

# NEED A RIDE? UBER: THE TRENDY CHOICE THAT COULD TURN THREATENING

*Emily L. Dyer\**

## TABLE OF CONTENTS

INTRODUCTION .....	240
I. REVOLUTIONIZING THE TRANSPORTATION INDUSTRY: AN INTRODUCTION TO TRANSPORTATION-NETWORK COMPANIES .....	241
II. UBER DRIVERS REJOICE! HOW NEVADA EVENTUALLY LEGALIZED TRANSPORTATION-NETWORKING COMPANIES .....	243
III. WITH GREAT LEGALIZATION COMES GREAT RESPONSIBILITY: SAFETY CONCERNS FALL THROUGH THE CRACKS .....	246
A. <i>Different Requirements for Essentially the Same Service</i> .....	247
B. <i>What Have Uber Drivers Done?</i> .....	252
IV. NEVADA'S UNIQUE POPULATION DESERVES SAFE RIDES FROM SAFE DRIVERS .....	254
A. <i>Uber Driver Background Checks Should Require     Fingerprinting</i> .....	255
B. <i>Video Recording in Vehicles Can Protect Both Drivers and     Passengers</i> .....	258
1. <i>Constitutional problems with cameras in Uber cars</i> .....	261
C. <i>Safety-Alert Buttons Should Be Available on the Uber App</i> .....	266
V. UBER HAS THE MONEY, SO WHAT'S STOPPING IT FROM IMPLEMENTING THESE SUGGESTIONS? .....	268
CONCLUSION .....	271

---

\* Juris Doctor Candidate, May 2017, William S. Boyd School of Law, University of Nevada, Las Vegas. I would like to thank my family and closest friends for their support and encouragement: Mom, Dad, Josh, Adam, Rachel, Sydney, Nikhail, Sarah, Cody, Stefany, Chelsea, Adrienne, Kristen, Yasnai, Brad, Chase, Taylor, and Mackenzie. Additionally, this note would not have been possible without the guidance of Professor Rebecca L. Scharf and the assistance of the entire Volume 17 staff of the Nevada Law Journal. Thank you.

## INTRODUCTION

Imagine this all-too-common scenario: almost every Saturday night, a group of girlfriends take a taxi to their favorite Las Vegas bar. It is a routine they rely on with confidence. But one night, a member of the group starts to feel sick and decides to head home early. Not wanting to ruin the other girls' fun, she reassures them she will just grab a cab home—no worries! As she walks out of the bar and begins to look for a cab, she realizes there are no yellow cars in sight. After some time, she remembers a friend gave her a “free ride” code for Uber. She downloads the app, inputs the code, and finds a car just a few blocks away. She sighs with relief as the car pulls up in front of her. While her mind is preoccupied with her queasy stomach, she jumps in, assuming that the car is the Uber she ordered. Like too many around the country recently, this girl did not make it home safe and sound.

Now rewind back to the moment before she jumped into a stranger's car and ask yourself: Would you want your best friend to enter a barely marked car driven by someone who committed a sexual offense or whose dismissed murder charge slipped through the cracks of a commercial background check? Would you want your mother to get into a stranger's car whose fingerprints are not documented, or with a driver who could have created a false identity, now with the ability to disappear easily without a trace? How about your daughter, sister—or even yourself? The presumption of a safe and predictable cab ride is fleeting when you enter an unmarked, private car, potentially driven by an insufficiently screened driver, with no safeguards available during the ride. This story is all too real, as countless accusations, charges, and convictions of Uber drivers continue to occur all around the world.

If the legislators, regulators, and private companies at the forefront of this issue continue to fail to create strict safety standards, the less attractive Uber becomes.<sup>1</sup> But if Nevada applies to Uber its pre-existing taxi provisions, with the eventual implementation of safety measures like fingerprint background checks, SOS buttons, and cameras, passengers could have the confidence to fully utilize Uber's many benefits.

Uber will surely upset the taxicab monopoly and will change the outdated practice of always taking taxicabs in Nevada, but regardless of Uber's benefits, protecting citizen safety must be paramount. Part I of this note introduces how transportation-networking companies have changed the transportation market. Part II highlights Uber's long journey to legality in Nevada and the public safety concerns that Nevada's regulations have failed to tackle. Part III addresses

---

<sup>1</sup> NAT'L ASS'N OF PROF'L BACKGROUND SCREENERS, BACKGROUND SCREENING—PAST, PRESENT AND FUTURE 2–3, <https://www.omnidataretrieval.com/docs/industrynews/HistoryBackgroundScreening.pdf> [<https://perma.cc/4EM2-TY99>] (“[N]egative publicity associated with negligent hiring—especially as the result of a less than thorough background check—can devastate the very foundation of a trusted organization.”) (last visited Nov. 4, 2016).

background check standards for transportation-network companies in Nevada in comparison to Nevada taxicab standards. Part IV discusses three possible solutions to help counter the current lax requirements in Nevada. Finally, Part V considers the monetary realities of the suggestions presented in Part IV.

I. REVOLUTIONIZING THE TRANSPORTATION INDUSTRY: AN INTRODUCTION TO TRANSPORTATION-NETWORK COMPANIES

It is nearly impossible to go a day without using modern technology. Since the invention of the smartphone, users have become accustomed to an almost instantaneous answer to any problem.<sup>2</sup> And while traditional means of transportation have become more convenient, the recent combination of transportation and technology has revolutionized daily routines and furthered the need for instant convenience.<sup>3</sup> However, this combination can be flawed; with an increased desire for companies to stay competitive and meet growing demand, a gap in user safety becomes inevitable absent adequate regulations and protections.

The California Public Utilities Committee first coined the name “transportation-networking company” (“TNC”).<sup>4</sup> A TNC is “an organization . . . that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles.”<sup>5</sup> Recognizing this new service—by hosting open discussions and developing regulations—the committee hoped to ensure public safety while encouraging innovation and convenience.<sup>6</sup>

The recent popularity of sharing economies paired with simple and convenient smartphone applications made this service desirable to millennials.<sup>7</sup> TNCs connect customers with nearby drivers through a visual application that provides a price range to the desired destination, information on the driver and his

---

<sup>2</sup> See generally Om Malik, *The Long History of the Fight Against Uber*, NEW YORKER (June 26, 2015), <http://www.newyorker.com/tech/elements/the-long-history-of-the-fight-against-uber> [<https://perma.cc/Q7R8-TH5J>].

<sup>3</sup> See generally MARKETLINE, UBER TECHNOLOGIES INC.: CALLING A CAB FOR THE TAXI INDUSTRY? 8 (2014).

