under a state of intoxication, even without causing any harm, already qualifies as “reckless driving” because a drunk driver operates his motor vehicle in such manner as to endanger properties and persons on the road.

Significantly, under Section 53 of R.A. 4136, “no person shall drive a motor vehicle while under the influence of liquor or narcotic drug”. **Once proven to be drunk, therefore, a person can be held liable for driving under the influence of alcohol, which is a graver offense than reckless driving.**

Since one's state of intoxication is a function of his alcohol intake, a fixed indicator of how “drunk” a “drunk driver” is needed for him to be considered in violation of the law. Ideally, national laws should adopt such an indicator, similar to initiatives already started at the level of the local government units (“LGUs”). The cities of Navotas and Makati, for example, have ordinances providing that a driver is drunk under the law if he registers a Blood Alcohol Content level of 0.06% within one (1) hour of his apprehension. This definition of a “drunk driver” is also the one being pushed for inclusion in the proposed implementing rules and regulations of the Land

Transportation and Traffic Code, as well as in the Driving Under the Influence Bill currently pending in Congress. It is also the standard used in many countries.

3. Distracted driving

The term “distracted driving” is commonly used abroad to refer to operating a motor vehicle inattentively on account of various activities not related to driving. Although the term is less popular here, our traffic enforcers have long recognized this as a major cause of road accidents (although they use the term “inattention”). Distracted driving is a form of reckless driving, because it deviates a driver’s attention away from the road, causing him to commit acts or omissions that may endanger himself and others.

A study conducted in the United States⁴ classifies sources of distracted driving into two: internal factors and non-driving cognitive activities. The latter refers to activities like worrying about problems or other concerns not related to driving, and cause comparatively fewer accidents.

The more common causes of accidents are distractions from internal factors (or those occurring inside the vehicle) like conversing with another person in the vehicle or on the phone, retrieving objects in the floor/dashboard, eating or drinking, adjusting car radios, and using any other gadget or device like mobile phones, laptops/iPads, iPods/MP3 players or GPS-enabled devices.

Distracted driving should be addressed at the national level. Currently, local ordinances, as in Sagada municipality and in Roxas City, focus on “texting/calling while driving” in particular, because this is one of the most common and conspicuous form of distracted driving. As the Singh study quoted above shows, however, there are many causes of distracted driving that produce the same risk of causing accidents, and all these causes should be treated comprehensively.

B. What are the penalties for reckless driving?

Reckless driving carries a penalty of a P1,200 fine, without prejudice to confiscation of the erring driver’s license by the enforcer. Drunk driving, on the other hand, is punishable by a fine (ranging from P2,000-P5,000), or imprisonment (three to six months) or both, at the discretion of the court. When an ordinance against particular forms of reckless driving like drunk driving or distracted driving is being enforced in the place where the violation

⁴ Dr. Santokh Singh, “Distracted Driving and Driver, Roadway and Environmental Factors” (Study conducted for the United States National Highway Traffic Safety Administration).

is committed, the offender shall likewise be held liable under it.

When reckless driving results in damages and injuries to persons or property, the provisions of the Revised Penal Code shall apply. Depending on the extent of damages caused, a person may be charged with crimes such as physical injuries, damage to property or even homicide and murder.

When a person causes damages or injuries on the road, he has the duty and obligation to help the victim. Otherwise, such person shall be held liable for the crime of Abandonment of One's Own Victim, punished under Article 275 of the Revised Penal Code. Under R.A. 4136, there is also a **duty** on the part of an erring driver to (1) show his license and give his true name and address, (2) give the true name and address of the owner of the motor vehicle, and (3) render assistance to the victim. Failure to assist one's own victim is excused only when (1) he is in imminent danger of being seriously harmed by reason of the accident, (2) he reports the incident to the nearest officer of the law, or (3) he summons a physician or nurse.

V. ADVISORY

In view of the foregoing, the following advisory points are issued:

1. RECKLESS DRIVING, DRUNK DRIVING AND DISTRACTED DRIVING ARE VIOLATIONS OF THE LAW IN THEMSELVES. THEY NEED NOT RESULT IN DAMAGES, INJURIES OR EVEN DEATH FOR THEM TO BE PUNISHABLE.

Everytime you go behind the wheel, never forget that you are responsible not only for your life but also for the lives of your passengers and countless others on the road, including pedestrians. Reckless driving, drunk driving and distracted driving are violations of this responsibility to yourself and to your community. **These acts, even without causing damages or injuries, will make you liable for reckless driving (or drunk driving, if intoxication is proved) under R.A. 4136.**

Being a responsible driver entails **observing all traffic rules and regulations, even if you see others violating them, and even if there are no traffic enforcers in sight.**

One way of honing personal discipline is to refrain from drinking and driving. As you are not certain of the exact effect of alcohol on you at any given occasion, it is recommended that after drinking, you ask another person to drive your car or just take a cab. Staying away from the wheel when you know that you have had a few

drinks can very well save your life and those of others.

Likewise, you should always be aware of maximum speed limits, which are imposed under the law in all types of roads. **Speed limits are not deemed suspended when the road appears very clear or when traffic is fast-moving.** Speed limits are imposed so that drivers will not lose control over their vehicles at all times and will be able to react quickly to any untoward incident.

2. DO NOT ENGAGE IN DISTRACTING ACTIVITIES WHILE DRIVING, LIKE USING YOUR MOBILE PHONES, ELECTRONIC GADGETS OR GPS DEVICES.

