

## 釋字第 777 號解釋部分不同意見書

吳陳銀大法官提出

多數意見以「中華民國 88 年 4 月 21 日增訂公布之刑法第 185 條之 4 規定：『駕駛動力交通工具肇事，致人死傷而逃逸者，處 6 月以上 5 年以下有期徒刑。』（102 年 6 月 11 日修正公布同條規定，提高刑度為 1 年以上 7 年以下有期徒刑，構成要件均相同）其中有關『肇事』部分，可能語意所及之範圍，包括『因駕駛人之故意或過失』或『非因駕駛人之故意或過失』（因不可抗力、被害人或第三人之故意或過失）所致之事故，除因駕駛人之故意或過失所致之事故為該條所涵蓋，而無不明確外，其餘非因駕駛人故意或過失所致事故之情形是否構成『肇事』，尚非一般受規範者所得理解或預見，於此範圍內，其文義有違法律明確性原則，此違反部分，應自本解釋公布之日起失其效力。」其論據為：「依本院歷來解釋，法律規定所使用之概念，其意義依法條文義、立法目的及法體系整體關聯性，須為受規範者可得理解，且為其所得預見，並可經由司法審查加以確認，始與法律明確性原則無違（本院釋字第 432 號、第 521 號、第 594 號、第 617 號、第 623 號、第 636 號及第 690 號解釋參照）。惟涉及拘束人民身體自由之刑罰規定，其構成要件是否符合法律明確性原則，應受較為嚴格之審查（本院釋字第 636 號解釋參照）。……核上開二規定為涉及拘束人民身體自由之刑罰規定，是其構成要件是否明確，自應受較為嚴格之審查，其判斷爰應僅以該規定文義及刑法體系整體關聯性為準，不應再

參考其他相關法律。……有關『肇事』部分，可能語意所及之範圍，包括『因駕駛人之故意或過失』或『非因駕駛人之故意或過失』（因不可抗力、被害人或第三人之故意或過失）所致之事故，除因駕駛人之故意或過失所致之事故，依其文義及刑法體系整體關聯性判斷，為該條所涵蓋，而無不明確外，其餘非因駕駛人故意或過失所致事故之情形是否構成『肇事』，尚非一般受規範者所得理解或預見，於此範圍內，其文義有違法律明確性原則，此違反部分應自本解釋公布之日起失其效力。」

查多數意見既認「肇事」可能語意所及之範圍，包括「因駕駛人之故意或過失」或「非因駕駛人之故意或過失」（因不可抗力、被害人或第三人之故意或過失）所致之事故，則「肇事」包括「因駕駛人之故意或過失」及「非因駕駛人之故意或過失」（因不可抗力、被害人或第三人之故意或過失）所致之事故，即無不明確之情形。但多數意見之結論卻是：「非因駕駛人故意或過失所致事故之情形是否構成『肇事』，尚非一般受規範者所得理解或預見，於此範圍內，其文義有違法律明確性原則」。其理由與結論彼此矛盾，已難贊同。

次按，確如多數意見所言，依本院釋字第 432 號、第 521 號、第 594 號、第 617 號、第 623 號、第 636 號及第 690 號解釋等歷來解釋，法律規定所使用之概念，其意義依法條文義、立法目的及法體系整體關聯性，須為受規範者可得理解，且為其所得預見，並可經由司法審查加以確認，始與法律明確性原則無違。

