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## Better to Bend Than to Break? New Jersey Compromises Citizen Safety for TNC Business

Veronica Kampfe\*

### I. Introduction

#### A. Opening

In 2016, an Uber driver shot and killed six people at random over the course of five hours while he was also picking up and dropping off passengers.<sup>1</sup> In 2018, a man posed as an Uber driver to abduct and sexually assault eight different women.<sup>2</sup> This is in addition to the 5,981 reported sexual assaults by Uber drivers in the United States in 2017 and 2018 alone.<sup>3</sup> In March 2019, New Jersey resident Samantha “Sami” Josephson was stabbed to death after she mistakenly entered the car of a fake Uber driver.<sup>4</sup> These are only a handful of the many persistent incidents involving rideshare drivers that have occurred throughout the nation despite legislation aimed at preventing them.

#### B. General Introduction of Transportation Network Companies (TNCs)

On a cold night in December 2008, the concept of Transportation Network Companies (TNCs) was created. Travis Kalanick and Garrett Camp had trouble hailing a cab in Paris; that night inspired them to launch Uber, a smartphone application where people could “tap a button

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<sup>1</sup> Eric Levenson, *Uber Driver Who Killed 6 in Kalamazoo, Michigan, Shooting Rampage Sentenced to Life in Prison*, CNN (Feb. 5, 2019), <https://www.cnn.com/2019/02/05/us/uber-driver-killer-kalamazoo/index.html>.

<sup>2</sup> Kayla Epstein, *These Women Say They Were Raped by Fake Uber Drivers. Now They’re Suing the Company*, WASH. POST (Apr. 10, 2019), <https://washingtonpost.com/business/2019/04/10/these-women-say-they-were-raped-by-fake-uber-drivers-now-theyre-suing-company/>.

<sup>3</sup> Ahiza Garcia & Sara O’Brien, *Uber Releases Safety Report Revealing 5,981 Incidents of Sexual Assault*, CNN (Dec. 6, 2019), <https://www.cnn.com/2019/12/05/tech/uber-safety-report/index.html>.

<sup>4</sup> Katie Mettler & Kayla Epstein, *A Student Thought She Had Gotten Into Her Uber, Police Say. Hours Later, Hunters Found Her Body*, WASH. POST (Mar. 31, 2019), <https://washingtonpost.com/crime-law/2019/03/31/she-thought-she-had-gotten-into-her-uber-police-say-hours-later-hunters-found-her-body/>.

and get a ride.”<sup>5</sup> The California Public Utilities Committee deemed Uber and similar companies “Transportation Network Companies.”<sup>6</sup> TNCs are organizations that use a digital platform to connect riders with potential drivers.<sup>7</sup> TNCs provide a smartphone application, or “app,” that allows drivers to make themselves available to users searching for a ride on the same app.<sup>8</sup> Riders use the app to request a ride, and when a “driver-partner” accepts the ride request, riders receive an estimated time of arrival, and they are picked up by the driver-partner in his or her own personal vehicle.<sup>9</sup> The app provides riders with information about the driver, including the driver’s first name, vehicle details, license plate number,<sup>10</sup> and sometimes even a driver rating, driver photo, and an image of the car.<sup>11</sup> The most popular and widely used TNCs are Uber and Lyft.<sup>12</sup>

### C. The Inability of Injured Parties to Hold TNCs Accountable for Acts of Drivers

Uber does not describe itself as a driving service; instead it is a “technology platform.”<sup>13</sup> Similarly, Lyft describes itself as a “technology company.”<sup>14</sup> The decision of TNCs to describe themselves as “technology platforms” is a strategic one; it allows TNCs to classify their drivers as

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<sup>5</sup> *The history of Uber*, UBER, <https://www.uber.com/newsroom/history/>.

<sup>6</sup> Public Utilities Commission of the State of California, Proposed Decision, Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry 2 (Sept. 19, 2013), <http://www.octap.net/169457749-CPUC-Ridesharing.pdf>.

<sup>7</sup> Caleb Holloway, *Uber Unsettled: How Existing Taxicab Regulations Fail to Address Transportation Network Companies and Why Local Regulators Should Embrace Uber, Lyft, and Comparable Innovators*, 16 WAKE FOREST J. BUS. & INTELL. PROP. L. 20, 24 (2015).

<sup>8</sup> *Id.*

<sup>9</sup> *How Does Uber Work?*, UBER, <https://help.uber.com/riders/article/how-does-uber-work?nodeId=738d1ff7-5fe0-4383-b34c-4a2480efd71e>.

<sup>10</sup> *Id.*

<sup>11</sup> *Help Center*, LYFT, <https://help.lyft.com/hc/en-us/articles/115013080908-How-to-get-picked-up-as-a-passenger>.

<sup>12</sup> *Top 6 Rideshare Services that Drivers are Using (And Why)*, GRIDWISE (May 21, 2017), <https://gridwise.io/top-6-rideshare-services>.

<sup>13</sup> *How Does Uber Work?*, *supra* note 9.

<sup>14</sup> Robert W. Wood, *Big Liabilities for Uber, Sidecar and Lyft?*, FORBES (Jan. 8, 2014), <https://www.forbes.com/sites/robertwood/2014/01/08/big-liabilities-for-uber-sidecar-and-lyft/#13ca59b5ccc0> (“Are you sick of waiting for a taxi or limo? If you have a smartphone, you may be able to summon a car in minutes via Uber, Sidecar or Lyft . . . They are tech companies, they claim, and just take a fee for putting passengers and drivers together.”).

independent contractors and limit their liability for acts of drivers.<sup>15</sup> In fact, the National Labor Relations Board (NLRB) released a memo in which the Board’s general counsel characterized TNC drivers as independent contractors, not employees.<sup>16</sup> Although this memo does not hold precedential value and can be reversed by a future NLRB general counsel, the decision is indicative of the current status of TNC drivers as independent contractors.<sup>17</sup> While the TNC drivers’ status as independent contractors has implications for their ability to unionize and hold TNCs accountable for employment and pay issues, their status as independent contractors also has implications for passengers who seek to sue TNCs for acts of their drivers. Their status as independent contractors poses a barrier to riders who seek to hold TNCs accountable through various tort principles.

Vicarious liability is a tort principle that requires an employer to “stand in the shoes” of a wrongdoer, so that a plaintiff may sue the company for acts of a third party.<sup>18</sup> *Respondeat superior* is a doctrine of vicarious liability that allows a plaintiff to hold an employer liable for acts of its employee.<sup>19</sup> For a plaintiff to utilize the doctrine of *respondeat superior*, it must show that an employment relationship existed between the company and the third party, and it must show that the employee was acting within the scope of employment.<sup>20</sup> This depends on a showing of some level of control by the business over the individual<sup>21</sup> and less flexibility of the individual in various

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<sup>15</sup> Martha Alejandra Salas, *Holding Ridesharing Companies Accountable in Texas*, 49 ST. MARY’S L. J. 879, 882 (2018) (“TNCs, however, have been proactive in denying liability for their drivers’ actions, alleging drivers are independent contractors, not employees.”).

<sup>16</sup> Noam Scheiber, *Uber Drivers are Contractors, Not Employees, Labor Board Says*, N.Y. TIMES (May 14, 2019), <https://www.nytimes.com/2019/05/14/business/economy/nlrb-uber-drivers-contractors.html>.

<sup>17</sup> *Id.*

<sup>18</sup> Agnieszka A. McPeak, *Sharing Tort Liability in the New Sharing Economy*, 49 CONN. L. REV. 171, 191 (2016).

<sup>19</sup> *Id.* at 192.

<sup>20</sup> See RESTATEMENT (THIRD) OF AGENCY § 2.04 (2006) (“An employer is subject to liability for torts committed by employees while acting within the scope of their employment.”).

<sup>21</sup> See *id.* §2.07.

aspects of their work, which is difficult to show in the ride-sharing economy model.<sup>22</sup> The status of TNC drivers as independent contractors poses a direct impediment to the ability of injured passengers to hold TNCs accountable for acts of their drivers. In general, the doctrine of *respondeat superior* cannot be used to hold employers accountable for the negligence of independent contractors.<sup>23</sup> There are some instances where companies *can* be held liable for acts of their independent contractors, but those involve situations where independent contractors have “apparent authority, are borrowed servants, or perform non-delegable duties or inherently dangerous or illegal activities.”<sup>24</sup>

On New Year’s Eve in 2013, Uber driver Syed Muzaffar struck and killed six-year-old Sophia Liu as she stood in a San Francisco crosswalk.<sup>25</sup> Muzaffar was not actually transporting passengers at the time of the accident, but he was engaged with the Uber app when the accident occurred.<sup>26</sup> Muzaffar was found guilty of manslaughter, and Liu’s family sued both the driver and Uber for wrongful death.<sup>27</sup> In its Answer to the Complaint filed by the Liu family, Uber emphasized that Muzaffar was not actually transporting passengers at the time of the accident.<sup>28</sup> Uber also stressed that it is not an employer of drivers, but merely acts as a technology platform

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<sup>22</sup> Benjamin Means & Joseph Seiner, *Navigating the Uber Economy*, 49 U.C. DAVIS L. REV. 1511, 1515 (2016) (“[T]he classification of workers as independent contractors or employees should be shaped by an overarching inquiry: How much flexibility do individuals have in determining the time, place, price, manner, and frequency of the work they perform? Those who select these variables are more independent than those who must accommodate themselves to a business owner’s schedule.”).

<sup>23</sup> McPeak, *supra* note 18, at 193.

<sup>24</sup> McPeak, *supra* note 18 at 193–94.

<sup>25</sup> Evan Sernoffsky, *Ex-Uber Driver Guilty of Manslaughter for Killing Girl in SF Crosswalk*, SAN FRANCISCO CHRONICLE (Aug. 2, 2018), <https://www.sfchronicle.com/bayarea/article/Uber-driver-guilty-of-manslaughter-for-killing-13127623.php>.

<sup>26</sup> *Id.* (“No passengers were in Muzaffar’s Honda sport utility vehicle, but he was on the Uber platform when he turned onto Polk through a green light and struck the [girl]”).

