



ACTIVE TRANSPORT AND ROAD SAFETY FOR CHILDREN

Final Report

Created by WRI Brasil.

December 2016

EXECUTIVE SUMMARY

WRI Brasil Cidades Sustentáveis has developed a legislative study on active transport and its relationship with road safety for children. This report documents the main findings of this study. Federal and municipal laws of cities with a population of more than 250,000 were considered. In addition, the process also included an analysis of the Senate and House bills, as well as the second instance decisions on the subject by the state courts of Rio Grande do Sul and Rio de Janeiro.

This study aimed to identify good legislative practices and possible gaps concerning road safety for children. The conclusion is that the Brazilian legislation, in spite of providing for a comprehensive system for child protection, does not include road safety as a children's and youth right.

Both federal and municipal laws are outdated in terms of meeting the goals for reduction of road crashes involving children. The main gaps include absence of differentiated speed limits for spaces where there is a high pedestrian flow of children and no safety, surveillance and preventive monitoring mechanisms. The road traffic legislation as well as the legislation on public safety and children's rights should be updated to include the places with higher flow of children as preferred areas for supervision and protection.

It was also observed that road crashes, especially those involving children being run over, are treated from a perspective of individual accountability, disregarding the participation, albeit indirect, of the government and other actors: community, police, road traffic agents and automakers.

CONSIDERATIONS

1. The Brazilian legislation provides for rules to protect children in transport, but fails to include road safety as a fundamental right of children.
2. Municipalities should review their legislation to be in line with the National Urban Mobility Policy and to prioritize active transport over private motorized transport.
3. The current reactive approach to road crashes, which places the responsibility on the victim and the driver, should be reviewed to include other social actors, especially public authorities and automakers, as co-responsible for road crashes prevention.
4. The judiciary and prosecutors should be qualified to properly interpret traffic crashes involving children.

INTRODUCTION

Children's independent mobility in public space is mainly by active transport, i.e., walking, cycling, skateboarding or rollerblading. This condition places children, together with the elderly and people with disabilities, in a position of vulnerability in the urban environment. Children are developing people who have not reached maturity to sufficiently understand the extent of road traffic risks. The notions of distance and speed are not fully developed and, especially in the early years of life, adult supervision is imperative.

The situation is even more unfavorable for children from low-income households, as they often lack qualified infrastructure, which increases the risk of crashes. In addition, these children live on a daily basis amid the growing motorization of the urban environment, do not have enough means to pay for private transportation and often do not have anyone to accompany them to school (HOLANDA, 2006; CACCIA, 2015).

Public and road insecurity, generated by the increased number of motorized vehicles on the streets and rising crime rates, has led to a reduction in children's independent mobility over recent decades. If we consider that a significant factor for urban violence is associated with social conditions and gender, mobility of poor girls and children with disabilities is even more affected. This aspect, combined with parental overprotection (PEREIRA, et al., 2013), has important implications on health, sociability, increased anxiety levels and cognitive development of children (SaBBAG, et al., 2015), contributing to further institutionalization of children at home, at school or in enclosed recreational spaces.

While the home is generally viewed as a safe place, the public thoroughfare is interpreted as a dangerous place. Road crashes are the leading cause of accidental death of children from one (1) to fourteen (14) years of age. On average, the global number of child fatalities due to road crashes is over 186,000 per year (SAÚDE, 2015). 30% to 40% of road deaths occur with children in low- and middle-income countries (PEDEN et al., 2004).

These figures reveal the urgent need for public policies aimed at reducing fatalities and serious injuries of children caused by road crashes, especially by prioritizing road safety for those who use active transport. Aware of the seriousness of the problem, the United Nations General Assembly, assembled in September 2015, ratifying the commitments made by the Decade of Action for Traffic Safety, set the new goal of reducing by half the number of traffic-related deaths and injuries by 2020 (World Health Organization, 2015). Some countries have developed public policies focused specifically on road safety. England, for example, has been promoting consistent education campaigns for children, parents and teachers on how to prevent crashes¹.

¹ Available at: <<https://www.gov.uk/government/publications/2010-to-2015-government-policy-road-safety/2010-to-2015-government-policy-road-safety>>. Accessed on 02/10/2016

In addition, there is a growing awareness that as crashes involving children decrease, parents' sense of safety increases, making them more at ease in allowing their kids to have more autonomy to get around, on foot or by bicycle. In the long term, this encourages the creation of a more active society, which sees non-motorized modes as a real transport choice in cities.