<sup>4</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). The California Public Utilities Company was assembled shortly after the first three TNCs officially launched in San Francisco in 2012. *Id.* at 4.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> See Christopher Koopman et al., *The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change* 3 (Mercatus Ctr., Working Paper, 2014). See generally Ashley Stahl, *A Millennial Manifesto: Why Gen Y Will Change the World*, FORBES (Apr. 28, 2016, 10:00 AM), <http://www.forbes.com/sites/ashleystahl/2016/04/28/a-millennial-manifesto> [<https://perma.cc/4L7D-BS3B>].

or her vehicle, and the medium to pay.<sup>8</sup> Additionally, drivers use their own vehicles, which is the first of many cost advantages over traditional transportation models.<sup>9</sup> Uber's stated goal of creating accessible transportation in order to increase users' opportunities to "connect" with their city<sup>10</sup> is dramatically changing the transportation norm because Uber is cost effective and easy to use.

Two main technology-enabled transportation models currently exist: ridesharing and ridesourcing.<sup>11</sup> TNCs provide the ridesourcing services previously described. Ridesharing is essentially a carpool service with the assistance of a smartphone application.<sup>12</sup> In the 1980s and 1990s, ridesharing dramatically increased in popularity, and by 2004, technology-enabled ridesharing services became available.<sup>13</sup> Ridesharing uses a technology platform to group travelers in a private vehicle, all with a similar destination, with the goal of saving travel costs, reducing emissions, and improving traffic congestion.<sup>14</sup> Ridesharing faces similar concerns as ridesourcing, including regulations, insurance, safety, and lack of customer awareness.<sup>15</sup> But in contrast, ridesourcing does not provide the same environmental benefits as ridesharing, as a driver's motivation to pick up riders is based on fare income.<sup>16</sup> Thus, TNC drivers are incentivized to make any trip available rather than providing incidental rides to pre-planned locations.<sup>17</sup> TNCs' spontaneity and convenience quickly became more appealing and user friendly than ridesharing. In sum, TNCs appear to be more similar to traditional taxi services with the ridesharing benefits of a smart phone application used to quickly arrange individualized rides, or even to carpool.<sup>18</sup> While ridesourcing companies remain in limbo in the debate of what type of service

---

<sup>8</sup> See John G. Browning, *Conning the IADC Newsletters: Emerging Technology and Its Impact on Automotive Litigation*, 81 DEF. COUNS. J. 83, 84 (2014); see also Lisa Rayle et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco 2* (Univ. of Cal. Transp. Ctr., Working Paper No. UCTC-FR-2014-08, 2014).

<sup>9</sup> See Malik, *supra* note 2. This note will not focus on the cost-effective benefits of transportation-networking companies, but presumably this benefit adds to Uber's overall appeal.

<sup>10</sup> *The Uber Story*, UBER, <https://www.uber.com/our-story> [<https://perma.cc/E68V-RV99>] (last visited Nov. 5, 2016).

<sup>11</sup> See Rayle et al., *supra* note 8.

<sup>12</sup> *Id.*

<sup>13</sup> See SUSAN SHAHEEN, U.C. BERKELEY TRANSP. SUSTAINABILITY RES. CTR., *TRANSPORTATION NETWORK COMPANIES AND RIDESOURCING: COMPARING TAXI AND TNC/RIDESOURCING TRIPS AND USER CHARACTERISTICS IN SAN FRANCISCO* (Nov. 4, 2014).

<sup>14</sup> Rayle et al., *supra* note 8, at 2.

<sup>15</sup> MOBILITY INV. PRIORITIES, REAL-TIME RIDESHARING, <http://mobility.tamu.edu/mip/strategies-pdfs/travel-options/technical-summary/real-time-ridesharing-4-pg.pdf> [<https://perma.cc/82P2-G9R7>] (last visited Nov. 5, 2016).

<sup>16</sup> Rayle et al., *supra* note 8.

<sup>17</sup> Donald N. Anderson, "Not Just a Taxi"? *For-Profit Ridesharing, Driver Strategies, and VMT*, 41 TRANS. 1099, 1100-01 (2014) (describing characteristics of TNC services).

<sup>18</sup> See generally Rayle et al., *supra* note 8; *Announcing UberPool*, UBER NEWSROOM (Aug. 5, 2014), <https://newsroom.uber.com/announcing-uberpool> [<https://perma.cc/W3V4-2R67>].

they provide and what type of regulations are required, users and TNCs continue to push for their service to be executed everywhere because the benefits are extremely desirable to the current technologically-advanced generation.<sup>19</sup>

There are multiple TNCs in the market, but this note specifically focuses on Uber—the world’s largest TNC.<sup>20</sup> Uber incorporated in Delaware in 2010 and serves more than eight million users worldwide.<sup>21</sup> Uber’s 160,000-plus U.S. drivers<sup>22</sup> pride themselves on being independent contractors for a technology company, not a transportation company.<sup>23</sup> With a pre-money valuation of \$17 billion as of July 2014, Uber’s impressive growth is attributed to the application’s convenience and reliability.<sup>24</sup> If Uber plans to continue providing thousands of people with flexible employment opportunities and convenient rides, it must put customer safety at the top of its priority list.

## II. UBER DRIVERS REJOICE! HOW NEVADA EVENTUALLY LEGALIZED TRANSPORTATION-NETWORKING COMPANIES

A coy and mischievous smile emerges as you see the flashing lights, hear the cliché sound of coins dropping into the metal slot machine tray, and feel the warm desert air when a friend suggests a trip to Las Vegas. But once you arrive in the city of neon lights, you are faced with a transportation nightmare. It may begin with the large taxi line that greets your arrival at McCarran Airport, or when you try to arrange a ride to a club on the strip that is just a little too far for a woman in heels to reach on foot.

With all of Las Vegas’s perks, transportation is without a doubt one of its pitfalls. When traveling to New York City, for example, you can choose between a taxi, bus, subway, or boat to get to your destination; but in Las Vegas, a taxi is your only realistic option. Without a variety of public transportation alternatives,<sup>25</sup> locals and tourists alike craved the services provided by alternative-transportation companies. Likewise, TNCs found the idea of setting up shop in Nevada highly desirable because it is one of the most lucrative trans-

---

<sup>19</sup> See Rayle et al., *supra* note 8, at 1.

<sup>20</sup> Scott Austin et al., *The Billion Dollar Startup Club*, WALL ST. J. (Feb. 18, 2015), <http://graphics.wsj.com/billion-dollar-club> [<https://perma.cc/BEN6-K4R5>].