<sup>27</sup> *Id.*

<sup>28</sup> Uber Ans. at 2-3, *Liu v. Uber Tech., Inc.*, No. CGC-14-536979 (Cal. Super. Ct. Jan. 27, 2014) (“At the time of the accident, Mr. Muzaffar was operating his own vehicle and was not transporting a rider who requested transportation services through the Uber App, en route to pick up a passenger who requested transportation services using the Uber App, or receiving a request for transportation services through the Uber App. At the time of the accident, there was no reason for Mr. Muzaffar to interact with the Uber App.”).

to connect drivers with passengers.<sup>29</sup> Ultimately, Uber settled the lawsuit with the Liu family for an “undisclosed amount of money.”<sup>30</sup> The settlement allowed Uber to avoid a trial that would have determined its responsibility towards passengers for the acts of its drivers.<sup>31</sup>

Few plaintiffs have successfully proven that there is an employment relationship between TNCs and their drivers, and those that have been successful have argued for such a relationship in the area of employment benefits, rather than tort liability.<sup>32</sup> Other methods for holding TNCs accountable have been argued, such as the use of the non-delegable duty doctrine because TNCs have “a non-delegable duty to operate safely.”<sup>33</sup> TNCs have had much success in deflecting blame for the acts of their drivers; so much so that plaintiffs are required to get creative and push the limits of existing tort doctrines for the slim chance of holding TNCs accountable. In light of the current inability of passengers to hold TNCs accountable for the actions of their drivers through state tort law, this Comment does not suggest methods to recover for the acts committed against TNC passengers. Instead, it suggests ways to prevent such incidents at the outset, specifically those that occur in New Jersey, where some precautionary action has occurred, but not nearly enough.

#### D. The Transportation Network Company Safety and Regulatory Act

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<sup>29</sup> *Id.* at 4 (“Uber itself does not provide transportation services and is not a transportation carrier. It does not own vehicles or employ drivers.”).

<sup>30</sup> Bob Egelko, *Uber Settles Lawsuit with Family Over Girl’s New Year’s Eve Death*, SAN FRANCISCO CHRONICLE (July 15, 2015), <https://www.sfchronicle.com/bayarea/article/Uber-settles-suit-with-family-over-girl-s-New-6385063.php>.

<sup>31</sup> *Id.*

<sup>32</sup> Alexi Pfeffer-Gillett, *When “Disruption” Collides with Accountability: Holding Ridesharing Companies Liable for Acts of Their Drivers*, 104 CALIF. L. REV. 233, 250 (2016) (“Rather than relying exclusively on respondeat superior, plaintiffs may be better served by arguing an alternative route to liability--that in the absence of an employee-employer relationship, TNCs are liable for their drivers because they have a nondelegable duty to operate safely.”).

<sup>33</sup> *Id.* at 250.

In February 2017, former New Jersey governor Chris Christie signed The Transportation Network Company Safety and Regulatory Act into law.<sup>34</sup> The Act was introduced to create statewide standards for insurance coverage, jurisdiction over TNC operations, and guidelines to approach disputes between TNC passengers and drivers.<sup>35</sup> A main goal of the Act was to “[keep] all participants in the market safe.”<sup>36</sup> The legislation imposed statewide standards for background checks of drivers, tracking of drivers, and mandatory insurance liability coverage.<sup>37</sup> It also authorized the New Jersey Motor Vehicle Commission (MVC) to ensure compliance.<sup>38</sup> The law has been described by some as “compromising” lawmaking where New Jersey made concessions to prevent Uber and Lyft from leaving the state.<sup>39</sup>

#### E. Sami’s Law

In April 2019, a 21-year-old resident of New Jersey was abducted and murdered by a fake Uber driver in her college state of South Carolina.<sup>40</sup> In response to her tragic death, New Jersey signed “Sami’s Law” into legislation, which imposes safety regulations on TNCs.<sup>41</sup> The provisions require TNC drivers to display certain identifying markers and also give the New Jersey MVC the responsibility to issue certain driver identifications.<sup>42</sup> The main difference between the

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<sup>34</sup> Thomas Ahearn, *Transportation Network Companies Such as Uber and Lyft Will Face More Scrutiny Over Background Checks in 2018*, EMP’T SCREENING RES. (Dec. 14, 2017), <https://www.esrcheck.com/wordpress/2017/12/14/transportation-network-companies-such-as-uber-and-lyft-will-face-more-scrutiny-over-background-checks-in-2018/>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Alex Wolf, *Uber Will Give Thumbs Up If NJ Doesn’t Take Fingerprints*, LAW 360 (June 21, 2016), <https://advance.lexis.com/api/permalink/a496ec05-9e8e-49a0-9985-e08a8b0a775f/?context=1000516>.

<sup>38</sup> *Id.*

<sup>39</sup> Claude Brodesser-Akner, *5 Big Things You Need to Know About N.J.’s New Uber and Lyft Law*, NJ.COM, [https://www.nj.com/politics/2017/02/5\\_things\\_you\\_should\\_know\\_about\\_njs\\_new\\_uber\\_and\\_ly.html](https://www.nj.com/politics/2017/02/5_things_you_should_know_about_njs_new_uber_and_ly.html) (last visited Jan. 6, 2020).

<sup>40</sup> Jesse Rifkin, *After a Brutal South Carolina Murder by an Uber Driver Imposter, Sami’s Law Would Require More Identification of Rideshare Vehicles*, GOV. TRACK INSIDER (July 30, 2019), <https://govtrackinsider.com/after-a-brutal-south-carolina-murder-by-an-uber-driver-imposter-samis-law-would-require-more-de9cfcc6598c>.

<sup>41</sup> *Id.*

<sup>42</sup> N.J. Stat. § 39:5H-23 (2019).

2017 legislation signed by Governor Chris Christie and the 2019 legislation signed by Governor Phil Murphy is that the latter aims to protect TNC passengers from incidents involving fake drivers, rather than actual drivers employed by TNCs.

#### F. The Approach

New Jersey has taken steps to protect its citizens from the dangers associated with TNCs. Yet, the legislation imposed by New Jersey is compromised by the fact that it appeases companies like Uber and Lyft so they do not leave the state and take their valuable business with them. This Comment will examine the successes and shortcomings of the New Jersey legislation as it exists now. This Comment suggests that in light of the fact that it is difficult for victims to hold TNCs accountable for the actions of their drivers, New Jersey needs to impose more regulations on TNCs themselves. This Comment will also suggest that New Jersey adopt more aggressive regulations to protect riders from predators that pose as drivers in light of recent incidents. Part II of this Comment will examine the Transportation Network Company Safety and Regulatory Act and its provisions in more detail. It will also explore the ways in which the legislation favors TNCs over rider safety. Part III of this Comment will examine Sami's Law, including why it was passed in New Jersey and the future impact it will have on TNCs in the state. Part IV of this Comment will address the need for regulation in New Jersey to enhance rider safety against violent acts of TNC drivers. Part V of this Comment will address the need for regulation in New Jersey that will further protect riders from driver impersonators in ways that Sami's Law fails to.

#### II. Successes and Shortcomings of the Transportation Network Company Safety and Regulatory Act

There is no denying that the Transportation Network Company Safety and Regulatory Act has significant safety provisions with the potential to make TNC operations in New Jersey safer.

It is important to note, however, the many ways in which the Act falls short. This legislation was not free of controversy or politics, and both have impacted the final legislation in a multitude of ways.

A. Breakdown of the Safety Provisions of the Act

The Transportation Network Company Safety and Regulatory Act has many provisions, and those that address safety will be discussed in detail. First, the Act mandates that certain information be provided to the TNC passenger *prior* to the passenger entering the driver's personal vehicle.<sup>43</sup> Through the TNC's website or application, the rider must receive a digital photograph of the driver.<sup>44</sup> The TNC is also required to provide the details of the license plate number of the driver's personal vehicle,<sup>45</sup> although TNCs like Lyft go beyond this requirement and provide an image of what the car looks like, along with its make and model.<sup>46</sup> Next, within forty-eight hours of the completion of the ride, the TNC must provide a digital receipt with the following information: the pick-up location and destination, the trip's total time and distance, an itemized ride fee, and any surcharge associated with the ride.<sup>47</sup>

A very important aspect of this legislation is that it imposes insurance requirements on TNCs. This means that a rider is insured in an accident, even in situations when the TNC drivers themselves are not.<sup>48</sup> Where a driver's insurance policy has lapsed, passengers are still insured up

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<sup>43</sup> N.J. Stat. § 39:5H-8 (2017).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*; *Help Center*, *supra* note 11.

<sup>47</sup> N.J. Stat. § 39:5H-9 (2017).

<sup>48</sup> N.J. Stat. § 39:5H-10 (2017) (“Whenever a transportation network company driver is providing a prearranged ride, the [TNC] driver, [TNC], or any combination of the two shall maintain the following insurance coverage: primary automobile liability insurance in the amount of at least \$1,500,000 for death, bodily injury, and property damage; primary automobile insurance for medical payments benefits in an amount of at least \$10,000 per person per incident, which shall only apply to and provide coverage for the benefit of the transportation network company driver; and uninsured and underinsured motorist coverage in an amount of at least \$1,500,000.”).

to \$1.5 million per trip in medical bills by the TNC itself.<sup>49</sup> This acts as a backstop to the driver's insurance, so there is no uncertainty about whether a passenger's medical bills will be paid.<sup>50</sup>

The Act also implements a zero tolerance policy on “the use of controlled dangerous substances that may impair a transportation network company driver.”<sup>51</sup> This applies both when the driver is providing a ride to a passenger, or is logged onto the application and not physically transporting anyone.<sup>52</sup> TNCs are required to provide passengers with a protocol for reporting drivers who violate this policy.<sup>53</sup> Additionally, if a TNC driver receives a complaint that alleges one of its drivers has violated the zero tolerance policy, the TNC is required to conduct an investigation.<sup>54</sup> Within seventy-two hours of the completion of an investigation that corroborates the complaint, the TNC is required to revoke the driver's access to the digital network.<sup>55</sup>

Perhaps the most controversial aspect of the legislation,<sup>56</sup> the Act also imposes mandatory criminal background checks on TNC drivers.<sup>57</sup> Unlike limousine and taxi drivers, TNC drivers are not required to undergo fingerprinting.<sup>58</sup> As will be discussed in more depth in Part II. B., New Jersey contemplated imposing a mandatory fingerprinting requirement on TNC drivers.<sup>59</sup> After

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<sup>49</sup> *Id.*

<sup>50</sup> Brodesser-Akner, *supra* note 39.

<sup>51</sup> N.J. Stat. § 39:5H-14 (2017).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Brodesser-Akner, *supra* note 39 (“It stops short of requiring [TNC drivers] be fingerprinted for a background check, or even that they be interviewed in-person for the job. . . . [T]he special agent in charge of the FBI's Newark bureau said fingerprinting was a ‘more exact’ method of checking if someone has a criminal past.”).

<sup>57</sup> N.J. Stat. § 39:5H-17 (2017); Alex Wolf, *Uber Will Give Bill Thumbs Up If NJ Doesn't Take Fingerprints*, LAW 360 (June 21, 2016) (“[W]hile [Uber] supports letting the state attorney general develop driver background checks, any fingerprinting requirement would force it out of the state.”).

<sup>58</sup> Susan K. Livio, *Uber, Lyft Drivers Must Pass Background Checks after Christie OKs New Law*, NJ.COM (Feb. 13, 2017), [https://www.nj.com/politics/2017/02/nj\\_now\\_regulates\\_uber\\_lyft\\_and\\_other\\_ride-sharing.html](https://www.nj.com/politics/2017/02/nj_now_regulates_uber_lyft_and_other_ride-sharing.html) (“The taxi and limousine industry, meanwhile, urged lawmakers to require ride share companies to meet the same regulations imposed on them, such as the requirement that taxi and limo drivers must be fingerprinted and pass a drug test.”).