惟查本院歷來解釋，就法律明確性之審查，從未僅以單一法律之法體系整體關聯性而為判斷，且刑法及刑事特別法所定之構成要件，有須參考其他相關法律而為判斷者，亦有須依其他相關法律而為判斷者，不勝枚舉。例如：刑法第 107 條第 1 項第 1 款、第 4 款<sup>1</sup>及第 112 條<sup>2</sup>所稱之「要塞」，須依要塞堡壘地帶法而為判斷；刑法第 135 條第 1 項、第 2 項<sup>3</sup>及第 140 條第 1 項<sup>4</sup>所稱之「公務員依法執行職務」「公務員依法執行之職務」或「公務員依法執行一定之職務」，須依刑法以外其他相關法律而為判斷；刑法第 187 條之 2 第 1 項<sup>5</sup>及第 187 條之 3 第 1 項<sup>6</sup>所稱之「核能」及「放射線」，須依刑法以外其他相關法律而為判斷；刑法第 193 條<sup>7</sup>所稱之「建築術成規」，須依刑法以外之建築相關法規而為判斷；刑法第 225 條第 1 項、第 2 項<sup>8</sup>及第 341 條第 1 項<sup>9</sup>所稱之「精神障礙」、「身

---

<sup>1</sup> 刑法第 107 條第 1 項規定：「犯前條第一項之罪而有左列情形之一者，處死刑或無期徒刑：一、……將要塞……交付敵國或毀壞或致令不堪用者。……」

四、以關於要塞……之秘密文書、圖畫、消息或物品，洩漏或交付於敵國者。」

<sup>2</sup> 刑法第 112 條規定：「意圖刺探或收集第一百零九條第一項之文書、圖畫、消息或物品，未受允准而入要塞……，或留滯其內者，處 1 年以下有期徒刑。」

<sup>3</sup> 刑法第 135 條第 1 項、第 2 項規定：「(第 1 項)對於公務員依法執行職務時，施強暴脅迫者，處 3 年以下有期徒刑、拘役或 300 元以下罰金。(第 2 項)意圖使公務員執行一定之職務或妨害其依法執行一定之職務或使公務員辭職，而施強暴脅迫者，亦同。」

<sup>4</sup> 刑法第 140 條第 1 項規定：「於公務員依法執行職務時，當場侮辱，或對於其依法執行之職務公然侮辱者，處 6 月以下有期徒刑、拘役或 100 元以下罰金。」

<sup>5</sup> 刑法第 187 條之 2 第 1 項規定：「放逸核能、放射線，致生公共危險者，處 5 年以下有期徒刑。」

<sup>6</sup> 刑法第 187 條之 3 第 1 項規定：「無正當理由使用放射線，致傷害人之身體或健康者，處 3 年以上 10 年以下有期徒刑。」

<sup>7</sup> 刑法第 193 條規定：「承攬工程人或監工人於營造或拆卸建築物時，違背建築術成規，致生公共危險者，處 3 年以下有期徒刑、拘役或 3000 元以下罰金。」

<sup>8</sup> 第 225 條第 1 項、第 2 項規定：「(第 1 項)對於男女利用其精神、身體障礙、心智缺陷或其他相類之情形，不能或不知抗拒而為性交者，處 3 年以上 10 年以下有期徒刑。(第 2 項)對於男女利用其精神、身體障礙、心智缺陷或其他相類之情形，不能或不知抗拒而為猥褻之行為者，處 6 月以上 5 年以下有期徒刑。」

<sup>9</sup> 刑法第 341 條第 1 項規定：「意圖為自己或第三人不法之所有，乘未滿 18 歲人之知慮淺薄，或乘人精神障礙、心智缺陷而致其辨識能力顯有不足或其他相類之情形，使之將本人或第三人之物交付者，處 5 年以下有期徒刑、拘役或科或併科 50 萬元以下罰金。」

體障礙」及「心智缺陷」，須依刑法以外之身心障礙者權益保障法而為判斷。

再按「汽車駕駛人駕駛汽車肇事致人受傷或死亡者，應即採取救護措施及依規定處置，並通知警察機關處理，不得任意移動肇事汽車及現場痕跡證據，違反者處新臺幣 3,000 元以上 9,000 以下罰鍰。但肇事致人受傷案件當事人均同意時，應將肇事汽車標繪後，移置不妨礙交通之處所。」「前項駕駛人肇事致人受傷而逃逸者，吊銷其駕駛執照；致人重傷或死亡而逃逸者，吊銷其駕駛執照，並不得再考領。」道路交通管理處罰條例第 62 條第 3 項及第 4 項分別定有明文。