<sup>21</sup> ELEC. PRIVACY INFO. CTR., COMPLAINT, REQUEST FOR INVESTIGATION, INJUNCTION, AND OTHER RELIEF SUBMITTED BY THE ELECTRONIC PRIVACY INFORMATION CENTER 2–3 (2015).

<sup>22</sup> Ellen Huet, *Uber’s Ever-Renewing Workforce: One-Fourth of Its Current U.S. Drivers Joined Last Month*, FORBES (Jan. 22, 2015, 4:14 PM), <http://www.forbes.com/sites/ellenhuet/2015/01/22/uber-study-workforce> [<https://perma.cc/3AN3-C8PE>].

<sup>23</sup> See *O’Connor v. Uber Techs., Inc.*, 82 F. Supp. 3d 1133, 1137 (N.D. Cal. 2015).

<sup>24</sup> MARKETLINE, *supra* note 3, at 7, 9.

<sup>25</sup> In addition to taxis, there are bus routes and a monorail available.

portation markets, with over forty million annual visitors and more than \$300 million in annual taxi company revenue.<sup>26</sup>

Since the violent taxicab wars in Southern Nevada in 1969,<sup>27</sup> concern for safe tourism and general public wellbeing has driven the discussion toward stricter transportation regulations.<sup>28</sup> However, the unfamiliarity and mystery of Uber quickly revived those similar safety concerns. Amid much controversy, Uber launched its application in Nevada on October 24, 2014.<sup>29</sup> To placate the taxicab and transportation authorities, Uber focused its service on residential customers, avoiding the Las Vegas Strip and the airport.<sup>30</sup> When Uber first launched, it was not regulated, and the issue of public safety quickly became apparent.<sup>31</sup> Fewer than five days after Uber launched its application, the Nevada Transportation Authority (“NTA”) and the state Attorney General’s office sought court orders from several district judges around the state to halt Uber’s operations in Nevada.<sup>32</sup> While some judges ordered the company to stop operating until a hearing could be scheduled, others found no immediate public safety concerns.<sup>33</sup> After forum-shopping accusations and multiple lawsuits were filed, on November 25, 2014, Washoe County District Judge Scott Freeman issued a statewide injunction banning Uber for failing to follow state transportation regulations.<sup>34</sup>

Throughout 2015, Uber, state regulators and legislators, the NTA, and countless other affected parties worked together to achieve legalization in Nevada.<sup>35</sup> While the journey came with many hurdles—namely the failure of Sen-

<sup>26</sup> L.V. CONVENTION & VISITORS AUTH., 2015 LAS VEGAS YEAR-TO-DATE EXECUTIVE SUMMARY (2015); *see also* NEV. TAXICAB AUTH., TAXICAB INDUSTRY STATISTICS: SEPTEMBER 2015, at 7 (2015).

<sup>27</sup> Richard N. Velotta, ‘Taxi Wars’ of ‘60s Predate Today’s Stand-off with Uber, L.V. REV.-J. (Nov. 29, 2014, 8:57 PM), <http://www.reviewjournal.com/news/traffic-transportation/taxi-wars-60s-predate-today-s-stand-uber> [<https://perma.cc/KK4K-S7AK>].

<sup>28</sup> *Provides for the Permitting and Regulation of Transportation Network Companies: Hearing on S.B. 439 Before the S. Comm. on Commerce, Labor & Energy*, 2015 Leg., 78th Sess. (Nev. 2015) (statement of Richard Bryan, Frias Transp. Mgmt. Co).

<sup>29</sup> Richard N. Velotta, *Uber Begins Ride-Sharing Service in Vegas, Reno*, L.V. REV.-J. (Oct. 24, 2014, 6:19 AM), <http://www.reviewjournal.com/news/las-vegas/uber-begins-ride-sharing-service-vegas-reno> [<https://perma.cc/TNF6-ELSK>].

<sup>30</sup> *See id.*

<sup>31</sup> Kimberly Pierceall, *Judge Denies Order to Stop Uber in Nevada*, CNSNEWS.COM (Oct. 29, 2014, 6:34 PM), <http://cnsnews.com/news/article/judge-denies-order-stop-uber-nevada> [<http://perma.cc/HA9A-6Q3M>].

<sup>32</sup> *Id.*

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

<sup>34</sup> Richard N. Velotta, *Uber Temporarily Suspends Operations in Nevada*, L.V. REV.-J. (Nov. 27, 2014, 12:33 AM), <http://www.reviewjournal.com/news/nevada/uber-temporarily-suspends-operations-nevada> [<https://perma.cc/VV97-6G2H>].

<sup>35</sup> “We remain committed to working with Nevada’s leaders to create a permanent regulatory framework that affords Nevadans the flexibility and innovation offered by Uber,” stated Uber spokeswoman, Eva Behrend, in response to the court’s ruling. Eric M. Johnson, *Rides-*

ate Bill 439 in April<sup>36</sup> and peaceful protests by members of taxi unions in May<sup>37</sup>—TNCs finally crossed the finish line. On May 29, 2015, Governor Brian Sandoval signed Assembly Bills 175 and 176, which, inter alia, set up the regulatory framework, imposed a 3 percent fare tax, and put TNCs under the jurisdiction of the NTA.<sup>38</sup> On September 11, 2015, fewer than three months later, the NTA adopted the final regulations and began to review TNC applications.<sup>39</sup> Irrespective of some Nevada counties' requirements of local business licenses, Uber officially became active in Nevada on September 15, 2015.<sup>40</sup>

Uber's limited time in Nevada since legalization has come with great successes and great struggles. By early 2016, Nevada had approximately 19,000 TNC drivers.<sup>41</sup> In January 2016, the Reno-Tahoe Airport began to allow TNCs to pick up customers<sup>42</sup>—a major victory for Uber, since airport transactions are a major source of taxi revenue. However, some unfortunate incidents with TNCs have occurred since they began operating legally in Nevada. For example, an individual identifying as an Uber driver solicited a plain-clothes police officer after assuring this potential passenger that he did not need the Uber app to pay the \$20 ride fare.<sup>43</sup> In mid-2016, a passenger who was not scheduled

---

*haring Firm Uber Suspends Operations in Nevada*, REUTERS (Nov. 27, 2014, 7:07 AM), <http://www.reuters.com/article/us-usa-nevada-ridesharing-idUSKCN0JB18J20141127> [https://perma.cc/8H7R-43PK].