<sup>59</sup> Wolf, *supra* note 57.

Uber and Lyft threatened to leave the state rather than comply with a fingerprinting requirement, a “compromise” was reached.<sup>60</sup>

Additionally, within six months of the Act’s passage, TNCs were required to submit to the Attorney General the method that they, or a third party, planned to use to conduct the company’s background checks of prospective drivers.<sup>61</sup> Although the Act was created by the legislature, it is interesting to note that New Jersey lawmakers passed the responsibility of implementation of this important, hugely debated<sup>62</sup> part of the Act off to the Attorney General and other State divisions.<sup>63</sup> In fact, if the Attorney General did not approve of the TNC or third party’s criminal background check method, driver-applicants would have had to provide to the Division of State Police “the applicant’s name, address, fingerprints, and written consent for a criminal history record background check to be performed by the Division of State Police.”<sup>64</sup> Consequently, a TNC that failed to provide an effective method of screening applicants would still be subject to a fingerprinting requirement that some TNCs vehemently opposed.<sup>65</sup> Both Uber and Lyft use third-parties to conduct their background checks, and both use a startup called Checkr.<sup>66</sup> Checkr screens prospective drivers using Social Security numbers and local, state, and national databases including the National Sex Offender Public Website and websites that identify suspected terrorists.<sup>67</sup> Although not mandated by the Act, Uber also utilizes Checkr’s “Continuous Check”

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<sup>60</sup> Livio, *supra* note 58.

<sup>61</sup> N.J. Stat. § 39:5H-17 (2017).

<sup>62</sup> Livio, *supra* note 58; Heather Kelly, *Uber CEO Explains Why He Thinks Fingerprinting Drivers is Unjust*, CNN (June 24, 2016), <https://money.cnn.com/2016/06/23/technology/uber-travis-kalanick-ges-fingerprinting/index.html>.

<sup>63</sup> N.J. Stat. § 39:5H-17(e) (2017).

<sup>64</sup> *Id.*

<sup>65</sup> Kelly, *supra* note 62 (“Uber doesn't support fingerprinting. The ride-hailing company has been fighting to hire drivers without fingerprint-based background checks.”).

<sup>66</sup> Sara Ashley O’Brien & Kaya Yurieff, *What We Know (And Don’t Know) About Uber Background Checks*, CNN (Nov. 3, 2017), <https://money.cnn.com/2017/11/03/technology/uber-lyft-background-checks-new-york-terror-attack-suspect/index.html>.

<sup>67</sup> *Id.*

system that “does ongoing checks into individuals rather than once before they start working.”<sup>68</sup> The company “proactively reruns driving and criminal history checks every year to ensure that drivers continue to meet [its] standards.”<sup>69</sup> Lyft began utilizing a similar continuous monitoring system in 2019 after harassment allegations against drivers surfaced.<sup>70</sup>

The Act also mandates driving record checks for each applicant. Prior to allowing a driver-applicant to log onto the TNC’s digital network, the TNC or a third party must conduct a driving record check.<sup>71</sup> A driver is prohibited from accessing the TNC’s digital network if the driver has more than three moving violations within the preceding three years.<sup>72</sup> Additionally, drivers cannot continue to use a TNC digital network if they have been charged with one of four specific violations in the preceding three years: driving under the influence, resisting arrest, reckless driving, driving with a revoked or suspended license, or a comparable conviction in another state.<sup>73</sup> Drivers are also prohibited from utilizing the digital network if they have been convicted of one of the following crimes: aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, or endangering the welfare of a child.<sup>74</sup> In addition, if the driver is a match in the National Sex Offender Public Website, he or she will be prohibited from utilizing the TNC digital network.<sup>75</sup>

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<sup>68</sup> Biz Carson, *The Startup that Runs Background Checks on Uber and Lyft Drivers Is Now Worth \$2.2 Billion*, FORBES (Sept. 19, 2019), <https://www.forbes.com/sites/bizcarson/2019/09/19/checkr-background-funding-round/#5fc80fee5460>.

<sup>69</sup> *Driver Screening*, UBER, <https://www.uber.com/us/en/ride/safety/driver-screening/>.

<sup>70</sup> Sasha Lekach, *Lyft Finally Catches Up with Uber’s Continuous Driver Background Checks*, MASHABLE (Apr. 15, 2019), <https://mashable.com/article/lyft-driver-safety-background-checks-id-verification/>.

<sup>71</sup> N.J. Stat. § 39:5H-18 (2017).

<sup>72</sup> N.J. Stat. § 39:5H-20 (2017).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

Finally, the Act requires that TNCs make certain disclosures to the MVC.<sup>76</sup> A TNC must maintain records of individual rides and records of TNC drivers for at least five years after the driver stops working for the TNC.<sup>77</sup> These records must be made available to the New Jersey MVC to investigate specific complaints against TNC drivers.<sup>78</sup> This is an especially important provision because it allows New Jersey to collect safety data and track driver incidents.<sup>79</sup>

#### B. How the Act Favors TNCs Over Rider Safety

As one New Jersey legislator put it, the regulatory scheme for TNCs in New Jersey prior to the Transportation Network Company Safety and Regulatory Act was “the wild west . . . no regulation, no nothing.”<sup>80</sup> The Act was certainly necessary, and it implemented many important changes to the regulatory scheme of TNCs in New Jersey. Yet, there are notable safety measures missing from the Act, and their exclusion is no accident or oversight. This section discusses specific provisions of the Transportation Network Company Regulatory and Safety Act, where it appears on their face that they impose stringent regulations on TNCs, but a closer look reveals that they do not.

There were many compromises made by the New Jersey legislature when it created the Act. Yet, the Act was applauded both by TNC companies and the legislators themselves.<sup>81</sup> While a Lyft spokesman thanked the Senate and Assembly for approving the “critical legislation,”<sup>82</sup> an Uber spokesman commented that the efforts of the bill sponsors and legislative leadership “will further Uber’s mission of improving mobility and extending economic opportunity across New

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<sup>76</sup> N.J. Stat. § 39:5H-25 (2019).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Brodesser-Akner, *supra* note 39.

<sup>80</sup> Matt Friedman, *Uber Car Services Facing Stricter Rules from N.J. Lawmakers*, NJ.COM, (Dec. 11, 2014), [https://www.nj.com/politics/2014/12/uber\\_car\\_services\\_facing\\_stricter\\_rules\\_from\\_nj\\_lawmakers.html](https://www.nj.com/politics/2014/12/uber_car_services_facing_stricter_rules_from_nj_lawmakers.html).

<sup>81</sup> Colleen O’Dea, *Keeping Safety First For New Jersey’s Ridesharing Passengers*, NJSPOTLIGHT, (Dec. 21, 2016), <https://www.njspotlight.com/stories/16/12/20/keeping-safety-first-for-new-jersey-s-ridesharing-passengers/>.

<sup>82</sup> *Id.*

Jersey.”<sup>83</sup> One of the New Jersey sponsors of the legislation even said that lawmakers “worked with Uber and Lyft and law enforcement officials to create a statewide standard for ensuring the safety and protection of passengers, while maintaining the flexibility that has helped these ridesharing services to become so popular.”<sup>84</sup>

While the statements by TNCs and legislators alike suggest that the Act’s passage was a simple and uncomplicated process, the reality is that the law’s passage was a “tumultuous, three-year effort marked by threats from Uber executives [that] they would pull out of New Jersey.”<sup>85</sup> In fact, prior to multiple re-drafting attempts, rideshare company officials complained that the original regulations set impossible standards that no other state driver was required to meet, and that it included “poison pills” that would drive TNCs out of the state.<sup>86</sup> To keep TNCs from fleeing New Jersey, legislators struck a balance “between protecting the public and promoting a growing new industry”<sup>87</sup> and worked alongside Uber and Lyft to pass the legislation.

The critical safety feature that New Jersey failed to implement in a bid to appease TNCs was a fingerprinting requirement. While Uber argues that fingerprint checks are “an unnecessary burden and cost,”<sup>88</sup> the numbers have proven otherwise. As of 2018, both Uber and Lyft had cleared thousands of people who should have been disqualified based on their criminal records.<sup>89</sup> Even with the concession that not all criminals are *violent* criminals, it remains problematic that the background check system utilized by Uber is so flawed. Still, New Jersey is not unique in its

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Livio, *supra* note 58.

<sup>86</sup> Larry Higgs, *Bill to Regulate Uber, Lyft Would Require Driver Background Checks*, NJ.COM (May 19, 2016), [https://www.nj.com/traffic/2016/05/bill\\_to\\_regulate\\_uber\\_lyft\\_advances\\_to\\_state\\_assem.html](https://www.nj.com/traffic/2016/05/bill_to_regulate_uber_lyft_advances_to_state_assem.html).

<sup>87</sup> Livio, *supra* note 85.

<sup>88</sup> Heather Kelly, *Uber and Lyft’s Austin Battle Over Fingerprinting Goes to the Voters*, CNN BUSINESS (May 7, 2016), <https://money.cnn.com/2016/05/07/technology/uber-lyft-fingerprints-austin/>.

<sup>89</sup> Curt Devine, Nelli Black, Drew Griffin & Collette Richards, *Thousands of Criminals Were Cleared to be Uber Drivers. Here’s How Rideshare Companies Fought Stronger Checks*, CNN (June 1, 2018), <https://www.cnn.com/2018/06/01/us/felons-driving-for-uber-invs/index.html?iid=EL>.

decision to appease TNCs through the implementation of less stringent background check requirements. Out of forty-three states that have passed some sort of regulation on TNCs, thirty-one states have laws that mostly mirror Uber’s recommended screening policies.<sup>90</sup> In fact, legislative sources from twenty-five states admitted that Uber had direct influence over the content of their laws.<sup>91</sup> An in-house Uber lobbyist even remarked that “Uber has essentially regulated itself.”<sup>92</sup>

Moreover, while the Transportation Network Company Safety and Regulatory Act was being drafted and re-drafted in New Jersey in 2016, Uber pulled out of Austin, Texas, after its citizens voted to require fingerprinting.<sup>93</sup> Former Uber CEO Travis Kalanick justified his opposition to fingerprinting as a desire to give “more people who have been arrested the opportunity to work as drivers.”<sup>94</sup> Regardless of whether or not New Jersey legislators agree with that perspective, they rejected a fingerprinting requirement in a bid to keep TNCs from leaving New Jersey like they had left Austin, Texas.

The question to be asked is not whether TNCs are the safest possible method of transportation; the question is whether they are safer than the alternative. If the thousands of applicants with a criminal history that passed the Uber background check had instead been applicants for the taxi or limousine industry in one of the many cities where fingerprinting is required,<sup>95</sup> their prior crimes may have been detected. Neither industry is perfect,<sup>96</sup> but taxi and

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Kelly, *supra* note 62.