「汽車駕駛人，有下列情形之一者，應接受道路交通安全講習：一、違規肇事受吊扣駕駛執照處分。」「違反本條例之行為，自行為成立之日起；行為有連續或繼續之狀態者，自行為終了之日起，逾三個月不得舉發。但汽車肇事致人受傷或死亡案件，因肇事責任不明，已送鑑定者，其期間自鑑定終結之日起算。」同條例第 24 條第 1 項第 1 款及第 90 條亦定有明文。<sup>10</sup>同條例第 92 條第 1 項復規定：「……汽車駕駛人執照考驗、換發、證照效期與登記規定……及其他有關道路交通安全等事項之規則，由交通部會同內政部定之。」而依道路交通管理處罰條例第 92 條第 1 項規定訂定之道路交通安全規則，<sup>11</sup>其第 2 條第 1 項第 1 款、第 50 條第 1 項、第 53

<sup>10</sup> 道路交通管理處罰條例第 92 條第 4 項授權訂定之違反道路交通管理事件統一裁罰基準及處理細則第 10 條第 2 項第 4 款規定：「肇事舉發：發生道路交通事故，肇事原因或肇事責任不明，經分析研判或鑑定後，確認有違反本條例行為之舉發。」第 35 條第 2 項規定：「車輛肇事案件，被通知人已依指定應到案日期到案，因肇事責任尚待鑑定，無法即時裁決……」就肇事一辭，亦未限制可歸責方屬肇事。

<sup>11</sup> 道路交通安全規則第 1 條規定：「本規則依道路交通管理處罰條例第 92 條第 1 項規定訂定

條及第 65 條第 1 項、第 3 項亦分別規定：「汽車：指在道路上不依軌道或電力架線而以原動機行駛之車輛（包括機車）。」「汽車駕駛執照為駕駛汽車之許可憑證，由駕駛人向公路監理機關申請登記，考驗及格後發給之。汽車駕駛人經考驗及格，未領取駕駛執照前，不得駕駛汽車。」「汽車駕駛執照分為下列各類：一、小型車普通駕駛執照。二、大貨車普通駕駛執照。三、大客車普通駕駛執照。四、聯結車普通駕駛執照。五、小型車職業駕駛執照。六、大貨車職業駕駛執照。七、大客車職業駕駛執照。八、聯結車職業駕駛執照。九、國際駕駛執照。十、輕型機車駕駛執照。十一、小型輕型機車駕駛執照。十二、普通輕型機車駕駛執照。十三、重型機車駕駛執照。十四、普通重型機車駕駛執照。十五、大型重型機車駕駛執照。」「申請汽車駕駛執照考驗者，其應考科目為筆試及路考。」「筆試包括交通規則及機械常識，報考普通駕駛執照者，免考機械常識。……」則於道路上駕駛動力交通工具，均應通過包括道路交通管理處罰條例第 62 條第 3 項、第 4 項與第 90 條「汽車駕駛人駕駛汽車肇事致人受傷或死亡者，應即採取救護措施及依規定處置，並通知警察機關處理，不得任意移動肇事汽車及現場痕跡證據」及駕駛人肇事致人受傷、受重傷或死亡，縱肇事責任不明，是否可歸責於該駕駛人，均不得逃逸等內容交通規則之駕駛執照考驗，亦即於道路上駕駛動力交通工具者，均明知駕駛動力交通工具肇事致人受傷、受重傷或死亡，縱非因可歸責於該

---

之。」

駕駛人之違規而肇事，或是否可歸責於該駕駛人不明，均不得逃逸。

另按所謂「肇事」，依教育部《重編國語辭典修訂本》，係指闖禍、引起事故。<sup>12</sup>係屬客觀事實之描述，包括行為人有責及無責之情形。一般人民依據日常生活與語言經驗，尚非難以理解，更為受規範應通過交通規則考驗取得駕駛執照於道路上駕駛動力交通工具者所得預見，並可經由司法審查加以確認，與法律明確性原則無違。