<sup>36</sup> Sandra Chereb, *Senate Rejects Bill to Allow Ride-Sharing in Nevada*, L.V. REV.-J. (Apr. 15, 2015, 8:26 PM), <http://www.reviewjournal.com/news/nevada-legislature/senate-rejects-bill-allow-ride-sharing-nevada> [https://perma.cc/CE2J-9DAS].

<sup>37</sup> See Richard N. Velotta & Ricardo Torres, *Taxi Drivers Stage Peaceful Protest Against Uber on the Strip*, L.V. REV.-J. (May 29, 2015, 10:13 PM), <http://www.reviewjournal.com/business/taxi-drivers-stage-peaceful-protest-against-uber-the-strip> [https://perma.cc/J8FP-T89F].

<sup>38</sup> See *Taxi Drivers Protest, Governor Signs Ride-Sharing Bill*, NEWS 3 L.V. (May 29, 2015), <http://news3lv.com/archive/taxi-drivers-protest-governor-signs-ride-sharing-bill> [https://perma.cc/9EN7-GUN8]. The first five million dollars collected in each biennium of the three percent tax will go to the Highway Fund, with the remainder going to the state's general fund. STATE OF NEV. GOVERNOR'S FIN. OFFICE, SILVER SAGE REVENUE REPORT AUG. 3, 2016, at 1 (2016).

<sup>39</sup> See *Nevada Board Adopts Regulations for Ride-Hailing Companies*, FOX 5 VEGAS (Nov. 20, 2015, 1:48 PM), <http://www.fox5vegas.com/story/30011003/nevada-board-adopts-regulations-for-ride-hailing-companies> [https://perma.cc/2PCS-3UDU].

<sup>40</sup> See Richard N. Velotta & Ben Botkin, *Uber, Lyft Up and Running, Defy Clark County*, L.V. REV.-J. (Sept. 15, 2015, 6:14 PM), <http://www.reviewjournal.com/news/traffic-transportation/uber-lyft-and-running-defy-clark-county> [https://perma.cc/S8NS-KNPB].

<sup>41</sup> Michelle Rindels, *As Industry Shifts, Las Vegas Cabs Do Some Soul-Searching*, L.V. SUN (Feb. 11, 2016, 2:00 AM), <http://lasvegassun.com/news/2016/feb/11/as-industry-shifts-las-vegas-cabs-do-some-soul-sea> [https://perma.cc/5DKV-EHLM].

<sup>42</sup> See Olivia DeGennaro, *Reno-Tahoe Airport Allows Uber Drivers to Pick People Up, Taxi Drivers React*, NEWS 4 (Jan. 20, 2016), <http://mynews4.com/news/local/reno-tahoe-airport-allows-uber-drivers-to-pick-people-up-taxi-drivers-react> [https://perma.cc/8QLW-MZBD].

<sup>43</sup> Richard N. Velotta, *Transportation Regulators Investigate 2 Incidents Involving Uber Drivers*, L.V. REV.-J. (Oct. 4, 2015, 11:45 AM), [http://www.reviewjournal.com/news/traffic-](http://www.reviewjournal.com/news/traffic-transportation/uber-lyft-and-running-defy-clark-county)

through the app to be picked up allegedly stabbed an Uber driver.<sup>44</sup> In an effort to combat any more hiccups in its history in Nevada, Uber's website offers recommendations and regulations for drivers in Las Vegas, including guidelines such as: "Do not pick up riders directly on the Strip. . . . Do not wait in taxi lines. Do not stage on casino properties. Do not accept cash for rides. Do not give fare quotes or estimates to riders."<sup>45</sup> While Uber users have not reported dangerous incidents in Nevada like those experienced by other users around the country, as of this note's writing, the potential for an Uber horror story may be just around the corner.

### III. WITH GREAT LEGALIZATION COMES GREAT RESPONSIBILITY: SAFETY CONCERNS FALL THROUGH THE CRACKS

Uber's controversial and prolonged evolution in Nevada should have provided Nevada's legislators and regulators ample time to proactively address the countless safety concerns other states faced while legalizing and regulating TNCs.<sup>46</sup> However, the signed assembly bills 175 and 176, and accompanying regulations fall short in safeguarding Nevada's unique customer base, especially compared to Nevada's pre-existing taxi regulations and other jurisdiction's TNC regulations.

When Uber first began operating in Nevada in late 2014,<sup>47</sup> taxi drivers urged TNCs to follow the already-established taxi regulations,<sup>48</sup> because those regulations were designed to protect the unique passengers and transportation market in Nevada.<sup>49</sup> Despite the taxi industry's pleas for equal regulations, Nevada created lax regulations for TNCs, essentially disregarding the state's vio-

---

transportation/transportation-regulators-investigate-2-incidents-involving-uber-drivers [http://perma.cc/DY4F-CDBR].

<sup>44</sup> Parker Collins, *Uber Driver Stabbed in Downtown Las Vegas*, KTNV (Apr. 2, 2016, 10:38 AM), <http://www.ktnv.com/news/uber-driver-stabbed-in-downtown-las-vegas> [https://perma.cc/ZSE9-T225].

<sup>45</sup> *Local Regulations*, UBER L.V., <http://lasvegas.ubermovement.com/local-regulations> [https://perma.cc/SD8V-BTVY] (last visited Nov. 5, 2016).

<sup>46</sup> See Richard N. Velotta, *Taxi Exec Calls Proposed Uber, Lyft Rules a 'Public Safety Disaster'*, L.V. REV.-J. (Aug. 11, 2015, 2:36 PM), <http://www.reviewjournal.com/news/traffic-transportation/taxi-exec-calls-proposed-uber-lyft-rules-public-safety-disaster> [https://perma.cc/TY29-J4VC] ("It appears that Nevada is unable to learn from the misadventures of other states with TNCs.").

<sup>47</sup> Velotta, *supra* note 29.

<sup>48</sup> Velotta, *supra* note 27. See generally *infra* Part III.

<sup>49</sup> Velotta, *supra* note 27 ("Taxi regulations are overseen by the Nevada Taxicab Authority, which was established in 1969 after more than a decade of confrontations among cabdrivers that casino executives feared were getting so violent that they would discourage tourists from coming to Las Vegas.").

lent history with taxicabs, and the present-day news stories and litigation pushing for increased safety measures.<sup>50</sup>

*A. Different Requirements for Essentially the Same Service*

Nevada Assembly Bills 175 and 176 established the background-check requirements for TNC applicants.<sup>51</sup> This section will discuss the background-check requirements for TNC drivers in Nevada in comparison to the requirements for taxi drivers—specifically, eligibility based on past criminal acts and who bears the responsibility for the manner in which the background checks in Nevada are conducted.