<sup>94</sup> *Id.*

<sup>95</sup> Devine, *supra* note 89 (“Most US taxi and limousine drivers are required to obtain special licenses and undergo fingerprint checks.”).

<sup>96</sup> Adrienne LaFrance & Rose Eveleth, *Are Taxis Safer than Uber?*, THE ATLANTIC (Mar. 3, 2015), <https://www.theatlantic.com/technology/archive/2015/03/are-taxis-safer-than-uber/386207/> (Taxi drivers have been in the headlines just like Uber has. In the past year, there have been assaults against taxi passengers reported in Seattle, Washington, D.C., Portland, Fort Lauderdale, and elsewhere. In 2012, a rash of incidents in Washington—

limousine companies check a prospective driver’s fingerprint against a database that includes a person’s “complete criminal history in the United States,” including records related to “arrests, federal employment, naturalization, or military service.”<sup>97</sup> Neither Uber, Lyft, the taxi industry nor the limousine industry has a perfect background check process; but it is apparent that the methods New Jersey has allowed TNCs to employ do not match the depth of the methods required by TNCs’ competitors in the more general for-hire transportation industry.

There are some other aspects of the legislation that may seem like a “win” for the safety of consumers and a compromise on behalf of TNCs. On the contrary, many of the regulations are ones that TNCs like Uber and Lyft had already unilaterally imposed on themselves. While the legislation was being considered in New Jersey, taxi industry leaders argued that Uber should carry the same exact insurance that taxi and limousine companies are required to carry.<sup>98</sup> Yet, Uber and Lyft argued that their standards should be different from the standards imposed on taxi and limousine drivers because their drivers are considered part-time employees or independent contractors.<sup>99</sup> In its present form, the legislation actually “codifies the insurance level that Uber already maintained before the legislation passed.”<sup>100</sup> Indeed, the requirement of \$1.5 million on all trips whether the TNC driver is uninsured or under-insured is a regulation that Uber had already imposed on itself prior to the Act.<sup>101</sup>

While it may appear that New Jersey was acting pursuant to concern for its citizens, the reality is that the state acted pursuant to threats that prior versions of the Act would “literally

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seven assaults over the course of a few weeks—prompted the District’s taxicab commissioner to issue a warning to female passengers.”).

<sup>97</sup> *Id.*

<sup>98</sup> Matt Friedman, *Uber: State Lawmakers and Taxi Industry are Trying to Drive Us Out of N.J.*, NJ.COM (Mar. 18, 2015), [https://www.nj.com/politics/2015/03/fighting\\_nj\\_taxi\\_industry\\_over\\_regulation\\_uber\\_tak.html](https://www.nj.com/politics/2015/03/fighting_nj_taxi_industry_over_regulation_uber_tak.html).

<sup>99</sup> *Id.* (“Uber, along with competitors like Lyft—which do provide an insurance policy to drivers—have said that their standards should be different, since their drivers are considered part-time employees . . .”).

<sup>100</sup> Brodesser-Akner, *supra* note 39.

<sup>101</sup> *Id.*

guarantee that Uber would be driven out of New Jersey, costing the state thousands of jobs.”<sup>102</sup> Furthermore, Uber and Lyft already had policies of providing riders with driver information prior to pick-up.<sup>103</sup> In fact, both TNCs impose even further requirements than the New Jersey legislation has through their policies of providing riders with driver’s personal contact information before their ride.<sup>104</sup> Further, during the drafting and re-drafting process, a representative for Uber remarked that “the bill duplicates what the companies have in place already.”<sup>105</sup> Rather than regulate TNCs, New Jersey’s Act simply reiterates the same standards that Uber and Lyft have already unilaterally imposed on themselves. It is true that TNCs have proactively self-regulated to ensure a higher level of safety for passengers, but without additional standards, the Act fails to add anything to the level of safety extended by TNCs to passengers in New Jersey. In fact, the Act does not do much regulating at all; without it, the standards imposed on TNCs would be relatively the same.

Another major failure of the Transportation Network Company Safety and Regulatory Act is that it declined to clarify the status of drivers as independent contractors or employees of TNCs. As discussed in Part I. C., those who have been injured by TNC drivers have consistently struggled to hold TNCs accountable for their actions. While the Act imposes a mandatory insurance requirement that TNCs must provide in the event of an accident,<sup>106</sup> that provision does not offer a

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<sup>102</sup> Friedman, *supra* note 98.

<sup>103</sup> *How to Identify a Driver and Vehicle*, UBER, <https://help.uber.com/riders/article/contact-a-driver?nodeId=0e0bbf4e-2a95-42b6-9bc2-2566e8bd98dc> (“Uber allows you to contact your driver without revealing your phone number by placing a free call directly within the Uber app.”); *Help Center*, *supra* note 11.

<sup>104</sup> *Contact a Driver*, Uber, <https://help.uber.com/riders/article/contact-a-driver?nodeId=0e0bbf4e-2a95-42b6-9bc2-2566e8bd98dc>; *How to Get Picked Up as a Passenger*, Lyft, <https://help.lyft.com/hc/en-us/articles/115013080908-How-to-get-picked-up-as-a-passenger> (“After you’ve requested a ride and a driver has accepted, you’ll see the driver’s name, ETA (estimated time of arrival), rating, profile photo, and an image of their car . . . If you have any special instructions, or need to speak to your driver while they are on their way, you can give them a call in the app by tapping the icon in the bottom left.”).

<sup>105</sup> Higgs, *supra* note 86.

<sup>106</sup> N.J. Stat. § 39:5H-10 (2017).

solution for riders who seek relief from actions of drivers beyond car accidents. Legislators purported that there would “[n]o longer . . . be confusion about the responsibilities of companies or the rights of [TNC] customers,”<sup>107</sup> but in reality, the Act leaves open more questions than it answers.

In the definitions section of the Act, a TNC driver is described as:

a person who receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company, and uses a personal vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.<sup>108</sup>

This is very similar to TNC’s own description of themselves as “technology platforms” in an attempt to solidify their employees’ status as independent contractors.<sup>109</sup> Therefore, it appears that New Jersey legislators have said quite a lot without saying anything at all. Although passengers are guaranteed recourse for accidents that occur throughout their rides, the Act still leaves open-ended the question of whether or not injured parties can hold TNCs accountable for more deliberate acts of drivers.

Yet, it is important to note that Uber’s reluctance to define its drivers as “employees” has caused problems in other areas for the TNC. In November 2019, New Jersey demanded that Uber pay \$649 million in unpaid employment taxes based on the assertion that the TNC had misclassified its workers as independent contractors instead of employees.<sup>110</sup> In fact, New Jersey’s action was the first time that a local government sought payroll taxes from Uber.<sup>111</sup> The TNC’s

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<sup>107</sup> O’Dea, *supra* note 81.

<sup>108</sup> N.J. Stat. § 39:5H-2 (2017).

<sup>109</sup> *How Does Uber Work?*, *supra* note 9; Wood, *supra* note 14.

<sup>110</sup> Matthew Haag & Patrick McGeehan, *Uber Fined \$649 Million for Saying Drivers Aren’t Employees*, N.Y. TIMES (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/nyregion/uber-new-jersey-drivers.html>.

<sup>111</sup> *Id.*

response was to challenge the “preliminary but incorrect determination” by New Jersey, as Uber insisted that its drivers are independent contractors.<sup>112</sup> The commissioner of the New Jersey Department of Labor and Workforce Development articulated an effort by the department to “crack[] down on employee misclassification” because of the financial toll it has on the state’s economy.<sup>113</sup>

Additionally, in California, the state’s Senate passed a bill that requires TNC drivers to be designated as employees to allow them access to minimum wage and unemployment insurance, although Uber has vowed to fight it.<sup>114</sup> As a result, other jurisdictions like New York City, Oregon, and Washington State have initiated similar legislation.<sup>115</sup> The efforts by New Jersey and other states to classify Uber drivers as employees could have huge spillover effects when it comes to areas like vicarious liability. Despite the failure of New Jersey’s Transportation Network Company Safety and Regulatory Act to classify TNC drivers as employees within New Jersey, the efforts of other state departments could have an impact on the ability of TNC’s to shield themselves from liability in New Jersey.

### III. Sami’s Law

Regardless of its shortcomings, the Transportation Network Company Safety and Regulatory Act is an important first step in the regulation of TNC’s and their drivers; however,

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Robert W. Wood, *Despite Sweeping California Gig Worker Law, Uber Says It Won’t Treat Drivers As Employees*, FORBES (Sep. 11, 2019), <https://www.forbes.com/sites/robertwood/2019/09/11/california-law-making-gig-workers-employees-could-hit-uber-lyft--others/#29f38a046586> (“California’s Senate has passed a bill—Assembly Bill 5—that could require Uber, Lyft and gig companies to treat workers as employees. A similar bill was already passed by California’s Assembly, so the assumption is that soon the bill will become law.”); Carolyn Said, *Uber: We’ll Fight in Court to Keep Drivers as Independent Contractors*, SAN FRANCISCO CHRONICLE (Sep. 11, 2019), <https://www.sfchronicle.com/business/article/Uber-We-ll-fight-in-court-to-keep-drivers-as-14432241.php> (“Uber’s top lawyer pledged that its drivers will remain independent contractors, despite California’s passage of a bill that hinders companies from claiming that workers are not employees.”).

<sup>115</sup> *Id.*

there is one important category of actors the legislation fails to address. TNC driver impersonators have become an unfortunate consequence of the rise of TNCs across the nation, and they went largely unnoticed until the death of a young New Jersey native captured the country's attention.

A. What Happened to Samantha "Sami" Josephson

Uber has advertised itself as a safe option to get home after a night of drinking.<sup>116</sup> As an alternative to drunk driving, Uber *is* a safe alternative for people who have been consuming alcohol, and taking an Uber instead of getting behind the wheel of a car should be encouraged. Yet, it has not proven to be the safest alternative for women.<sup>117</sup> Around 2 a.m. on Friday, March 29, 2019,<sup>118</sup> college senior Samantha "Sami" Josephson made the same decision that many college students do. After a night out with friends, she ordered an Uber home in her college town of Columbia, South Carolina.<sup>119</sup> Except the black Chevy Impala that Josephson entered that night was not the car scheduled to pick her up through the Uber app.<sup>120</sup> Instead, Josephson mistook the Impala for her Uber and got into a car that belonged to a predator.<sup>121</sup> After Josephson entered the car of twenty-four-year-old Nathaniel David Rowland, he activated the car's child safety locks to prevent her from leaving it.<sup>122</sup> Fourteen hours later, Josephson's body was found in a field ninety miles from her college town.<sup>123</sup>

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<sup>116</sup> Kate Parker, *Uber & MAAD Announce Campaign to Eliminate Any Excuse for Drinking and Driving*, UBER (Nov. 16, 2018), <https://www.uber.com/newsroom/reasons-to-ride/>.