復按 88 年增訂之刑法第 185 條之 4，係由立法委員黃國鐘等 18 位立法委員及顏錦福等 17 位立法委員提案增訂，黃國鐘等 18 位立法委員提案增訂該規定之參考條文為行政院草案（按應係行政院、司法院之草案），其立法理由僅列載多位刑法學者之評估意見，該等刑法學者多認為係仿德國刑法第 142 條之規定而增訂（立法院公報第 3 屆第 2 會期第 23 次會議議案關係文書院總字第 246 號第 39 頁及第 48-50 頁參照），而行政院、司法院草案之修正理由係「為維護交通安全，加強救護，減少被害人之死傷，促使駕駛人於肇事後，能對被害人即時救護，特增設本條關於肇事致人死傷而逃逸之處罰規定」，嗣立法院司法委員會審查通過採納黃國鐘等 18 位立法委員之提案，惟文字略加修正為：「駕駛動力交通工具肇事，致人死傷而逃逸者，處 6 月以上 5 年以下有期徒刑。」院會二、三讀通過之條文內容與司法委員會審查通過

---

<sup>12</sup> <http://dict.revised.moe.edu.tw/cgi-bin/cbdic/gsweb.cgi?o=dcbdic&searchid=Z00000115669> 最後瀏覽日：108 年 3 月 18 日。

之條文內容完全相同（立法院公報第 88 卷第 13 期院會紀錄第 77 頁、第 82 頁、第 97 頁、第 98 頁、第 100 頁、第 211 頁、第 215 頁及第 218 頁參照）。查黃國鐘等 18 位立法委員提案增訂該規定之參考條文既為行政院、司法院之草案，而行政院、司法院草案之修正理由係「為維護交通安全，加強救護，減少被害人之死傷，促使駕駛人於肇事後，能對被害人即時救護」，則自不以行為人就肇事有故意過失為必要，否則立法目的即無法達到。況查，該規定參考之德國刑法第 142 條肇事逃逸罪，亦不以就肇事有故意過失為必要。<sup>13</sup> 綜上，就立法過程觀之，依該規定之立法目的，該規定所稱之「肇事」，自不以駕駛人有故意過失為必要，縱無過失，亦包括在內。更何況駕駛動力交通工具肇事之當下，究竟何人有過失，多

---

<sup>13</sup> German Criminal Code Section 142 Leaving the scene of an accident without cause provides that: ‘  
(1) A party to a road traffic accident who leaves the scene of the accident before he  
1. has facilitated, on behalf of the other parties to the accident and any persons suffering injury or damage, the determination of his identity, his vehicle and the nature of his involvement through his presence and an statement that he was involved in the accident; or  
2. has waited for an appropriate period of time under the circumstances, during which no one was willing to make such determinations, shall be liable to imprisonment not exceeding three years or a fine.  
(2) A party to an accident shall also be liable under subsection (1) above if he  
1. after expiry of the waiting period (subsection (1) No 2 above); or  
2. justifiably or excusably  
left the scene of the accident but subsequently does not without undue delay make these determinations possible.  
(3) A party to the accident satisfies the obligation to subsequently make the determinations possible if he informs the persons entitled to receive such information (subsection (1) No 1 above) or a nearby police station that he was involved in the accident, and if he states his address and whereabouts as well as the licence plate number and location of his vehicle, and makes it available for prompt examination for a reasonable period. This shall not apply if he intentionally obstructs the determinations by his conduct.  
(4) The court shall mitigate the sentence (section 49(1)) in cases under subsections (1) and (2) above or may order a discharge under these provisions if the party to the accident subsequently voluntarily makes the determinations possible (subsection (3) above) within twenty-four hours after an accident which did not take place in owing traffic and which resulted in merely minor property damage.  
(5) A party to an accident shall be deemed to be anyone whose conduct under the circumstances may have contributed to causing the accident.’ [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1336](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1336) last visited: May 21, 2019.