When a driver applies to become an Uber driver,<sup>52</sup> the TNC conducts a background check from commercially available criminal-history and sex-offender-registry databases<sup>53</sup> and reviews the applicant's driving record.<sup>54</sup> A driver must be at least nineteen years old, and possess a valid driver's license and a DMV-registered vehicle.<sup>55</sup> An applicant cannot have been found guilty of driving under the influence ("DUI"),<sup>56</sup> nor can the applicant's name appear on a database with sex-offender-registry information, regardless of the time period.<sup>57</sup> The applicant cannot be found guilty of terrorism, an act of violence, a sexual offense, fraud, theft, damage to property, or a felony involving the use of a vehicle in the previous seven years.<sup>58</sup> This section of the signed bills provides the most opportune avenue for the legislature to implement strict standards to protect passengers from potentially dangerous drivers.

While the legislature appointed the NTA to further regulate TNCs, the NTA failed to properly fill in the blanks. The cracks in the regulations are glaring when compared to the requirements of Nevada taxi drivers and to those of TNCs in other states. Nevada taxi companies must follow strict requirements

---

<sup>50</sup> *Id.*; see also *infra* Part III.B. See generally, e.g., *Bos. Cab Dispatch, Inc. v. Uber Techs., Inc.*, No. 13-10769-NMG, 2015 WL 314131 (D. Mass. Jan. 26, 2015); *Manzo v. Uber Techs., Inc.*, No. 13-C-2407, 2014 WL 3495401 (N.D. Ill. July 14, 2014); *Yellow Grp. v. Uber Techs., Inc.*, No. 12 C 7967, 2014 WL 3396055 (N.D. Ill. July 10, 2014).

<sup>51</sup> Assemb. B. 175, 2015 Leg., 78th Sess. § 30 (Nev. 2015); Assemb. B. 176, 2015 Leg., 78th Sess. § 29 (Nev. 2015).

<sup>52</sup> Assembly Bills 175 and 176 provide requirements for the entire state, while counties within in the state have the opportunity to make additional minimal requirements. Assemb. B. 175 § 44(2); Assemb. B. 176 § 44(2).

<sup>53</sup> See *infra* Part IV.A. for more discussion on the important distinction between commercially available databases versus state-run databases used for background checks.

<sup>54</sup> See Assemb. B. 176 § 29. For excessive driving violations, Nevada has a three-year time limit. *Id.* § 29(3)(f). However, this note focuses solely on the issues presented by criminal background—and not driving record—violations.

<sup>55</sup> *Id.* § 29(3)(a)–(c).

<sup>56</sup> *Id.* § 29(3)(h).

<sup>57</sup> *Id.* § 29(3)(j).

<sup>58</sup> *Id.* § 29(3)(i).

when vetting their drivers. An applicant is required to: (1) be a resident of the state for the previous thirty days, (2) have a valid driver's license, (3) provide a physician's certificate to verify the driver has met certain health requirements,<sup>59</sup> (4) list all convictions and pending court cases, (5) take a test to measure ability to read and speak English, (6) get fingerprinted, (7) document child support status, and (8) attend a Driver's Awareness Program.<sup>60</sup> Then, the Nevada Criminal History Repository—a statute-established “filing cabinet” of Nevada criminal history records<sup>61</sup>—runs the applicant's fingerprints through an in-state, criminal-record check, which are then forwarded to the FBI for a more detailed review.<sup>62</sup>

Some of the regulations for taxi drivers, however, do seem more lax than TNCs. For example, a taxi driver cannot have any DUI convictions within the previous three years and cannot have been convicted of any felony within the previous five years.<sup>63</sup> However, taxi regulations provide a catch-all provision eliminating applicants if the NTA finds a driver morally unfit or detrimental to the public.<sup>64</sup> “Morally unfit” or a danger to public safety<sup>65</sup> may include being responsible for an accident resulting in death of or injury to another, being a habitually reckless or negligent driver, frequently violating traffic laws, committing an offense in another state that would have resulted in revocation of a license in Nevada, or being convicted of any sexual or moral turpitude offense.<sup>66</sup> Thus, allowing the NTA more discretion when screening drivers.

Throughout the long journey to TNC legalization, the opposition—mostly taxi companies and taxi unions—disagreed with the significant differences between the two services' background-check requirements.<sup>67</sup> Generally, the NTA did not oppose TNCs in Nevada, but it believed that taxis were regulated for a reason and that TNCs should be subject to the same requirements—in-depth

---

<sup>59</sup> The applicant must obtain a certificate from a licensed physician if found to meet the health requirements established by Federal Motor Carrier Safety Regulation 49 C.F.R. § 391.41. NEV. REV. STAT. § 706.8842 (2015). The Federal Motor Carrier Safety Regulation requires that thirteen health conditions be met, including no history of certain heart and respiratory diseases, no use of Schedule I narcotics, and no diagnosis of alcoholism. 49 C.F.R. § 391.41(b) (2015).

<sup>60</sup> *Driver Permit Requirements*, NEV. TAXICAB AUTH., [http://taxi.nv.gov/Driver\\_Info/Driver\\_Permit\\_Requirements](http://taxi.nv.gov/Driver_Info/Driver_Permit_Requirements) [<https://perma.cc/ES5Q-VSXS>] (last visited Nov. 5, 2016); see also NEV. REV. STAT. § 706.8841 (2015).

<sup>61</sup> *Mission Statement and History*, NEV. DEP'T PUB. SAFETY: GEN. SERVS. DIV., <http://gsd.nv.gov/About/Mission> [<https://perma.cc/J7QK-TVSE>] (last visited Nov. 5, 2016).

<sup>62</sup> See *id.*

<sup>63</sup> *Driver Permit Requirements*, *supra* note 60.

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

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Yellow Checker Star Transportation, Position Statement in Opposition to SB 439 and SB 440, at 7 (Mar. 25, 2015) [hereinafter Position Statement].

background checks, commercial insurance, vehicle-safety standards, and consistent, reasonable, and stable fares and rates.<sup>68</sup>

One major, and concerning, difference lies between the two sets of regulations—namely, the process Uber uses to decide which applicants it considers safe drivers versus the NTA’s long established screening procedure for taxi drivers. The first difference is *who* conducts the background check. Uber uses a third-party company, Checkr, to conduct a commercial background check based on a driver’s name, address, license number and state, and social security number.<sup>69</sup> This process is clearly less rigorous than the NTA’s additional requirement that the Nevada Criminal History Repository and the FBI run an applicant’s fingerprints.<sup>70</sup> While a private company may use databases with similar records, the state’s repository and the FBI database are regulated and provide more secure and accurate archives of a driver’s criminal history.<sup>71</sup>

The second issue is *what* driver’s information is used to conduct a background check. TNC’s commercial background check uses basic personal information to search third-party databases.<sup>72</sup> This check can result in many errors ranging from name misspellings or use of aliases to out-of-date and unverified information.<sup>73</sup> Name-based background checks have a potential error rate of 43 percent, compared to a roughly 1 percent potential error rate with fingerprint background checks.<sup>74</sup> Further, fingerprinting is one of the most important components of any background check regimen because fingerprints are true identifiers and cannot be falsified.<sup>75</sup> The FBI has been the national repository for fingerprints and criminal history since 1924; the accuracy, consistency, and continuity of records are far superior to third-party commercial data searches.<sup>76</sup> TNCs and their supporters counter the effectiveness of fingerprints

---

<sup>68</sup> *Id.* at 1.