<sup>117</sup> *3 Women Allegedly Sexually Assaulted by Fake Drivers Suing Uber*, NBC4 NEWS (Apr. 8, 2019), <https://www.nbclosangeles.com/news/local/Women-Sue-Uber-claiming-Sexual-Assault-by-fake-Drivers-508279771.html>.

<sup>118</sup> Emily Shapiro, *New Jersey Governor Signs 'Sami's Law' for Ride-Sharing after Death of College Student*, ABC NEWS (June 21, 2019), <https://abcnews.go.com/US/jersey-governor-signs-samis-law-rideshare-safety-honor/story?id=63859131>.

<sup>119</sup> Amir Vera, *A College Student Got into a Car She Thought was Her Uber, Police Say. She was Found Dead in a Field*, CNN (Mar. 31, 2019), <https://www.cnn.com/2019/03/30/us/south-carolina-missing-college-student/index.html>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> EJ Dickson, *College Student Samantha Josephson Killed After Mistaking Car for Uber*, ROLLING STONE (Apr. 1, 2019), <https://www.rollingstone.com/culture/culture-news/samantha-josephson-usc-murder-uber-815851/>.

<sup>123</sup> Vera, *supra* note 119.

## B. The Bill’s Passage in New Jersey

The murder of Sami Josephson hit hard in many communities. It had an impact on her college state of South Carolina<sup>124</sup> along with the rest of the nation.<sup>125</sup> What happened to Sami Josephson hit hard especially in New Jersey.<sup>126</sup> Unfortunately, Uber driver imposters are fairly common. “[Fake] drivers troll nightclubs and bars late at night to find people scanning the dark for their ride . . . . They wave to passengers and say, ‘I’m your driver.’”<sup>127</sup> To protect New Jersey citizens from a recurring problem throughout the nation, New Jersey introduced “Sami’s Law” two months after the student’s death.<sup>128</sup> Josephson’s parents and sister were present when the state Senate voted 38–0 to approve the bill in May of 2019,<sup>129</sup> and it was signed into law by Governor Phil Murphy on June 20, 2019.<sup>130</sup>

The law requires TNCs to issue certain markers to help passengers identify their vehicle.<sup>131</sup> TNCs are required to create an “identifying marker” and each driver is required to have two identifying markers on his or her car.<sup>132</sup> The identifying markers must also be “reflective, capable

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<sup>124</sup> Travis Bland & Isabella Cueto, *Suspect Locked USC Student in Car Before Killing Her, Police Say*, THE STATE (Mar. 31, 2019), <https://www.thestate.com/news/local/article228635334.html> (“USC President Harris Pastides released a statement about Josephson’s death, saying, ‘Times like these leave me searching for words of wisdom and comfort.’”).

<sup>125</sup> Jack Healy, *They Thought It Was Their Uber. But the Driver Was a Predator.*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/fake-uber-driver-assaults.html> (“[T]he killing of Samantha Josephson, a 21-year-old college student in South Carolina who was stabbed to death after getting into a car she mistook for her Uber last weekend, has brought national attention to a rash of kidnappings, sexual assaults and robberies carried out largely against young women by assailants posing as ride-share drivers.”).

<sup>126</sup> Rifkin, *supra* note 40 (“Samantha ‘Sami’ Josephson was abducted and murdered . . . after entering a vehicle she mistakenly thought was her Uber . . . . In response, her home state of New Jersey on June 20 became the first state to sign Sami’s Law . . . .”).

<sup>127</sup> Healy, *supra* note 125.

<sup>128</sup> Brent Johnson, *Uber, Lyft Customers in N.J. May Soon [Get] More Protection Under New Bill after College Student’s Murder*, NJ.COM (May 30, 2019), <https://www.nj.com/politics/2019/05/uber-lyft-customers-in-nj-may-soon-be-better-protected-under-new-law-after-college-students-murder.html>.

<sup>129</sup> *Id.*

<sup>130</sup> Shapiro, *supra* note 118.

<sup>131</sup> *Governor Murphy Signs “Sami’s Law” to Enhance Protections for Rideshare Passengers*, OFFICIAL SITE OF THE STATE OF NEW JERSEY (June 20, 2019), <https://www.nj.gov/governor/news/news/562019/approved/20190620a.shtml>.

<sup>132</sup> N.J. Stat. § 39:5H-23 (2019).

of being illuminated, or both.”<sup>133</sup> Additionally, each TNC driver must display the identifying marker on the front windshield of his or her personal vehicle, as well as on the rear window.<sup>134</sup> Drivers are also required to adhere two-dimensional barcodes on the driver and passenger side rear windows so that passengers can scan them and be sure that they have approached the correct vehicle.<sup>135</sup>

Furthermore, drivers are required to display two credential placards at all times while logged onto the digital network or providing a ride.<sup>136</sup> The placards “will be created by the New Jersey Motor Vehicle Commission and issued to drivers. [They] will include the driver’s first name, a high-resolution color photo of the driver, the vehicle’s license plate number and the state that issued the plate.”<sup>137</sup> If a driver terminates his or her status as a driver with the TNC, the driver is required to return the placard to the TNC within thirty days of the termination.<sup>138</sup> TNCs like Lyft have already required their drivers to utilize emblems and signs.<sup>139</sup> Nevertheless, New Jersey imposes a fine on drivers that fail to comply and also threatens to ban TNCs from New Jersey that fail to comply with the regulations.<sup>140</sup> Drivers that fail to comply would be penalized by the state with a \$250 fine, and TNCs would be required to prohibit those drivers from utilizing their digital network.<sup>141</sup> Furthermore, a TNC that fails to enforce the law would be subject to a hearing where its permit to operate in New Jersey could be suspended.<sup>142</sup>

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Kaitlyn Kanzler, ‘Sami’s Law’: NJ Uber, Lyft drivers must now carry detailed ID cards, NORTHJERSEY.COM (June 20, 2019), <https://www.northjersey.com/story/news/new-jersey/2019/06/20/nj-uber-lyft-law-drivers-show-signs-carry-id-cards-samis-law/1511862001/>.

<sup>138</sup> N.J. Stat. § 39:5H-23 (2019).

<sup>139</sup> *New Driver Welcome Kit*, LYFT, <https://help.lyft.com/hc/en-us/articles/115013082088-New-driver-welcome-kit>.

<sup>140</sup> Rifkin, *supra* note 40.

<sup>141</sup> N.J. Stat. § 39:5H-23 (2019).

<sup>142</sup> *Id.*

### C. Efforts to Get the Bill Passed on the Federal Level

After the swift passage of Sami’s Law in New Jersey, Josephson’s parents and New Jersey legislators pushed to enact the law on a federal level.<sup>143</sup> “Sami’s Law” is a federal companion version of the same law that was passed in New Jersey, and the two mirror each other with the exception of different penalties for failure to comply.<sup>144</sup> Although some have argued for the federal regulation of TNCs,<sup>145</sup> the regulation of TNCs as it stands is on the state-level only.<sup>146</sup> A key difference between the state and the federal version of the legislation is that the state law threatens TNCs with suspension from New Jersey,<sup>147</sup> and the federal version “would penalize any state which fails to comply by withholding 1% of their federal highway funding.”<sup>148</sup> The bill has a great deal of support<sup>149</sup> and the “one percent” provision is similar to federal incentives already used as motivation for other state regulations, like the raised drinking age and the prohibition of open alcohol containers in vehicles.<sup>150</sup>

The role of the federal government in the regulation of TNCs is currently unclear. Some even argue that federal regulations might be too far removed from local issues to be able to solve local matters.<sup>151</sup> Yet, the issue of driver impersonators is not an issue unique to New Jersey.<sup>152</sup>

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<sup>143</sup> Rifkin, *supra* note 40.

<sup>144</sup> Jessica Campsis, *New Jersey Governor Signs Rideshare Safety Law in Honor of Murdered College Student*, THE HILL (June 20, 2019), <https://thehill.com/homenews/state-watch/449600-new-jersey-governor-signs-uber-safety-law-in-honor-of-murdered-college> (“Companion legislation, also named ‘Sami’s Law,’ has also been introduced in the House.”); *Governor Murphy Signs “Sami’s Law” to Enhance Protections for Rideshare Passengers*, *supra* note 131.

<sup>145</sup> Katherine E. O’Connor, *Along for the Ride: Regulating Transportation Network Companies*, 51 TULSA L. REV. 579, 592–93 (2016) (“One potential solution to TNC regulatory concerns is the imposition of regulation at the federal level. Though action has yet to be taken through the Federal Trade Commission or through Congress, there are arguments both for and against federal involvement in the regulation of TNCs.”).

<sup>146</sup> Rifkin, *supra* note 40.

<sup>147</sup> N.J. Stat. § 39:5H-23 (2019).

<sup>148</sup> Rifkin, *supra* note 40.

<sup>149</sup> *Id.*

<sup>150</sup> *Cardin, Smith Introduce Legislation to Improve Ride-Share Safety*, Cardin for Maryland (July 14, 2019), <https://www.cardin.senate.gov/newsroom/press/release/cardin-smith-introduce-legislation-to-improve-ride-share-safety>.

<sup>151</sup> O’Connor, *supra* note 145, at 598.

<sup>152</sup> Healy, *supra* note 125.

Only time will tell what impact New Jersey’s innovative legislation can have across the nation as a whole.

D. The Impact of Sami Josephson’s Legacy on Future Rider Safety

Immediately after the death of Josephson, Uber responded with a new alert system.<sup>153</sup> The system “reminds riders about checking their ride three separate times: the first is a banner at the bottom of the app once the ride has been offered, the second is a warning to check license plate, car details and photo, and the third is an actual push notification before the driver arrives reminding riders to check once more.”<sup>154</sup> Called the “Check Your Ride” campaign, the system attempts to remind app users to check their ride before they get into their car in an effort to make such an action synonymous with using Uber every time.<sup>155</sup>

Similarly, in January 2020, after some testing in seven U.S. cities,<sup>156</sup> Uber unveiled a new PIN Verification system as another *optional* step for riders to ensure that they have entered their actual Uber. Called “Verify Your Ride,” Uber insists that it “adds an extra layer of safety to ensure a rider is getting into the right car.”<sup>157</sup> If riders choose to opt into the feature through the app, they will be sent a “unique rider PIN number” each time they request a ride.<sup>158</sup> According to Uber, “[w]hen the driver arrives, the rider can verbally provide the PIN to the driver before getting into the vehicle. After the driver enters the correct PIN, the trip can begin.”<sup>159</sup> It ensures that riders

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<sup>153</sup> Stephanie Gosk, Conor Ferguson & Scott Stump, *Uber Unveils New Safety Measures in Wake of College Student’s Murder*, TODAY (Apr. 18, 2019), <https://www.today.com/money/uber-unveils-new-safety-measures-wake-college-student-s-murder-t152335>.