數無從判斷，須經車輛行車事故鑑定委員會鑑定，如將非因駕駛人故意或過失所致事故之情形，排除在該規定規範範圍之外，則每個發生事故致人死傷之駕駛人，均得以其自認就事故之發生無故意過失，因此未留在現場，因該規定僅處罰故意犯，縱行為人之認知錯誤，其就事故之發生確有故意過失，仍無法以該規定處罰，該規定將形同具文，無法達成「為維護交通安全，加強救護，減少被害人之死傷，促使駕駛人於肇事後，能對被害人即時救護」之立法目的。

綜合上開說明，刑法第 185 條之 4 規定之「肇事」一詞，其意義依法條文義、立法目的及法體系整體關聯性，包括可歸責於駕駛人及不可歸責於駕駛人之情形，為受規範者可得理解，且為其所得預見，並可經由司法審查加以確認，與法律明確性原則無違。

而與我國法制較為相近之日本道路交通法第 72 條、第 117 條<sup>14</sup>及國人較常造訪之美國加州之汽車法(Vehicle

---

<sup>14</sup> 日本道路交通法第 72 條規定：「交通事故があつたときは、当該交通事故に係る車両等の運転者その他の乗務員（以下この節において「運転者等」という。）は、直ちに車両等の運転を停止して、負傷者を救護し、道路における危険を防止する等必要な措置を講じなければならない。この場合において、当該車両等の運転者（運転者が死亡し、又は負傷したためやむを得ないときは、その他の乗務員。以下次項において同じ。）は、警察官が現場にいるときは当該警察官に、警察官が現場にいないときは直ちに最寄りの警察署（派出所又は駐在所を含む。以下次項において同じ。）の警察官に当該交通事故が発生した日時及び場所、当該交通事故における死傷者の数及び負傷者の負傷の程度並びに損壊した物及びその損壊の程度、当該交通事故に係る車両等の積載物並びに当該交通事故について講じた措置を報告しなければならない。2 前項後段の規定により報告を受けたもよりの警察署の警察官は、負傷者を救護し、又は道路における危険を防止するため必要があると認めるときは、当該報告をした運転者に対し、警察官が現場に到着するまで現場を去つてはならない旨を命ずることができる。3 前二項の場合において、現場にある警察官は、当該車両等の運転者等に対し、負傷者を救護し、又は道路における危険を防止し、その他交通の安全と円滑を図るため必要な指示をすることができる。4 緊急自動車若しくは傷病者を運搬中の車両又は乗合自動車、トロリーバス若しくは路面電車で当該業務に従事中のものの運転者は、当該業務のため引き続き当該車両等を運転する必要があるときは、第一項の規定にかかわらず、その他の乗務員に第一項前段に規定する措置を講じさせ、又は同項後段に規定する報告をさせて、当該車両等



Code) 第 2001 條<sup>15</sup>、紐約州之汽車及交通法(Vehicle and Traffic Law) 第 600 條第 2 項<sup>16</sup> 與華盛頓州法(Revised Code

の運転を継続することができる。」

第 117 條規定：「車両等（軽車両を除く。以下この項において同じ。）の運転者が、当該車両等の交通による人の死傷があつた場合において、第七十二条（交通事故の場合の措置）第一項前段の規定に違反したときは、五年以下の懲役又は五十万円以下の罰金に処する。2 前項の場合において、同項の人の死傷が当該運転者の運転に起因するものであるときは、十年以下の懲役又は百万円以下の罰金に処する。」 [http://elaws.e-gov.go.jp/search/elawsSearch/elaws\\_search/lsg0500/detail?lawId=335AC0000000105#699](http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=335AC0000000105#699) last visited:

March 20, 2019.