<sup>69</sup> CHECKR, <https://checkr.com> [<https://perma.cc/RCM7-43NL>] (last visited Nov. 5, 2016); see Tracey Lien, *Kalamazoo Shootings: Here’s How Uber Does Its Background Checks*, L.A. TIMES (Feb. 22, 2016, 2:26 PM), <http://www.latimes.com/business/technology/la-fi-tn-uber-background-check-20160222-story.html> [<https://perma.cc/4S6F-5ULE>]. Uber previously used a company called Hirease to conduct its background checks. Complaint, at 8, *Doe v. Uber Techs., Inc.*, No. 3:15-CV-04670, 2015 WL 5915994 (N.D. Cal. Oct. 8, 2015) [hereinafter *Doe Complaint*].

<sup>70</sup> *Driver Permit Requirements*, *supra* note 60.

<sup>71</sup> MATTHEW W. DAUS & PASQUALINO “PAT” RUSSO, ONE STANDARD FOR ALL: CRIMINAL BACKGROUND CHECKS FOR TAXICAB, FOR-HIRE, AND TRANSPORTATION NETWORK COMPANY (TNC) DRIVERS 11 (2015); MADELINE NEIGHLY & MAURICE EMSSELLEM, NAT’L EMP’T L. PROJECT, WANTED: ACCURATE FBI BACKGROUND CHECKS FOR EMPLOYMENT 1 (2013).

<sup>72</sup> See *Doe Complaint*, *supra* note 69, at 8.

<sup>73</sup> DAUS & RUSSO, *supra* note 71, at 10.

<sup>74</sup> *Id.* at 86.

<sup>75</sup> *Id.* at 11, 15.

<sup>76</sup> *Id.* at 73–74.

by focusing on the cost, potential inconveniences,<sup>77</sup> and occasional imperfections in the system.<sup>78</sup> Uber promotes the benefits of their three-step background-check process and their driver review function as a sufficient screening mechanism.<sup>79</sup> Ultimately, the numerous reliability benefits and the public confidence behind knowing their driver had a fingerprint background check far exceed any inconvenience to the potential driver or company.<sup>80</sup>

The third issue is *which* criminal records Uber accepts, particularly because a decent percentage would not be acceptable to the NTA. TNC regulations allow convicted sexual offenders to drive for Uber, while taxi regulations explicitly forbid it. For an Uber applicant, there must be at minimum seven years since the applicant's sexual offense conviction before becoming a driver.<sup>81</sup> There may not be much assurance in the review of an applicant's name in a sex-offender database as the background checks review the sex-offender registries maintained by each state.<sup>82</sup> Some states restrict what names are allowed to be posted on sex-offender registries information and 11 percent of sex-offender-registry information has been found to have critical errors,<sup>83</sup> which is likely increased when searches are conducted through unofficial commercial databases. Further, according to Uber's website, information regarding approximately 25 percent of registered sex offenders in California cannot be posted to online registries, significantly reducing the reliability of Uber's background check process.<sup>84</sup> Comparatively, the NTA may choose not to grant licenses to drivers who have committed sexual crimes or moral turpitude offenses, regard-

---

<sup>77</sup> See Curt Woodward, *Uber CEO Says Fingerprint-Based Background Checks Can Be 'Discriminatory'*, BOS. GLOBE (Dec. 1, 2015), <http://www.betaboston.com/news/2015/12/01/uber-ceo-says-fingerprint-based-background-checks-can-be-discriminatory> [https://perma.cc/PL77-93S8].

<sup>78</sup> Uber's blog contains numerous convoluted reasons why their background check requirements are superior to fingerprinting. See *Details on Safety*, UBER NEWSROOM (May 12, 2016), <https://newsroom.uber.com/details-on-safety> [https://perma.cc/GMM8-7ZB2].

<sup>79</sup> *Id.* According to Uber's website, the review function is where "riders rate their experience at the end of every trip, and drivers do the same. Uber regularly reviews that feedback and, through this process, we're able to create and maintain a safe and respectful environment for riders and drivers." *Feedback Is a Two-Way Street*, UBER NEWSROOM (Apr. 23, 2014), <https://newsroom.uber.com/feedback-is-a-2-way-street> [https://perma.cc/HWJ2-YKAH].

<sup>80</sup> DAUS & RUSSO, *supra* note 71, at 6, 74–75.

<sup>81</sup> Assemb. B. 176, 2015 Leg., 78th Sess. § 29(3)(i) (Nev. 2015).

<sup>82</sup> *Id.* § 29(2)(b)(2).

<sup>83</sup> DOUGLAS R. HOFFER, STATE OF VT. OFFICE OF THE STATE AUDITOR, SEX OFFENDER REGISTRY: QUESTIONABLE RELIABILITY WARRANTS ADDITIONAL IMPROVEMENTS 2 (July 14, 2014); see also DAUS & RUSSO, *supra* note 71, at 11.

<sup>84</sup> *Details on Safety*, *supra* note 78; *Sex Offender Registration and Exclusion Information*, STATE CAL. DEP'T JUSTICE: OFFICE ATT'Y GEN., <http://www.meganslaw.ca.gov/sex-reg.aspx?lang=ENGLISH> [https://perma.cc/WGL4-QFXT] (last visited Nov. 5, 2016) ("[A]pproximately 25% of registered sex offenders cannot be posted online by law. Whether public disclosure is permitted is based on the type of sex crime for which the person is required to register.").

less of the time frame with the catch-all regulatory provision.<sup>85</sup> Current TNC regulations are concerning because sex-related crimes, or similar moral turpitude offenses, are crimes that an individual likely does not just commit once, as compared to, for example, a battery.<sup>86</sup> While all sex offenders may not reoffend, the opportunity to have control over a passenger may put the driver in the position to more likely reoffend than if employed in a less-intimate environment. The significant differences in the how strict the regulations for each service are may be one reason for the increased amount of sexually related incidents involving Uber drivers than taxi drivers. The different standards for taxi and Uber drivers are substantial and must be addressed, especially when both are giving rides to the vulnerable population in Nevada, including travelers from all over the world, intoxicated individuals, both tourists and locals. Since the two services do not greatly differ in their main function, the regulations should not be so inconsistent.

