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Bill 62

An Act to amend the Highway Traffic Act in respect of harm to vulnerable road users

Ms. J. Bell

Private Member's Bill

1st Reading November 21, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Highway Traffic Act*. It is about the legal consequences of a collision that seriously injures or kills a pedestrian, a cyclist, a mobility device user, a roadway worker, an emergency responder outside their motor vehicle or another individual listed in the Bill.

Here are some highlights:

The driver who caused the injury or death is guilty of an offence if they caused it by breaking one of the rules of the road listed in the Bill. The listed rules include rules about unlicensed drivers, driving while intoxicated, driving while using a cell phone, speeding, careless driving, disobeying signs or lights at intersections or pedestrian crossovers, proper signalling, sharing the road, safety near emergency vehicles, safely opening car doors, and other rules.

A driver convicted of the offence is subject to the consequences for breaking the rule, and to a mandatory probation order. The order will require the driver to take a driving instruction course and perform community service. The community service must include activity related to improving driving safety and public education on driving safety. Their driver's licence will be suspended during the probation.

The driver must also attend the sentencing hearing. Victim impact statements may be presented during the sentencing hearing.

An Act to amend the Highway Traffic Act in respect of harm to vulnerable road users

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 (1) The *Highway Traffic Act* is amended by adding the following Part:

**PART X.0.1
HARM TO VULNERABLE ROAD USERS**

Offence

191.0.2 (1) Every driver of a motor vehicle, other than a motor assisted bicycle, who causes or contributes to causing death or serious bodily harm to an individual described in subsection (2) by contravening one or more listed provisions under subsection (3) is guilty of an offence.

Vulnerable road users

(2) The following are the individuals referred to in subsection (1):

1. A pedestrian.
2. An individual on a bicycle or on a motor assisted bicycle.
3. An individual in a wheelchair or other device driven by muscular or any other kind of power that is designed for and used by a person whose mobility is limited by one or more conditions or functional impairments.
4. An individual who is on the highway because the individual is engaged in construction, maintenance, repair or a similar function while on that part of the highway.
5. An individual who,
 - i. is,
 - A. a police officer, a special constable, a First Nations Constable, a municipal law enforcement officer or an auxiliary member of a police force, within the meaning of the *Police Services Act*,
 - B. a firefighter within the meaning of the *Fire Protection and Prevention Act, 1997*,
 - C. an individual who attends on a call for an ambulance, or
 - D. an emergency response worker, and
 - ii. is acting in the course of their duties, and
 - iii. is not in or on a motor vehicle, street car or other motor vehicle running only upon rails, motorized snow vehicle, traction engine, farm tractor, self-propelled instrument of husbandry or road-building machine.
6. An individual prescribed by the regulations.

Listed provisions

(3) The listed provisions referred to in subsection (1) are the following provisions:

1. Subsections 32 (1) and (3).
2. Subsection 41.2 (1).
3. Subsections 44.1 (1) and (2).
4. Subsections 53 (1) and (1.1).
5. Subsection 78 (1).
6. Subsections 78.1 (1) and (2).
7. Section 128.
8. Subsection 134 (1).

9. Subsections 135 (2) and (3).
10. Subsections 136 (1) and (2).
11. Subsection 138 (1).
12. Subsection 139 (1).
13. Subsections 140 (1) and (3).
14. Subsections 141 (2), (3), (5), (6) and (7).
15. Subsections 142 (1), (2) and (8).
16. Subsection 142.1 (1).
17. Section 143.
18. Subsections 144 (5), (6), (7), (8), (9), (10), (11), (14), (15), (16), (17), (18), (19) and (21).
19. Subsection 145 (1).
20. Subsections 146 (3), (4) and (5).
21. Subsections 146.1 (3) and (4).
22. Subsections 148 (1), (4), (6.1) and (8).
23. Subsection 149 (1).
24. Subsections 150 (1) and (2).
25. Subsection 151 (5).
26. Subsection 153 (1).
27. Subsection 154 (1).
28. Subsection 156 (1).
29. Subsection 157 (1).
30. Subsections 158 (1) and (2).
31. Subsections 159 (1), (2), (3) and (4).
32. Section 160.
33. Section 161.
34. Section 162.
35. Subsections 163 (1) and (2).
36. Section 164.
37. Subsection 165 (1).
38. Subsections 166 (1) and (2).
39. Section 167.
40. Section 168.
41. Subsection 170 (1).
42. Subsection 172 (1).
43. Subsection 176 (3).
44. Subsection 182 (2).

Relation to absolute liability offence

(4) An offence under subsection (1) is not an absolute liability offence, even if an offence of contravening a listed provision is an absolute liability offence.

Sentence

191.0.3 (1) On conviction of an offence under subsection 191.0.2 (1),

- (a) the defendant is liable to the penalty to which the defendant would be liable if they were convicted of contravening the listed provision or provisions;
- (b) any other consequence that must be imposed for contravening the listed provision or provisions shall be imposed on the defendant; and
- (c) any other consequence that may be imposed for contravening the listed provision or provisions may be imposed on the defendant.

Mandatory probation order

(2) In addition to the penalty and consequences imposed under subsection (1), on conviction of the offence, the court shall direct that the defendant comply with the conditions prescribed in a probation order.