<sup>154</sup> Jordan Crooke, *Uber, Lyft Implement New Safety Measures after Student’s Death*, TECHCRUNCH (Apr. 19, 2019), <https://www.autoblog.com/2019/04/19/uber-lyft-new-safety-measures-after-student-death/>.

<sup>155</sup> Natasha Nitturkar, *Uber Rolls Out ‘Check Your Ride’ Campaign to Boost Safety*, BUSINESS TRAVELLER (July 14, 2019), <https://www.businesstraveller.com/business-travel/2019/07/24/uber-rolls-out-check-your-ride-campaign-to-boost-safety/>.

<sup>156</sup> Stephen Shankland, *Uber Activates PIN System Designed to Reduce Sexual Assault Problems*, CNET (Jan. 7, 2020), <https://www.cnet.com/news/uber-activates-pin-system-designed-to-reduce-sexual-assault-problems/>.

<sup>157</sup> Uber, *Introducing PIN: Another Step to Verify Your Ride | Safety at Uber | Uber*, YOUTUBE (Nov. 19, 2020), <https://www.youtube.com/watch?v=nza3udC73zo&feature=youtu.be>.

<sup>158</sup> *Id.*

<sup>159</sup> Shankland, *supra* note 156.

will be certain they are in the right vehicle, and it “gives drivers peace of mind that they have the correct passenger in their car.”<sup>160</sup> This feature would certainly enhance the safety of riders who opt into it, but since this is not a feature that Uber has imposed on all riders, it will be difficult to tell how much the feature will really enhance the safety of all riders. Additionally, it is unclear whether this feature would make a difference in a situation similar to Josephson’s, where the child safety locks were engaged by the driver once Josephson realized she was in the wrong car.

While legislation may prevent further tragedies, it is important that campaigns and features like these exist to remind passengers of the easiest way to keep themselves safe in the first place: check that you are in the right car. After the death of Josephson, not only have TNCs themselves taken initiative to constantly remind passengers to double-check their rides, but New Jersey has also implemented measures that will make TNC vehicles easier to identify. The efforts by legislators and members of the Josephson family following the tragic death of Sami Josephson will certainly have important safety implications, but as will be discussed below in Part V, there are still more measures that need to be taken to prevent the same sorts of incidents from recurring in New Jersey.

#### IV. The Need for Regulation to Enhance Rider Safety

The oversights and holes left in the Transportation Network Company Safety and Regulatory Act have had—and will continue to have—very real consequences. To prevent some of these once unthinkable tragedies from any repetition, the Act must be supplemented with additional legislation and preventative actions.

##### A. What Have TNC Drivers Done? Persistent Safety Incidents in New Jersey and the Nation

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<sup>160</sup> *Introducing PIN*, *supra* note 157.

An attempted murderer accused of raping an Uber passenger in Kansas City, a murderer on parole, and a previously deported immigrant accused of sexually assaulting multiple passengers—these are some of the drivers who cleared Uber’s “robust and fair” background process.<sup>161</sup> But, Lyft’s track record is no better. In 2019, a woman filed a lawsuit stemming from a 2017 sexual assault in New Jersey.<sup>162</sup> She had ordered a fifteen-minute Lyft back to her home in Brooklyn, but instead, she was allegedly taken across state lines into New Jersey.<sup>163</sup> The Lyft driver allegedly held her at gunpoint and, along with two other men, sexually assaulted her.<sup>164</sup> After the passenger reported the incident at the New York Police Department, the driver was allegedly able to change his name within the Lyft application and continue to drive for the TNC.<sup>165</sup> Thirteen other women joined her lawsuit against Lyft for its mishandling of allegations of sexual assault.<sup>166</sup> In one instance, a woman was sexually assaulted by a driver who then went into her phone and added a twenty-five dollar tip for himself after the assault.<sup>167</sup> In another instance, a blind woman ordered a Lyft during the daytime and was offered a free ride home by her driver, who then forced himself on her.<sup>168</sup>

Unfortunately, there have been a multitude of incidents touching New Jersey. In December 2017, an Uber driver allegedly sexually assaulted a woman in the back of his car at the end of her

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<sup>161</sup> Devine, *supra* note 89.

<sup>162</sup> Kevin Billings, *Lyft Facing Lawsuit For Alleged 2017 New Jersey Sexual Assault*, INTERNATIONAL BUSINESS TIMES (Sept. 18, 2019), <https://www.ibtimes.com/lyft-facing-lawsuit-alleged-2017-new-jersey-sexual-assault-2828907>.

<sup>163</sup> Sara Ashley O’Brien, *Lyft Hit by Five More Alleged Sexual Assault, Rape Cases in One Day*, CNN BUSINESS (Sept. 18, 2019), <https://www.cnn.com/2019/09/17/tech/lyft-hit-by-five-more-sexual-assault-cases/index.html>.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Sara Ashley O’Brien, *14 Women Sue Lyft for Allegedly Mishandling Sexual Assault and Rape Reports*, CNN BUSINESS (Sept. 4, 2019), <https://www.cnn.com/2019/09/04/tech/lyft-sexual-assault-lawsuit/index.html>.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

Uber ride early in the morning in Edgewater, New Jersey.<sup>169</sup> After driving the woman from her friend's house in Edgewater to her own house in the same town, the Uber driver allegedly backed into a parking space and attacked her.<sup>170</sup> On the same day, the woman reported the sexual assault to the local police, but the driver has not been arrested and the investigation is ongoing.<sup>171</sup> The woman was able to obtain a protective order from the Uber driver, but her pending lawsuit accuses the driver of sexual assault and accuses Uber of intentional infliction of emotional distress due to Uber's negligence in thoroughly vetting and screening potential drivers.<sup>172</sup>

Perhaps most chilling, in November 2017, Sayfullo Saipov rented a pickup truck to mow down cyclists on a Manhattan bike path.<sup>173</sup> Prior to the incident, he had passed both Uber and Lyft background checks and had completed over 1,400 trips for Uber and 180 for Lyft.<sup>174</sup> All of those trips were in New Jersey.<sup>175</sup>

Yet, these incidents are not isolated to New Jersey; it is a national problem. In April 2018, a report revealed that 103 Uber drivers had been accused of sexual assault or abuse on passengers.<sup>176</sup> Since there was no publicly available data at the time for the number of sexual assaults committed by TNC drivers, the report was the culmination of police reports, federal court records, and court databases for major cities.<sup>177</sup> In many instances, criminal cases are dismissed or the charges are dropped,<sup>178</sup> so it is difficult to ascertain just how many instances of sexual assault

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<sup>169</sup> Anthony G. Attrino, *N.J. Woman Sues Uber Alleging Driver Sexually Assaulted Her in Back of Car*, NJ.COM (Dec. 18, 2019), <https://www.nj.com/bergen/2019/12/nj-woman-sues-uber-alleging-driver-sexually-assaulted-her-in-back-of-car.html>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> O'Brien, *supra* note 66.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> Sara Ashley O'Brien, Nelli Black, Curt Devine & Drew Griffin, *CNN investigation: 103 Uber Drivers Accused of Sexual Assault or Abuse*, CNN (Apr. 30, 2018), <https://money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault/index.html>.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

by TNC drivers have occurred. Or at least it was, until Uber issued its own response to the report on December 5, 2019.<sup>179</sup>

In response to the report released in April 2018,<sup>180</sup> Uber released the data that it had on sexual assaults, fatal attacks, and other incidents over the 2.3 billion rides taken in the U.S. between 2017 and 2018.<sup>181</sup> The report revealed that Uber received 5,981 reports of sexual assault in 2017 and 2018 and that, among those incidents, there were also 464 reports of rape.<sup>182</sup> The report also revealed 19 deaths caused by assault during the same period.<sup>183</sup> Unsurprisingly, the report identified 89% of the victims of sexual assault to be women and female-identifying individuals.<sup>184</sup> For comparison purposes, Uber also claimed that the New York Police Department “received more than 1,100 complaints of sex offenses in the transit system over 2017 and 2018,” a transit system that had 3.4 billion subway rides over the same period.<sup>185</sup> It has also been reported that Lyft plans to issue its own safety report regarding its own incidents.<sup>186</sup> Additionally, Uber has acknowledged an intent to “release a safety report every two years.”<sup>187</sup>

According to the report, “one out of every 6 million trips may result in an incident report concerning non-consensual sexual penetration, and one in every 900,000 trips may result in an incident report concerning non-consensual touching of a sexual body part.”<sup>188</sup> These numbers are terrifying, especially when one considers that one-third of Americans use “ride-hailing service[s]

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<sup>179</sup> Jennifer Saba, *Breakingviews – Ugly Uber Data is First Step Tackling Ugly Problem*, REUTERS (Dec. 6, 2019), <https://www.reuters.com/article/us-uber-safety-breakingviews/breakingviews-ugly-uber-data-is-first-step-tackling-ugly-problem-idUSKBN1YA29S>.

<sup>180</sup> *Id.* (“Uber (UBER) first pledged to release the report nearly a year ago in response to a CNN investigation that found at least 103 Uber drivers in the United States had been accused of sexually assaulting or abusing their passengers in the previous four years.”).

<sup>181</sup> *Id.*

<sup>182</sup> Garcia, *supra* note 3.

<sup>183</sup> *Id.*

<sup>184</sup> Garcia, *supra* note 3.

<sup>185</sup> Saba, *supra* note 179.

<sup>186</sup> *Id.*

<sup>187</sup> Garcia, *supra* note 3.

<sup>188</sup> *Id.*

such as Uber or Lyft.”<sup>189</sup> It is unacceptable that almost 6,000 passengers were victims of sexual assault on a platform that is supposed to safely get passengers from Point A to Point B. It is even more unacceptable when one considers that these statistics only came from *one* TNC; and further, that those 6,000 are just the incidents that were actually reported. The first step to making ride-sharing safer is accountability, and Uber’s release of its report is a step in the right direction. One can only hope that Lyft will follow through on its promise to release its own report. Once the extent of the problem is established, it may be possible to work towards actual solutions to better protect passengers. These statistics only confirm what TNCs throughout the nation fail to acknowledge; ridesharing, at least in its present state, is not safe at all.

## B. How Can New Jersey Prevent More Incidents?

### 1. Fingerprinting

Not all of the above examples occurred within the state lines of New Jersey; yet the regulations in other states mirror those in New Jersey. Of forty-three states that have passed regulations on TNCs, none require fingerprint-based checks.<sup>190</sup> Certain cities, like New York, require TNC drivers to go through their city’s “gold standard” fingerprinting background check by the Taxi and Limousine Commission.<sup>191</sup> Yet, as of April 1, 2019, both Uber and Lyft have declined to accept new for-hire vehicle sign-ups in the city “due in part to new [TNC] regulations.”<sup>192</sup> Both TNCs have made it impossible to evaluate the safety benefits that

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<sup>189</sup> JingJing Jiang, *More Americans Are Using Ride-Hailing Apps*, FACTTANK (Jan. 4, 2019), <https://www.pewresearch.org/fact-tank/2019/01/04/more-americans-are-using-ride-hailing-apps/>.