<sup>15</sup> California Vehicle Code §20001 stipulates that: ‘ (a) The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

(b) (1) Except as provided in paragraph (2), a person who violates subdivision (a) shall be punished by imprisonment in the state prison, or in a county jail for not more than one year, or by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(2) If the accident described in subdivision (a) results in death or permanent, serious injury, a person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or by both that imprisonment and fine. However, the court, in the interests of justice and for reasons stated in the record, may reduce or eliminate the minimum imprisonment required by this paragraph.

(3) In imposing the minimum fine required by this subdivision, the court shall take into consideration the defendant’s ability to pay the fine and, in the interests of justice and for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(c) A person who flees the scene of the crime after committing a violation of Section 191.5 of, or paragraph (1) of subdivision (c) of Section 192 of the Penal Code, upon conviction of any of those sections, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision.

(d) As used in this section, “permanent, serious injury” means the loss or permanent impairment of function of a bodily member or organ.’

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=VEH&sectionNum=20001](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH&sectionNum=20001). Last visited: March 23, 2019.

<sup>16</sup> New York Vehicle and Traffic Law § 600(2) ‘Leaving scene of an incident without reporting’ provides that: ‘2. Personal injury.

a. Any person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred, stop, exhibit his or her license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his or her name, residence, including street and street number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy and license number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the place of said injury, then, he or she shall report said incident as soon as physically able to the nearest police station or judicial officer. In addition to the foregoing, any such person shall also: (i) produce the proof of insurance coverage required pursuant to article forty-four-B of this chapter if

of Washington, RCW) 第 46 編(Title 46)第 52 章(Chapter

---

such person is a TNC driver operating a TNC vehicle at the time of the incident who was (A) logged on to the TNC's digital network but not engaged in a TNC prearranged trip or (B) was engaged in a TNC prearranged trip; and (ii) disclose whether he or she, at the time such incident occurred, was (A) logged on to the TNC's digital network but not engaged in a TNC prearranged trip or (B) was engaged in a TNC prearranged trip.

b. It shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so, to exchange the information required hereinabove and such member of a law enforcement agency shall assist such operator or operators in making such exchange of information in a reasonable and harmonious manner.

c. A violation of the provisions of paragraph a of this subdivision resulting solely from the failure of an operator to exhibit his or her license and insurance identification card for the vehicle or exchange the information required in such paragraph shall constitute a class B misdemeanor punishable by a fine of not less than two hundred fifty nor more than five hundred dollars in addition to any other penalties provided by law. Any subsequent such violation shall constitute a class A misdemeanor punishable by a fine of not less than five hundred nor more than one thousand dollars in addition to any other penalties provided by law. Any violation of the provisions of paragraph a of this subdivision, other than for the mere failure of an operator to exhibit his or her license and insurance identification card for such vehicle or exchange the information required in such paragraph, shall constitute a class A misdemeanor, punishable by a fine of not less than five hundred dollars nor more than one thousand dollars in addition to any other penalties provided by law. Any such violation committed by a person after such person has previously been convicted of such a violation shall constitute a class E felony, punishable by a fine of not less than one thousand nor more than two thousand five hundred dollars in addition to any other penalties provided by law. Any violation of the provisions of paragraph a of this subdivision, other than for the mere failure of an operator to exhibit his or her license and insurance identification card for such vehicle or exchange the information required in such paragraph, where the personal injury involved (i) results in serious physical injury, as defined in section 10.00 of the penal law, shall constitute a class E felony, punishable by a fine of not less than one thousand nor more than five thousand dollars in addition to any other penalties provided by law, or (ii) results in death shall constitute a class D felony punishable by a fine of not less than two thousand nor more than five thousand dollars in addition to any other penalties provided by law.' <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: last visited: March 23, 2019.

52)第 20 條(Section 20)<sup>17</sup>及加拿大刑法第 320.16 條<sup>18</sup>、第

---

<sup>17</sup> RCW 46.52.020 Duty in case of personal injury or death or damage to attended vehicle or other property—Penalties stipulates that: ‘

- (1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.
- (2) ...
- (3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.
- (4) (a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.  
(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, is punishable according to chapter 9A.20 RCW.  
(c) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident involving striking the body of a deceased person is guilty of a gross misdemeanor.  
(d) This subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying with this section....’