Probation order conditions

(3) The probation order must remain in force for no more than one year from the date when the order takes effect and must contain the following conditions, despite clauses 72 (3) (b) and (c) of the *Provincial Offences Act*:

1. That the defendant successfully complete a driving instruction course that satisfies the requirements, if any, provided for by the regulations.
2. That the defendant perform a community service as set out in the order.

Community service

- (4) The probation order must, in respect of the community service condition ordered under paragraph 2 of subsection (3),
- (a) set the number of hours of community service required at no less than 50 hours and no more than 200 hours; and
 - (b) require the community service to include activity related to public education on driving safety or otherwise improving driving safety.

Licence suspended

(5) The driver's licence of a person who is convicted of the offence is suspended for the duration of the probation order.

Charging procedure

191.0.4 (1) A proceeding in respect of an offence under subsection 191.0.2 (1), or in respect of an offence of contravening any listed provision the contravention of which is alleged in respect of the offence under subsection 191.0.2 (1), shall be commenced by laying an information under Part III of the *Provincial Offences Act*, not by filing a certificate of offence, despite subsection 3 (1) of the *Provincial Offences Act*.

Nullity

(2) A proceeding referred to in subsection (1) is a nullity if it purports to be commenced by filing a certificate of offence.

Attendance at sentencing

191.0.5 (1) The defendant in a proceeding in respect of an offence under subsection 191.0.2 (1) shall personally attend every sentencing hearing in respect of the offence, even if the defendant acts by representative in the proceeding.

Defendant fails to attend

(2) If the defendant is not in personal attendance at a sentencing hearing in respect of the offence, the court shall not hold the hearing until the defendant is in personal attendance, despite clause 54 (1) (a) of the *Provincial Offences Act*, except under subsection 52 (1) of that Act.

Compel attendance

(3) For greater certainty, the court may exercise its powers under clause 54 (1) (b) of the *Provincial Offences Act* if the defendant fails to personally attend sentencing proceedings.

Victim impact statement

191.0.6 (1) In determining the penalty and other consequences to be imposed for an offence under subsection 191.0.2 (1), the court shall consider any statement of a person who has suffered or claims to have suffered physical or emotional harm, property damage or economic loss as the result of the commission of the offence, including a person who has suffered or claims to have suffered physical or emotional harm, property damage or economic loss as the result of the commission of the offence against another person, describing,

- (a) the physical or emotional harm, property damage or economic loss they have suffered as the result of the commission of the offence; and
- (b) the impact of the offence on them.

Presentation of statement

(2) A person may present the statement to the court in any manner that the court considers appropriate.

Consideration of statement

(3) In considering the statement, the court shall take into account the portions of the statement that it considers relevant to determining the penalty and other consequences and disregard any other portion.

Breach of probation order

191.0.7 A defendant who is convicted of an offence under section 75 of the *Provincial Offences Act* in respect of a probation order imposed under subsection 191.0.3 (2) of this Act is liable to a fine of not more than \$50,000 and, in addition, their licence or permit may be suspended for a period of not more than two years. Clause 75 (d) of the *Provincial Offences Act* does not apply.

Continuation of probation order

191.0.8 (1) The court may continue a probation order imposed under subsection 191.0.3 (2) with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable, if the defendant,

- (a) fails to comply with the conditions of the probation order set out in paragraphs 1 and 2 of subsection 191.0.3 (3); and
- (b) shows good cause for failing to comply.

Exception

(2) Subsection (1) does not apply if the defendant is convicted of an offence under section 75 of the *Provincial Offences Act* in respect of the probation order.

Regulations

191.0.9 The Lieutenant Governor in Council may make regulations,

- (a) prescribing individuals for the purpose of paragraph 6 of subsection 191.0.2 (2);
- (b) respecting requirements of driving instruction courses for the purpose of paragraph 1 of subsection 191.0.3 (3).

(2) Sub-paragraph 5 i A of subsection 191.0.2 (2), as enacted by subsection (1), is struck out and the following substituted:

A. a police officer, a special constable, a First Nation Officer, a municipal law enforcement officer or an auxiliary member of a police service, within the meaning of the *Police Services Act, 2018*,

(3) Subsection 191.0.2 (3), as enacted by subsection (1), is amended by adding the following paragraph:

3.1 Subsections 44.2 (4) and (6).

(4) Subsection 191.0.2 (3) , as enacted by subsection (1), is amended by adding the following paragraph:

7.1 Subsections 130 (1) and (3).

(5) Subsection 191.0.2 (3) , as enacted by subsection (1), is amended by adding the following paragraph:

42.1 Subsections 175 (11), (11.1), (12), (12.1) and (12.2).

2 Paragraph 3 of subsection 207 (2) of the Act is amended by striking out “section 176, 182 or 199” at the end and substituting “section 176 or 182, subsection 191.0.2 (1) or section 199”.

Commencement

3 (1) Subject to subsection (2), this Act comes into force six months after the day it receives Royal Assent.

(2) Subsections 1 (2), (3), (4) and (5) come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4 The short title of this Act is the *Protecting Vulnerable Road Users Act, 2018*.