<sup>190</sup> Devine, *supra* note 89.

<sup>191</sup> Noah Manskar, *Uber Adds 2<sup>nd</sup> Background Check for NYC Drivers*, PATCH (Aug. 16, 2019), <https://patch.com/new-york/new-york-city/uber-adds-2nd-background-check-nyc-drivers>.

<sup>192</sup> *Fingerprinting Requirements*, UBER, <https://help.uber.com/partners/article/fingerprinting-requirements?nodeId=4693107e-e628-4b55-8c66-064481bd1c97#targetText=Fingerprinting%20Requirements,PART%20TO%20NEW%20TLC%20REGULATION%20S.&targetText=The%20cost%20is%20%2480%2D%24,any%20of%20our%20NYC%20offices; Updates for NYC Drivers>, LYFT, <https://www.lyft.com/driver/cities/new-york-city-ny>.

fingerprinting requirements would bring to a jurisdiction that implements them because TNC drivers currently engaged in the city have not been subject to a fingerprinting requirement.

Any of the incidents that have occurred throughout the nation as the result of someone slipping through the cracks of a TNC's third-party background check are incidents that could have occurred in any state, including New Jersey. There is truth to the argument that not every person who commits a crime has a prior record; not every TNC safety incident has been, or will be, committed by someone with a criminal history. But, if fingerprinting is a safer method for ensuring that no one with a serious criminal offense in their record will get behind the wheel of a car and be responsible for the life of a stranger, why not use it? Furthermore, former Uber CEO Travis Kalanick's justification that foregoing a fingerprinting requirement gives justice to "people who have been unfairly snared in the U.S. criminal justice system"<sup>193</sup> needs to be subject to more scrutiny by lawmakers. Do New Jersey legislators, and ultimately New Jersey citizens, agree with Kalanick that some felons, perhaps violent ones, deserve a second chance? More importantly, is an occupation that imposes a duty to safely carry strangers from one destination to another the appropriate medium for felons to re-enter the workforce? These are heavy questions with complicated answers; but maybe that is why New Jersey's elected representatives should have made these decisions instead of Uber's ousted CEO.

There is no question that New Jersey legislators grappled with at least some of these considerations when they decided not to implement a fingerprinting requirement in 2017. The strongest consideration is that it takes time and money to get fingerprints. In fact, Uber has refused to cover the cost of fingerprinting services for its applicants in New York City.<sup>194</sup> A fingerprinting

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<sup>193</sup> Kelly, *supra* note 62.

<sup>194</sup> *Fingerprinting Requirements*, *supra* note 192 ("The cost is \$80-\$90, and Uber does not cover the cost of fingerprinting or offer fingerprinting services at any of our NYC offices.").

requirement is not just more costly for Uber, but also drivers and, ultimately, passengers. Uber argues that it is much cheaper and efficient to outsource its background checks to a third-party with quick turnaround rates so that the TNC can hire drivers more quickly.<sup>195</sup> Yet, the fact that both Uber and Lyft have indefinitely halted their hiring processes in New York City<sup>196</sup> suggests that time is not a particular concern for either, at least not in major cities. Additionally, as fingerprinting background checks become more prevalent, more companies have emerged that offer fingerprinting as part of their comprehensive background check services.<sup>197</sup> More companies means price competition that may eventually result in cheaper fingerprinting services.

Uber has taken on criticism of its background check process and has acknowledged in the past that “no background check is perfect.”<sup>198</sup> Yet, the latest fingerprint-matching algorithm implemented by the Federal Bureau of Investigation has improved matching accuracy to more than 99.6 percent.<sup>199</sup> When it comes to their safety, what New Jersey citizens deserve is as close to “perfect” as possible; safety is not something that should not be compromised by TNC’s extra costs.

## 2. In-Person Interview Requirement

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<sup>195</sup> Marrian Zhou, *Uber, Lyft Reportedly Skimp on Background Checks*, CNET (Aug. 31, 2018), <https://www.cnet.com/news/uber-lyft-reportedly-skimp-on-background-checks/> (“Uber and Lyft use background screening services that are less expensive than one used by parts of the taxicab industry.”); Devine, *supra* note 89 (“Uber seeks to approve new drivers as quickly as possible to maintain a large workforce and therefore opposes requirements to fingerprint applicants, which can add weeks to the onboarding process.”).

<sup>196</sup> *See infra*, note 192 and accompanying text.

<sup>197</sup> *Uber and Lyft: Fingerprint-Based Background Checks Essential to Assure Public Safety*, INTERNATIONAL BIOMETRICS + IDENTITY ASSOCIATION 5, <https://www.ibia.org/download/datasets/3538/8.16%20Uber%20and%20fingerprint%20background%20checks.pdf>.

<sup>198</sup> Devine, *supra* note 89.

<sup>199</sup> *Next Generation Identification (NGI)*, FBI.GOV, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi> (“The CJIS Division implemented a new fingerprint-matching algorithm that improved matching accuracy from 92 percent to more than 99.6 percent.”).

Uber and Lyft are not companies with limited resources. Uber employs over ten thousand people<sup>200</sup> and Lyft is situated quite similarly with five thousand to ten thousand employees.<sup>201</sup> Uber and Lyft both went public in 2019 and have experienced deep losses since.<sup>202</sup> Yet, both companies project to turn a profit within the next few years<sup>203</sup> and receive significant capital from investors.<sup>204</sup> For companies with so many resources, it is hard to imagine why in-person interviews are not utilized in their hiring processes.

Safr, an app that entered the TNC market in 2017, was introduced as a ridesharing option that is safer for women.<sup>205</sup> Unlike Uber and Lyft, Safr implemented in-person interviews as part of its screening process for new drivers.<sup>206</sup> The main reason why Uber and Lyft utilize third-parties for background checks is because they are much more efficient than if the companies were to conduct them on their own,<sup>207</sup> but perhaps Safr recognized that safety trumps efficiency. Yet, it is important to acknowledge that there are some challenges with this approach. First, in-person

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<sup>200</sup> Uber Overview, LINKEDIN, <https://www.linkedin.com/company/uber-com/about/>.

<sup>201</sup> Lyft Overview, LINKEDIN, <https://www.linkedin.com/company/lyft/about/>.

<sup>202</sup> Andrew J. Hawkins, *Lyft is Still Losing a Ton of Money, but it Claims Profit is Within Reach*, THE VERGE (Oct. 30, 2019), <https://www.theverge.com/2019/10/30/20940450/lyft-q3-earnings-loss-revenue-2019> (“Uber and Lyft, which both went public this year, have set records for the amount of money lost in the run-up to their respective IPOs.”); *Uber Posts \$5.2 Billion Loss and Slowest Ever Growth Rate*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/2019/08/08/technology/uber-earnings.html>.

<sup>203</sup> Sherisse Pham, *Uber Will Take ‘Years’ to Make a Profit, CTO Says*, CNN BUSINESS (July 9, 2019), <https://www.cnn.com/2019/07/09/tech/uber-profit-thuan-pham/index.html> (“Uber will take at least ‘a few years’ to become profitable, according to one of the ride hailing firm’s top executives.”); Cathy Bussewitz, *Lyft Loses Money Again but Eyes Profits in about 2 Years*, WASH. POST (Oct. 30, 2019), [https://www.washingtonpost.com/business/technology/lyft-loses-money-again-but-eyes-profits-in-about-2-years/2019/10/30/942760b0-fb51-11e9-9e02-1d45cb3dfa8f\\_story.html](https://www.washingtonpost.com/business/technology/lyft-loses-money-again-but-eyes-profits-in-about-2-years/2019/10/30/942760b0-fb51-11e9-9e02-1d45cb3dfa8f_story.html) (“On the bright side, Lyft’s executives emphasized they believe the company will turn a profit in the fourth quarter of 2021, a year earlier than they had previously projected.”).

<sup>204</sup> Jason D. Rowley, *How Fierce Competition Shaped Uber And Lyft’s Fundraising Strategy*, CRUNCHBASE (Dec. 13, 2018), <https://news.crunchbase.com/news/how-fierce-competition-shaped-uber-and-lyfts-fundraising-strategy/>; Eliot Brown, *Uber, Lyft IPOs Might Lead to Higher Fares*, THE WALL STREET JOURNAL (Apr. 22, 2019), <https://www.wsj.com/articles/why-the-uber-lyft-ipos-may-lead-to-higher-fares-11555925401> (“Uber and Lyft have battled each other for years in a price war that has wildly undercut taxicab fares, thanks to billions of dollars in venture capital that subsidize the lower prices and support the companies’ broad losses.”).

<sup>205</sup> Abbi Matheson, *There’s an All-Female Ride-Sharing App Called Safr in Boston*, BOSTON NEWS (Mar. 2, 2017), <https://www.bostonmagazine.com/news/2017/03/02/safr-ride-sharing-boston/>.

<sup>206</sup> Mimi Montgomery, *This New App Wants to Make Ride-Sharing Safer for Women*, WASHINGTONIAN (Oct. 8, 2018), <https://www.washingtonian.com/2018/10/08/this-new-app-wants-to-make-ride-sharing-safer-for-women/>.

<sup>207</sup> Devine, *supra* note 89.

interviews would be much more feasible in cities rather than in rural areas. Next, Safr is an application marketed toward women in cities like Washington D.C.,<sup>208</sup> which is a smaller client base than all ride-sharing users throughout the country. Finally, in-person interviews would require TNCs to hire more employees in the areas served by Uber and Lyft, which is essentially everywhere.

If in-person interviews were required in New Jersey only, it could increase the safety of TNCs in the state without the need for so many resources. If successful in New Jersey, Uber and Lyft could implement in-person interviews in their most popular cities in phases; this would require less resources up front because the companies would not need to hire as many employees than if interviews were to be implemented everywhere at once. It also would not be the first time that Uber has implemented a new safety feature in phases.<sup>209</sup> If a brand-new start-up has the resources to conduct in-person interviews in a populous city like Washington, D.C., it follows that the two most popular TNCs could do the same in New Jersey.

### 3. Require TNCs to Make Driver Incident Reports Publicly Available

As discussed in Part II. B., the Transportation Network Company Safety and Regulatory Act prescribes that the New Jersey Motor Vehicle Commission has the right to inspect records held by TNCs in regard to complaints or investigations against drivers.<sup>210</sup> While Uber has a serious crime incident team,<sup>211</sup> these incidents are not immediately reported to the public. Yet, the decision by Uber to release its incident reports from 2017 and 2018<sup>212</sup> was a major step in the right direction despite the fact that the information was only made publicly available nearly two years since at

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<sup>208</sup> Montgomery, *supra* note 206.

