

CRIMES (SENTENCING PROCEDURE) AMENDMENT (CHILDREN IN VEHICLES) BILL 2011

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [4.36 p.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Crimes (Sentencing Procedure) Act 1999 to allow the introduction of an aggravating factor for certain serious traffic offences where a child under 16 years of age is a passenger in the offender's vehicle. The aggravating factor is to be applied to serious offences involving drink and drug driving, engaging in police pursuits and failing or refusing to undergo breath analysis or provide a sample for drug or alcohol testing. Committing a serious traffic offence with a child passenger presents a significant danger to the child. Road safety is a priority of the Government and it is necessary to ensure that children are protected from inherently dangerous driver behaviour.

There has been considerable community concern about people who commit serious traffic offences with a child in their vehicle. The Government shares the community's concern and is committed to protecting the welfare of our children. These changes will provide a strong deterrent to the small number of drivers who would risk a child in this manner. In 2011 there have been a number of significant cases of adults driving whilst intoxicated, with young children present in their vehicles. On 14 January 2011 a driver in Balmain returned a blood alcohol concentration reading of 0.144 from a roadside breath test. There were five children in her car at the time, aged from 18 months to 11 years. She pleaded guilty to driving with the mid-range prescribed concentration of alcohol. The court imposed a fine of \$1,000, ordered her to pay court costs and disqualified her from driving for six months.

On 17 March 2011 a driver in western Sydney returned a blood alcohol concentration reading of 0.192 while driving with two young children in her vehicle. She pleaded guilty to a high-range prescribed concentration of alcohol, failing to undergo a breath test, driving in a manner dangerous and resisting police. These cases, frankly, are unacceptable and the aim of this bill is to discourage such behaviour and protect our children. The amendment is not only based on these cases. The Roads and Traffic Authority's preliminary data for 2010 shows that two drivers were identified as being over the legal limit when involved in a crash that killed a child passenger under 16 years of age in their vehicle. Over the past five years there were 133 passengers under the age of 16 injured or killed in crashes where the driver had an illegal blood alcohol level. These are serious issues that lead to the death and injury of children on our roads.

In relation to drug driving, there is again no doubt that driving while affected by drugs also increases the risk of a crash. Similarly to testing for alcohol, there is no requirement to record the presence of a child when conducting roadside drug testing or when charging for a serious traffic offence. The aggravating factor will also apply to the offences of refusing or failing to undergo a test, or provide a sample for drug or alcohol testing. The law treats offences of failing or refusing to undergo a test or provide a sample for alcohol or drug testing very seriously, with penalty levels equivalent or similar to serious offences, such as high-range drink driving. These offences are covered by the new aggravating factor to ensure that there remains no incentive for a driver to refuse or fail to undergo a test or provide a sample.

Again, there is no doubt that engaging in police pursuits also dramatically increases the risk of injury to a driver and their passengers. Further proof of actual endangerment of children in vehicles of drivers committing such serious traffic offences will not be required for the aggravating factor to apply.

This bill does not create new offences. The amendment creates a new provision within the Crimes (Sentencing Procedure) Act 1999 to specify that having a passenger under 16 years of age in a vehicle is an aggravating factor for these serious traffic offences. The benefit of this amendment is that it will require courts to take this factor into account when sentencing for serious traffic offences, providing a deterrent to drivers who put child passengers at risk. Another benefit of the inclusion of this aggravating factor is that it will assist by ensuring that police officers will record the fact that a child passenger is present in a vehicle at the time of charging or issuing a penalty notice to a person for a serious traffic offence, and that this information is brought to the court's attention on sentence.

In New South Wales drink driving is a crime and offenders must be dealt with by the court. Penalties in New South Wales for drink driving are considerable and range from a fine for a first offence involving low-range prescribed concentration of alcohol up to two years imprisonment for a second offence of high-range prescribed concentration of alcohol. Mandatory minimum periods of disqualification apply. However, the severity of the penalty above the minimum is at the magistrate's discretion. There is a penalty range for other serious offences—drug driving, dangerous driving and engaging in police pursuits are classified as major offences and dealt with by the courts. These offences carry substantial maximum penalties and disqualification periods, including jail terms in almost all cases. The penalty ranges specified for traffic offences provide significant scope for sentencing discretion. This broad scope allows courts to properly reflect matters of aggravation on sentence.

Section 21A of the Crimes (Sentencing Procedures) Act 1999 states that, in determining the appropriate sentence for an offence, the court is to take into account any of the aggravating factors listed in subsection (2) that are relevant and known to the court. Inserting a specific circumstance of aggravation into this section with respect to certain traffic offences will ensure that this factor is considered and will focus the court's attention on it when determining the seriousness of the traffic offence and the sentence to be imposed. The new circumstance of aggravation is intended to reflect the gravity of committing a serious traffic offence with a child passenger in the vehicle, and it is appropriate that a specific circumstance of aggravation be introduced. In addition to focusing the attention of the courts on this issue, an aggravating factor in section 21A will ensure that police officers are aware of the need to record information about children in the vehicle when charging or issuing a penalty notice for serious traffic offences. Further, when preparing statements of facts and evidentiary statements for court, police will know that this information should be included. In addition, police prosecutors will be aware that when offenders appear on sentence for serious traffic matters they need to bring this factor to the attention of the court.

Before the election, the New South Wales Government committed to a review of sentencing. A reference in relation to sentencing was made to the Law Reform Commission in September 2011. The commission may consider how aggravating circumstances are dealt with in the sentencing process. As such, the proposed amendment may need to be reviewed in the process of responding to the report. However, this is no reason to delay the bill, which provides for the increased safety of children on our roads. The amendments I have outlined today send a clear message to the community that road safety is a high priority for the Government and are a clear deterrent to drivers who would risk children in this manner on our roads.

Consultation has been undertaken on the proposals in the bill. The Roads and Traffic Authority has worked closely with the Department of Attorney General and Justice, Ministry for Police and Emergency Services and the New South Wales Police Force in the preparation of these amendments. I would also like to commend 2UE presenter Paul Murray for being a tireless advocate on behalf of the community. Mr Murray and the community have been key drivers in calling for these changes. In conclusion, the introduction of the aggravating factor of having a child in the vehicle will help protect vulnerable children from reckless and irresponsible drivers. I trust honourable members will lend their support to the Government's proposed amendments. I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.