This report presents the results of a study carried out with the federal and municipal legislative bodies (of cities with more than 250,000 inhabitants) and the jurisprudence of the state courts of Rio Grande do Sul and Rio de Janeiro, with the objective of identifying the extent to which Brazilian legislation is adequate to protect active transport users, especially children. At the same time, a literature review was also carried out to provide a qualitative basis for the analysis, which considered the main practices and recommendations of international references and regulations, as well as scientific research concerning road safety and active transport for children.

LEGISLATION

NATIONAL LAW

Federal Constitution

The Federal Constitution of 1988 enshrined the principle of the integral protection of the child, article 227, whereby it is the duty of the family, society and State to ensure to the child, adolescent and young person, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community coexistence, and to safeguard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.

Two aspects of this device deserve attention. The first of these is the fact that, in spite of guaranteeing the right to life, the text does not expressly include the right to security, reflected in infraconstitutional legislation, which rarely mentions the child as the holder of the right to safe transportation. The second aspect is that responsibility for the protection of the child and therefore for its safety is not the exclusive task of the family, but also of society and especially of the State. The duty of protection and, consequently, liability for any accidents involving children has fallen on parents. One possible result of this is that many parents tend to take a stance of overprotection, avoiding the exposure of their children to the risks of traffic.

One of the constitutional principles of education is that access to school must take place under conditions of equality, article 206, item I. However, reality shows that the way to school is less safe for children from low-income families, who often make this journey on foot and in regions with less qualified road infrastructure.

Only recently, in 2014, the Constitution has won an amendment to include road safety as a component of public safety. Article 144, § 10, establishes that road safety is exercised for the preservation of public order and the safety of people and their assets on public roads. It includes education, engineering and traffic supervision, as well as other activities provided for by law that ensure citizens the right to efficient urban mobility.

Child and Adolescent Statute

The protection of children and adolescents is expressly provided in the Child and Adolescent Statute (ECA, from Portuguese). The ECA emerged at a crucial time of affirmation of fundamental children rights. The federal constitution had been enacted less than two years earlier, and the UN Convention on the Rights of the Child was ratified by Brazil in the same year that the ECA was adopted. In the following years, several human rights treaties were also ratified in the country.

Article 3 of ECA reaffirms the doctrine of integral protection established in the Constitution by stipulating that the child enjoys all the fundamental rights inherent to the human person,

without prejudice to the integral protection, assuring him or her of all the opportunities and facilities, in order to provide the physical, mental, moral, spiritual and social development, in conditions of freedom and dignity. Along the same lines, Article 4 enshrines the absolute priority of the child's interest. This priority includes, among other prerogatives, the primacy of receiving protection and relief under any circumstances and the preference for care in public services or of public relevance.

ECA also recognizes the child as a developing person by requiring that the law be interpreted considering this condition. Consequently, caution should be exercised by both the public authority and motor vehicle drivers so that the child is not required to be as mature as an adult on public roads. More than that, the expectation that the child make more mistakes than an adult should be incorporated into road design.

To a certain extent, and together with the Constitution, ECA is equivalent to a first generation of affirmation of children's rights at the national level, since for the first time the child is positioned as a subject of rights and a system of integral protection is established. The rights to life, health, freedom, respect, dignity, family coexistence, education, sport, leisure, professionalism and protection of work were prioritized.

The concern of the social movement that instituted ECA was the protection of children within the family and access to public social policies: health, education, institutions of shelter and custody. Rights such as accessibility and public and road safety have not been explicitly included in legislative texts, although they are implicitly included in full protection and in the criteria of absolute priority and the best interests of the child.

After 26 years since the statute came into force, it appears necessary to update it, incorporating in its text the right to public and road safety, as well as accessibility rights and the assumption of reduced mobility. The right to full protection should contemplate the reduction of traffic accidents involving children.

Brazilian Traffic Code

The Brazilian Traffic Code (CTB, in Portuguese), Law 9,503 / 1997, does not contain specific provisions on universal accessibility, reduced mobility, traffic moderation, road safety or a set of standards aimed at protecting children in urban environments. In this sense, a CTB revision would be appropriate to update it in relation to the recent developments on road safety and urban mobility. Still, some devices deserve attention. Article 29, § 2, establishes that all vehicles, motorized and non-motorized, are responsible for the safety of pedestrians.

Article 244 of the infractions is more specific and expressly prohibits the transport of children under seven years old on motorcycles, motor scooters or mopeds. These vehicles can transport children over the age of seven provided they are able to take care of their own safety. This article introduces an open and indeterminate concept: "conditions to take care of one's own security", because it does not refer to any other rule that objectively delimits under what conditions a child can or cannot take care of his own safety. That is, the interpretation of what will become "conditions to take care of one's own safety" will depend on judicial valuation in case of accident involving child transports by motor vehicle of two wheels.