Moreover, major cities like New York City and Houston already require fingerprint background checks for Uber drivers.<sup>87</sup> The requirements for drivers in New York City and in Nevada are frighteningly different, even though their consumers are similar, vulnerable tourists. In New York City, a driver must complete a physical examination by a licensed doctor, obtain an upgraded Class E license, take a defensive driver's course, take sex-trafficking-awareness training, pass a drug test, and submit to fingerprinting.<sup>88</sup> Houston requires its TNC drivers to undergo a five-panel drug test, physical examination, warrant check, and fingerprinting with the Texas Department of Public Safety.<sup>89</sup> Cities in Cali-

---

<sup>85</sup> *Driver Permit Requirements*, *supra* note 60.

<sup>86</sup> Presence of the following factors may increase an individual's tendency to commit a sexual assault: "physiological/biological (e.g., imbalanced hormones, being sexually attracted to children); sociocultural (e.g., being exposed to broader social messages supportive of aggression); developmental/environmental (e.g., having witnessed domestic violence); and situational/circumstantial (e.g., having easy access to victims, extreme levels of stress)." CTR. FOR SEX OFFENDER MGMT., FACT SHEET: WHAT YOU NEED TO KNOW ABOUT SEX OFFENDERS 3 (2008); *see, e.g.*, Karen Kersting, *New Hope for Sex Offender Treatment*, 34 MONITOR PSYCHOL. 52 (2003) ("People commit sexual crimes for different reasons . . . . Some are highly predatory, highly psychopathic and have repeated offenses, making them more likely to reoffend."). Further, in California, there is even a state institution specifically for sexual offenders who have completed their sentence, but are still deemed dangerous to the community. *Department of State Hospitals – Coalinga, CA. DEP'T. STATE HOSPS.*, <http://www.dsh.ca.gov/coalinga> [<https://perma.cc/98ME-XQBJ>] (last visited Nov. 5, 2016) ("The fundamental goal of the DSH-Coalinga Sex Offenders Treatment Program is for the individual to acquire pro-social skills and to prevent recurrence of sexual offending.").

<sup>87</sup> Douglas Hanks, *Uber Faces Fingerprinting Fight in Miami-Dade*, MIAMI HERALD (Feb. 25, 2016, 6:44 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article62532202.html> [<https://perma.cc/W8MV-NR62>].

<sup>88</sup> N.Y.C. TAXI & LIMOUSINE COMM'N, DRIVER NEW APPLICATION AND CHECKLIST REQUIREMENTS (PART B) (2016); *TLC License Checklist*, UBER N.Y.C., <http://driveuber.nyc.com/tlc-license-checklist> [<https://perma.cc/FX4S-MZ7R>] (last visited Nov. 5, 2016).

<sup>89</sup> Letter from Christopher Newport, Mayor's Chief of Staff, Houston, Texas, to Honorable Ann Kitchen, Council Member, Austin, Texas (Oct. 15, 2015) (on file with the author).

ifornia and Massachusetts, Austin, Chicago, and Atlanta are all currently debating fingerprinting for Uber background checks, several of which are supportive of the requirement.<sup>90</sup>

*B. What Have Uber Drivers Done?*

The troubling experiences suffered by Uber passengers at the hands of drivers around the world demonstrate the urgency and necessity for increased safety protections. For example, in 2014, a Chicago Uber driver faced allegations he sexually assaulted a female passenger.<sup>91</sup> A Los Angeles driver was accused of kidnapping a young woman from a club and taking her to a hotel to sexually assault her.<sup>92</sup> In Boston, a driver allegedly drove a young woman to a secluded area, locked her in the vehicle, then choked and raped her in the backseat.<sup>93</sup> In San Francisco, an Uber driver allegedly attempted to kick angry passengers out of his car by hitting one of the passengers with a hammer, after they chastised the driver's choice of routes.<sup>94</sup> In Washington, D.C., an Uber driver ran a red light, deviated from the planned route, and took the passengers on a high-speed joyride to evade a lighted taxi inspector.<sup>95</sup> In 2015, a Los Angeles driver reportedly yelled at a female passenger before violently grabbing her arm and throwing her out of his vehicle.<sup>96</sup> In Denver, an Uber driver alleg-

---

<sup>90</sup> *Airport Aims to Use Uber Drivers' Fingerprints to Check Past*, FOX NEWS (Mar. 28, 2016), <http://www.foxnews.com/us/2016/03/28/airport-aims-to-use-uber-drivers-fingerprints-to-check-past.html> [<https://perma.cc/QMH3-YSC6>]; Jim Dallke, *Uber and Lyft Won't Face Fingerprinting in Chicago—at Least for Now—Under New Regulations*, CHI. INNO (June 22, 2016, 1:50 PM), <http://chicago.inno.streetwise.co/2016/06/22/uber-and-lyft-wont-face-fingerprinting-in-chicago-at-least-for-now-under-new-regulations> [<https://perma.cc/5Q3B-2W4L>].

<sup>91</sup> *Uber Driver in Chicago Accused of Sexual Assault*, CBS NEWS (Dec. 11, 2014, 11:49 AM), <http://www.cbsnews.com/news/chicago-police-investigate-uber-driver-accused-of-rape> [<https://perma.cc/J34M-DWAT>].

<sup>92</sup> Veronica Rocha, *Uber Driver Accused of Kidnapping Clubgoer, Taking Her to Motel*, L.A. TIMES (June 3, 2014, 3:50 PM), <http://www.latimes.com/local/lanow/la-me-ln-uber-driver-kidnapping-hotel-20140603-story.html> [<https://perma.cc/AA77-VH4E>].

<sup>93</sup> Dara Kerr, *Who's Really Taking You for an Uber Ride?*, CNET (Dec. 22, 2014, 5:00 AM), <http://www.cnet.com/news/whos-really-taking-you-for-an-uber-ride> [<https://perma.cc/N22L-HCVB>].

<sup>94</sup> Dara Kerr, *How Risky is Your Uber Ride? Maybe More than You Think*, CNET (Oct. 8, 2014, 4:00 AM), <http://www.cnet.com/news/how-risky-is-your-uber-ride-maybe-more-than-you-think> [<https://perma.cc/TU7Q-VQG4>].