<sup>209</sup> Shankland, *supra* note 156 (“Uber tested the ‘verify your ride’ PIN system in seven US cities starting in December, but it’s now becoming available for all riders in the US and Canada. . .”).

<sup>210</sup> N.J. Stat. § 39:5H-25 (2019).

<sup>211</sup> Shannon Bond, *When Things Go Wrong at Uber: Inside its Serious Incident Team*, FINANCIAL TIMES (Dec. 28, 2018), <https://www.ft.com/content/3de6d6e8-034c-11e9-99df-6183d3002ee1>.

<sup>212</sup> Saba, *supra* note 179.

least some of the incidents were initially reported. Uber’s recent transparency is commendable, especially since the TNC has vowed to release incident reports every two years.<sup>213</sup> Prior to the release of Uber’s report, incident report information was not readily available to the public and the media; it was only available to New Jersey officials.<sup>214</sup> While two years is a fairly lengthy period of time, there are some risks to allowing the media and the public immediate access to TNC incident reports. First, there is the risk of false or mistaken complaints against drivers. If TNCs like Uber were required to immediately share incident reports with riders before independently investigating them first, there is the risk that false or mistaken complaints could impact an innocent driver. Further, the incidents are not *completely* concealed; the New Jersey MVC still has access to the reports.

Yet, TNCs are really the only ones that have “access [to] information regarding safety violations and incidents with drivers.”<sup>215</sup> Embodying these concerns, a New Jersey legislator remarked in 2017, “[w]e can do better.”<sup>216</sup> He also expressed a commitment to fixing New Jersey laws with subsequent legislation.<sup>217</sup> Instead of relying on Uber to release safety incident reports at its own leisure, New Jersey should require that all TNCs in the state release their safety incident reports on an annual or bi-annual basis. This will ensure that Uber actually releases its safety incident reports, and will require other TNCs like Lyft to do the same. Part of staying safe is staying informed, and it is impossible for riders to protect their own safety without access to all of the information on the strangers they are trusting to drive them. In order to “do better,” New Jersey must ensure that this information is available to its citizens on a consistent basis.

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<sup>213</sup> Garcia, *supra* note 3 (“The company says it plans to release a safety report every two years.”).

<sup>214</sup> Brodesser-Akner, *supra* note 39.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

#### 4. Require TNC Drivers to Disable Vehicle Child Safety Lock Features

This suggestion is perhaps the most invasive of driver privacy, as it dictates how a driver may or may not operate his or her own vehicle. Yet, it is something that New Jersey could regulate fairly easily. The Transportation Network Company Safety and Regulatory Act already requires that TNC driver's personal vehicles be inspected prior to permitting the driver-applicant to log onto the TNC network, and drivers are required to maintain valid inspection certificates of approval.<sup>218</sup> If New Jersey required that all child-lock features be disabled on drivers' personal vehicles, it would not be burdensome for the already-implemented inspection process to include a certification that a driver-vehicle does not possess child safety lock capabilities.

It is true that being an TNC driver is usually a part-time occupation; TNC drivers use their vehicles for purposes other than ridesharing. It is fair to assume that some, if not many, TNC drivers also have young children. Yet, the excessive nature of this regulation is better understood when it is considered alongside the fact that Sami Josephson was trapped in her kidnapper's vehicle on the night she was murdered because the child safety locks had been engaged.<sup>219</sup> Even with the concession that the man who murdered Josephson was not her actual Uber driver, it does not detract from the fact that Uber drivers are also capable of trapping riders in their personal vehicles. In fact, in July 2019, a writer's tweet went viral as a safety tip for TNC riders when she acknowledged that she checks for child safety locks every time she enters an Uber vehicle.<sup>220</sup> Additionally, as a reaction to increased crimes against women passengers travelling in taxis, some jurisdictions in other countries have enacted legislation barring child safety locks in the taxicab

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<sup>218</sup> N.J. Stat. § 39:5H-22 (2017).

<sup>219</sup> Dickson, *supra* note 122.

<sup>220</sup> Graham Rapier, *A Writer's Surprisingly Simple Trick for Staying Safe in a Lyft Has Gone Viral. Here's What You Need to Know*, BUSINESS INSIDER (Jul. 8, 2019), <https://www.businessinsider.com/uber-lyft-viral-safety-tip-to-check-for-child-lock-2019-7>.

industry.<sup>221</sup> Child safety locks are an important feature for parents of young children to keep them safely inside the car; but child safety locks have no real purpose in TNC vehicles. At the risk of diminishing the autonomy of some drivers, a requirement in New Jersey that all child safety lock features in TNC vehicles be disabled is a severe, but necessary step.

#### V. The Need for Regulation to Protect Riders from Driver Impersonators

Unfortunately, the tragic murder of Sami Josephson has not been the only incident involving TNC driver impersonators; in fact, there have been many. Just as the Transportation Network Company Safety and Regulatory Act is an important first step in the regulation of TNCs in New Jersey, Sami's Law will prove to be an integral first step in preventing similar tragedies like the one experienced by Josephson's family. While Sami's Law has offered solutions to established concerns, it has also highlighted new concerns that require their own creative solutions.

##### A. Noteworthy Incidents

In July 2018, Elizabeth Suarez waited for her Uber in Las Vegas.<sup>222</sup> When a car approached her, she asked the driver if he was waiting for Liz.<sup>223</sup> He responded that he was.<sup>224</sup> Yet, the driver took a different route, turned up the music, and ignored Ms. Suarez's questions while her real driver repeatedly called her cell phone.<sup>225</sup> Ms. Suarez realized too late that she was not in an Uber; the imposter demanded her wallet, her phone, and all of her possessions.<sup>226</sup> Unfortunately, others have been subject to far worse. In 2017, Carla Westlund was raped by a Los Angeles man after

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<sup>221</sup> *Cabs to Disable Child Locks by January 16*, THE TIMES OF INDIA (Jan. 10, 2019), <https://timesofindia.indiatimes.com/city/bengaluru/cabs-told-to-disable-child-locks-by-january-16/articleshow/67480353.cms>.

<sup>222</sup> Healy, *supra* note 125.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

she mistook his car for her Uber and fell asleep in the back.<sup>227</sup> In 2018, Nicholas Morales was charged with raping Ms. Westlund and six other women while impersonating TNC drivers.<sup>228</sup>

Moreover, in June 2019, “Riverdale” star Lili Reinhart warned her fans to be careful when using TNC applications after she was lured into a car by someone who posed as an Uber driver.<sup>229</sup> Luckily, Ms. Reinhart did not enter the car once she realized that it did not have any decals or other markings.<sup>230</sup> But, according to law enforcement descriptions of some assaults, some TNC driver impersonators not only lure people to their cars, but “even hang rideshare decals in their windows.”<sup>231</sup> While Sami’s Law will certainly protect TNC riders in situations where driver-impersonators do not possess any decals or markings, more is needed to protect passengers from those that do. Certain measures, such as the use of barcodes, are certainly valid and important measures; but it remains possible that riders will naively trust an Uber or Lyft decal instead of taking the time to stand and scan a sticker on a car.<sup>232</sup> The measures in Sami’s Law are only effective if properly followed; in a society where efficiency is sought after at all costs, it remains uncertain whether they will be.

## B. Next Steps

### 1. Imposing Penalties on Driver-Impersonators

If you do a quick Google search of “Uber decals” or “Lyft decals,” an abundance of pages appear that purport to sell TNC illuminated signs and decals. It is not difficult for an individual to purchase an Uber or Lyft decal, put it on his or her car, drive to a busy area at nighttime, and

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<sup>227</sup> *Id.*

<sup>228</sup> Healy, *supra* note 125.

<sup>229</sup> Tyler McCarthy, ‘Riverdale’ Star Lili Reinhart Warns Fans about Rideshare Imposters After Scary Airport Incident, FOX NEWS (June 3, 2019), <https://www.foxnews.com/entertainment/riverdale-lili-reinhart-rideshare-imposter>.

<sup>230</sup> *Id.*

<sup>231</sup> Healy, *supra* note 125.

<sup>232</sup> This is especially true when one considers that at least some TNC passengers are inebriated. See *supra* note 116.

convince someone to enter the car. In fact, in high-traffic areas like airports, there are instances where non-registered drivers target travelers and pose as registered drivers.<sup>233</sup> It is not difficult to pose as an TNC driver; but in order to protect citizens, it should be .

In New Jersey, it is illegal to impersonate a police officer or a public servant.<sup>234</sup> There are also penalties in New Jersey for impersonating certain officials, like emergency medical technicians (EMTs).<sup>235</sup> While criminalizing the impersonation of TNC drivers would be an overreaction, the fact that individuals have successfully impersonated TNC drivers still suggests that something more should be done. Just as impersonating an EMT in New Jersey comes with the threat of penalties, so too should the act of impersonating a TNC driver. TNC driver impersonation is a unique problem that has accompanied unique new technology; perhaps it requires a unique solution.

## 2. Preventing Replication of TNC Car Decals

In addition to the imposition of penalties and fines on TNC impersonators, New Jersey should impose fines on businesses that replicate TNC decals. Under Sami's Law, New Jersey possesses at least some degree of regulation over TNC decals; this regulatory power should be extended so that New Jersey may penalize businesses that make it possible for individuals to impersonate TNC drivers. Additionally, since the New Jersey MVC possesses the responsibility of issuing placards to TNC drivers, any individual who replicates the placards should be subject to a penalty or fine.<sup>236</sup> Ultimately, there is no valid reason why anyone except a registered TNC driver should be in possession of a TNC decal or placard.

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<sup>233</sup> Gaby Del Valle, *Fake Uber Drivers Are Illegally Luring Travelers at LaGuardia, JFK*, GOTHAMIST (Oct. 24, 2016), <https://gothamist.com/news/fake-uber-drivers-are-illegally-luring-travelers-at-laguardia-jfk>.

<sup>234</sup> N.J. Stat. § 2C:28-8 (2019).

<sup>235</sup> N.J.A.C. 8:40A-7.1(a), <https://www.nj.gov/health/ems/documents/reg-enforcement/njac840ar.pdf>.

<sup>236</sup> Kanzler, *supra* note 137.

## VI. Conclusion

In New Jersey, citizens face safety risks every time they enter the car of a TNC driver. Uber and Lyft have essentially regulated themselves within New Jersey, and this has left New Jersey legislation with critical gaps and oversights. TNCs have been able to structure themselves so that they are able to deflect liability for actions of their drivers, and New Jersey should not allow TNCs to structure the state's legislation as well. In light of persistent safety incidents involving TNC drivers in New Jersey and throughout the nation, more is required to protect New Jersey citizens from acts of TNC drivers and those that impersonate them. New Jersey law as it stands does not adequately balance the need for the safety of citizens against the desire to keep TNCs in New Jersey.