Article 311 imposes the requirement to travel at a speed compatible with the necessary safety near schools. The difficulty with this device is that, unless there is on-the-spot signaling on the

speed limit, in the case of a case there is room for discretion, or even discretion, of the driver and the judge over what is to traffic with incompatible speed.

CTB devotes an entire chapter to traffic education, articles 74 to 79. From the reading of these devices, especially from article 76, it is inferred that the traffic education prescribed by CTB is somewhat vague and states only that it must exist without guidance on the content. Added to this is the fact that the Brazilian Traffic Council (CONTRAN) has paid little attention to traffic education, whar guides to conclude that education for traffic in Brazil is practically nonexistent.

In addition, CTB provisions indicate that the main recipients of traffic education are children at school, disregarding that other actors - drivers, parents, teachers, school principals – should have information on how to avoid road crashes involving children. In addition to educating children about how to become good drivers, education practices should also encourage them to go on foot or by bike to school.

CTB is laconic regarding speed limits, since it only recommends limits to the circulation in the roads. In this way, the Code assumes a subsidiary position with respect to local governments, which will define the road hierarchy and signal the speeds allowed in each area of the city. From the reading of the jurisprudence, it was verified the absence of clear limits, which transfers to the Judiciary the decision on what is high speed. Insofar as it does not define what is high or low speed (which varies according to the type of road) and refers only to "compatible speed", CTB leaves room for the Judiciary to decide, on a case-by-case basis, if the driver is guilty or not.

Finally, it should be noted that CTB devotes few devices to transport by bicycle. What exists is the determination that public authorities should plan, design, regulate and operate vehicle, pedestrian and animal traffic, and promote the development of cycling traffic and safety. There is no article on the use of bicycles by children on the roads. Only Article 58 states that cyclists must circulate at the edges of the running track in roads with no structure dedicated to bicycles, regardless of the age of user or speed and safety conditions of the road.

In addition, there are no age restrictions for the transport of children on bicycles unlike the case of motorcycles, and no regulations on restraint systems, as opposed to cars. CTB also does not regulate which safety equipment should be required for children's transport in bicycle, such as the use of specific helmets, lights or the correct chair type/size according to age, height or weight.

Accessibility law for disabled persons or persons with reduced mobility

Law 10.098/2000 establishes general standards and basic criteria for the promotion of the accessibility of persons with disabilities or reduced mobility, by removing barriers and obstacles in roads and public spaces, in street furniture, in the construction and renovation of buildings and in modes of transport and communication. The use of "or" disjunctive indicates that accessibility is inclusive: it covers all persons who, temporarily or not, have reduced mobility, including children.

An important aspect of the law lies in the definition of some key concepts of mobility, such as accessibility, universal design, urban furniture and people with reduced mobility. However, this law clearly aims facilitating the access of persons with disabilities to people and goods in

urban areas, mentioning the word "child" only once and just to cite an example of a person with reduced mobility.

Multiyear Plan

Although unknown to the general public, the Pluriannual Plan (PPA, in Portuguese) sets guidelines, objectives and goals of the Public Administration for a period of four years. The current PPA was approved in 2016 by Law 13249 and will be in force until 2019. It determines a series of tasks to the Ministry of Cities, among them the implementation of measures of road safety and traffic moderation. In addition, the Ministry of Cities should support the deployment of 8,000 kilometers of tracks for non-motorized transport systems. It is recommended to monitor compliance with these targets, which may be an opportunity to influence that these measures be implemented in areas that register intense traffic of children and high rates of road crashes.

MUNICIPAL LEGISLATION

In relation to the municipal legislation, the research established a cut of municipalities with more than 250 thousand inhabitants. The analysis showed that, in most cases, there is no legislative elaboration on urban mobility. In those cities with some legislation, there are few laws that prioritize active transportation.

The requirement to implement municipal urban mobility plans could remedy this gap, but federal law does not require municipalities to institute the plan by law. Laws have the advantages of being generic, better elaborated and discussed, and presenting more precise provisions than non-instituted plans, in addition to being binding - that is, failure to comply with one of its provisions may result in sanctions against the public authority responsible for application. Because of the obligatoriness, smaller municipalities with little capacity of planning often end up practicing a mimetic isomorphism, that is: they copy without contextualization the plans of larger municipalities only to fulfill the legal requirement, not acting adequately in their own problems.

Despite the lack of consistent legislation on the subject, some municipal initiatives deserve mention. In São Paulo, Law 14.492 / 2007 created, the area of school safety as a priority area

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_16295