<https://app.leg.wa.gov/RCW/default.aspx?cite=46.52.020> last visited: March 23, 2019.

- <sup>18</sup> Canadian Criminal Code section 320.16 states that: ‘(1) Everyone commits an offence who operates a conveyance and who at the time of operating the conveyance knows that, or is reckless as to whether, the conveyance has been involved in an accident with a person or another conveyance and who fails, without reasonable excuse, to stop the conveyance, give their name and address and, if any person has been injured or appears to require assistance, offer assistance.  
(2) Everyone commits an offence who commits an offence under subsection (1) and who at the time of committing the offence knows that, or is reckless as to whether, the accident resulted in bodily harm to another person.  
(3) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of committing the offence, knows that, or is reckless as to whether, the accident resulted in the death of another person or in bodily harm to another person whose death ensues.’

<https://laws.justice.gc.ca/eng/acts/C-46/page-71.html#docCont> last visited: May 20, 2019.

320.2 條<sup>19</sup>、第 320.21 條，<sup>20</sup>亦均規定汽車駕駛人無論有無故意或過失發生交通事故致人受傷或死亡，未採取應採之措施而離開車禍現場，即構成犯罪。

此外，持我國駕駛執照之國人，直接持我國駕駛執照或換發國際駕駛執照後，得在世界上許多國家駕駛汽車，<sup>21</sup>如將刑法 185 條之 4 規定之肇事，限縮解釋為僅限於駕駛人有故意過失之情形，該種見解，不僅不能與國際接軌，且將使國人直接持我國駕駛執照或換發國際駕駛執照後，在世界上其他國家駕駛汽車，發生交通事故致人受傷或死亡時，極有可能未採取應採之措施即離開車禍現場，而受該國之刑事訴追，將之曝險於人生地不熟之國外，情何以堪，多數意見更難以贊同。

---

<sup>19</sup> Canadian Criminal Code section 320.16 stipulates that: 'Everyone who commits an offence under subsection 320.13(2), 320.14(2), 320.15(2) or 320.16(2) is liable on conviction on indictment or on summary conviction

(a) to the following minimum punishment, namely,  
(i) for a first offence, a fine of \$1,000,  
(ii) for a second offence, imprisonment for a term of 30 days, and  
(iii) for each subsequent offence, imprisonment for a term of 120 days;  
(b) if the offence is prosecuted by indictment, to imprisonment for a term of not more than 14 years;  
and  
(c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than two years less a day.' <https://laws.justice.gc.ca/eng/acts/C-46/page-71.html#docCont> last visited: May 20, 2019.

<sup>20</sup> Canadian Criminal Code section 320.16 reads that: 'Everyone who commits an offence under subsection 320.13(3), 320.14(3), 320.15(3) or 320.16(3) is liable on conviction on indictment to imprisonment for life and to a minimum punishment of,

(a) for a first offence, a fine of \$1,000;  
(b) for a second offence, imprisonment for a term of 30 days; and  
(c) for each subsequent offence, imprisonment for a term of 120 days.'  
<https://laws.justice.gc.ca/eng/acts/C-46/page-71.html#docCont> last visited: May 20, 2019.

<sup>21</sup> 中華民國交通部公路總局，主要國家駕照互惠情形一覽表參照。

[https://www.thb.gov.tw/sites/ch/modules/download/download\\_list?node=831dcd37-7259-47c3-9211-ffb8dee35bc&c=89275811-dcff-4d14-877e-981db78a5b18](https://www.thb.gov.tw/sites/ch/modules/download/download_list?node=831dcd37-7259-47c3-9211-ffb8dee35bc&c=89275811-dcff-4d14-877e-981db78a5b18) 最後瀏覽日:108 年 3 月 24 日。