When driving, always keep your attention on the road. **Driving in itself already demands intense focus and split-second decision-making,** especially in our roads that are often narrow and full of obstructions. Devoting your attention to other activities not related to driving will seriously affect your capacity to drive carefully.

Being in the middle of heavy traffic is not an excuse to engage in distracting activities like using your mobile phones and other gadgets. In fact, many collisions occur because drivers fail to react quickly when traffic starts to flow (especially in intersections) because they are engrossed in their other activities.

Do not rely on accessories that supposedly make it safer for you to use your gadgets while driving, as they provide only a false sense of safety. “Hands-free” headsets, for example, only succeed in keeping your hands on the wheel while talking to another person on your mobile phone. However, the mere act of dividing your attention to talk to another person is already a dangerous distraction that affects your driving skills. If you really have to take an important call, pull over so you will not be a danger to yourself and to others.

3. TAKE EXTRA CAUTION WHEN IN ACCIDENT-PRONE AREAS OR IN “KILLER HIGHWAYS”

Certain areas or roads have been the site of more accidents than others. In Metro Manila, for example, road crashes have been concentrated in certain highways like Commonwealth Avenue in Quezon City, Marcos Highway in Marikina City and Ortigas Avenue in Pasig City. In the provinces, accidents usually occur in stretches of roads with “blind curves” or are not well-lit. **The public should be reminded, however, that what makes a “killer highway” is the lack of**

cautiousness, and oftentimes lack of discipline, of motorists plying them. Thus, when in these areas, you should be more alert and vigilant in order to prevent any accident that may be caused by you or by another motorist.

4. BE VIGILANT IN ORDER TO PROTECT YOURSELF AND OTHERS, AND DO YOUR SHARE IN COMING UP WITH STRICTER LAWS AND RULES TO PROMOTE ROAD SAFETY.

Vigilance is the best defense against menaces in the road. **In the unfortunate event of an encounter with a reckless driver, your best protection is your presence of mind.**

Be on the lookout for drivers showing signs of recklessness, especially intoxication or inattentiveness, and immediately report them to enforcers. **When riding a public utility vehicle, do not be afraid to speak out and remind the driver to observe traffic rules, especially on speeding.** This could very well save your life.

In your own family and social circles, make defensive driving an issue for discussion and emphasize that it is a serious matter. Participate in public hearings where efforts to enact a nationwide Driving Under the Influence law and other laws and rules are underway.

Encourage your LGU to adopt a Driving Under the Influence ordinance while a national standard defining what “drunk driving” is being crafted. A template ordinance (see **Annex “A”** of this Advisory) may be used by citizens or council members to initiate legislation at the local level.

MAKING OUR ROADS SAFER AND FREE OF RECKLESS DRIVERS SHOULD BE A COLLECTIVE EFFORT.

This Advisory is issued by the DOJ in line with its thrust to take a proactive stance and dynamic approach in criminal justice concerns. All are enjoined to disseminate and faithfully observe this Advisory.

(signed)
LEILA M. DE LIMA
Secretary

ANNEX “A”
Driving Under the Influence Ordinance (Template)

REPUBLIC OF THE PHILIPPINES
SANGGUNIANG PANLUNGSOD
_____ City

By unanimous vote of the members of the City Council present, the following City Ordinance was enacted on third and final reading:

CITY ORDINANCE NO. _____

AN ORDINANCE PROHIBITING DRIVING UNDER THE
INFLUENCE OF ALCOHOL OR DRUNK DRIVING
WITHIN THE CITY AND PROVIDING STRICT
PENALTIES THEREFOR

Whereas, driving under the influence of alcohol or drunk driving is a pernicious act that endangers the safety of the public, causes unnecessary damage and claims many innocent lives;

Whereas, the prevalence of accidents and mishaps attributable to drunk driving necessitates the adoption of stricter rules and penalties in order to deter the commission of the said act on the City's roads;

Whereas, it is the avowed commitment of the City Council to enact ordinances geared towards the promotion of the welfare of its constituents and the protection of everyone against any harm and injury resulting from reckless and imprudent activities;

NOW, THEREFORE, BE IT ENACTED AS IT IS HEREBY ENACTED BY THE SANGGUNIANG PANLUNGSOD OF _____ CITY, BY VIRTUE OF THE POWERS VESTED IN IT BY LAW, IN SESSION ASSEMBLED, that:

Section 1. Title. This City Ordinance shall be known and cited as the Driving Under the Influence Ordinance of _____ City.

Section 2. Scope of Application. This City Ordinance shall apply to all drivers and their vehicles on any road and in any place within the City.

Section 3. Driving a Motor Vehicle While Under the Influence of Alcohol. No person shall drive a motor vehicle while under the influence of alcohol. For the purposes of this Section, a driver is considered under the

influence of alcohol if, at the time of competent examination performed within an hour of apprehension of a person, he is found to have a Blood Alcohol Content Level of 0.06%.

Section 4. Penalties. Anyone found to have violated the next preceding Section shall be punished with payment of fine of Two Thousand to Five Thousand Pesos (P2,000-P5,000.00) or imprisonment of not less than three months but not more than six months, or both, at the discretion of the court.

Section 5. Effectivity. This City Ordinance shall take effect within fifteen days following its publication in the City Hall and the Barangay Halls of this City.

Enacted by the Sangguniang Panlungsod of _____ City in its regular session held on _____ .

Certified true and correct:

City Secretary

Attested by:

City Vice Mayor and Presiding Officer

APPROVED:

City Mayor