<sup>95</sup> Julie Zauzmer & Lori Aratani, *Man Visiting D.C. Says Uber Driver Took Him on Wild Ride*, WASH. POST (July 9, 2014), <https://www.washingtonpost.com/blogs/dr-gridlock/wp/2014/07/09/man-visiting-d-c-says-uber-driver-took-him-on-wild-ride> [<https://perma.cc/C8U9-JAH8>].

<sup>96</sup> Carman Tse, *Woman Says Uber Driver Called Her a 'F\*cking B\*tch' and Threw Her onto the Street*, LAIST (June 4, 2015, 4:38 PM), [http://laist.com/2015/06/04/uber\\_driver\\_behaving\\_badly.php](http://laist.com/2015/06/04/uber_driver_behaving_badly.php) [<https://perma.cc/4MEV-M3CE>].

edly drove a passenger to the airport and then returned to rob her house.<sup>97</sup> In New Jersey, a young Uber driver was charged with four counts of sexual assault after being invited back to the victim's house with some of her friends.<sup>98</sup> All too many similar incidents plague Uber's reputation, and dangerous incidents continue to occur regularly.<sup>99</sup>

In August 2015, the San Francisco District Attorney filed a complaint alleging twenty-five drivers with serious criminal records including murder, child abuse, and assault, passed Uber's background checks and were cleared to drive.<sup>100</sup> Two months later, a lawsuit filed in Northern California alleged that Uber failed to protect two female riders against sexual assault, stating that Uber's marketing campaigns focused more on maximizing profits than on protecting female passengers.<sup>101</sup> Most of the news reports, lawsuits, and public outcry blame insufficient background checks for these safety lapses. Since pre-employment background checks are designed to screen out employees that may cause a company potential issues later, the accuracy and type of background checks are vital.<sup>102</sup> Of course, some taxi users may experience dangerous situations and issues with their drivers, but strict safety regulations and rigorous background checks help limit the frequency of those occurrences.<sup>103</sup> While states differ in their background-check requirements, Nevada, with its economy based largely in tourism and entertainment,<sup>104</sup> must make safety a greater concern than what is currently in place.<sup>105</sup>

---

<sup>97</sup> Tara Fowler, *Uber Driver Allegedly Drove Woman to Airport, Then Went Back to Rob Her Home*, PEOPLE (Apr. 1, 2015, 9:45 AM), <http://www.people.com/article/uber-driver-arrested-attempted-burglary> [https://perma.cc/L4GX-DFA9].

<sup>98</sup> Jessica Remo, *Driver Accused of Raping Customer Worked for Uber*, NJ.COM (Aug. 28, 2015, 10:51 AM), [http://www.nj.com/union/index/ssf/2015/08/driver\\_accused\\_of\\_raping\\_customer\\_worked\\_for\\_uber.html?utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.nj.com/union/index/ssf/2015/08/driver_accused_of_raping_customer_worked_for_uber.html?utm_source=twitterfeed&utm_medium=twitter) [http://perma.cc/4FWJ-RNKC].

<sup>99</sup> See generally *Reported List of Incidents Involving Uber and Lyft*, WHO'S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> [https://perma.cc/RRX6-KTY2] (last visited Nov. 5, 2016).

<sup>100</sup> See Complaint, at 11–13, *State v. Uber Techs., Inc.*, No. CGC-14-543120, 2014 WL 6911066 (Cal. Super. Dec. 9, 2014); Matt Weinberger, *Uber Hired a Convicted Murderer Who Applied with a Fake Name, Complaint Claims*, BUS. INSIDER (Aug. 19, 2015, 7:45 PM), <http://www.businessinsider.com/uber-background-check-civil-suit-2015-8> [https://perma.cc/D8JJ-W8MA].

<sup>101</sup> Doe Complaint, *supra* note 69, at 2.

<sup>102</sup> DAUS & RUSSO, *supra* note 71, at 8.

<sup>103</sup> See generally Adrienne LaFrance & Rose Eveleth, *Are Taxis Safer than Uber?*, ATLANTIC (Mar. 3, 2015), <http://www.theatlantic.com/technology/archive/2015/03/are-taxis-safer-than-uber/386207> [https://perma.cc/6QTE-GSMQ].

<sup>104</sup> See generally Doresa Banning, *A Boon to Nevada's Economy: Tourism Growth*, NEV. BUS. (Feb. 1, 2016), <http://www.nevadabusiness.com/2016/02/a-boon-to-nevadas-economy-tourism-growth> [https://perma.cc/85UY-ELE9].

<sup>105</sup> See Position Statement, *supra* note 67, at 1–7.

These incidents around the United States have prompted Uber's development of different strategies in an attempt to address the issue of safety, but the company's ideas, albeit creative, do not fix the root of the problem.<sup>106</sup> For example, Uber created a safety advisory board, consisting of police chiefs, attorney generals, professors, et cetera, to "provide critical recommendations and counsel . . . to develop new methods and technologies that reduce risk and increase safety for riders, drivers, and the public."<sup>107</sup> Further, Uber now monitors its drivers' acceleration speed through the driver's smart phone in an effort to flag dangerous driving.<sup>108</sup> While these efforts may help long-term goals for safer rides, it does not prevent problems; rather it provides information after the fact that requires some type of subsequent enforcement or punishment to have any effect.

When you book a ride through Uber, you should be able to expect a safe journey to your destination. But with recent horror stories, this presumption may no longer be reliable. While Uber conducts cursory background checks<sup>109</sup> from the driver's basic personal information, do these procedures sufficiently ensure passenger safety?

#### IV. NEVADA'S UNIQUE POPULATION DESERVES SAFE RIDES FROM SAFE DRIVERS

Nevada's unique market and customer base call for more intense safeguards than are currently required. The state's all-night lifestyle encourages many vulnerable passengers to use Uber's convenient service. The allure of using a mobile application to find a ride home, along with the non-cash payment method, makes Uber an ideal choice for both tourists and locals who have taken full advantage of the Vegas nightlife. Uber's marketing seems to target this crowd, while insufficiently protecting them. The campaign, "drink up, and Uber on,"<sup>110</sup> encouraged susceptible passengers to enjoy a ride service from drivers who are arguably as risky as driving while intoxicated. Uber recently partnered with Mothers Against Drunk Driving ("MADD") and conducted a study on Uber's effect on DUI incidents.<sup>111</sup> The study found a 10 percent decrease in

---

<sup>106</sup> For example, drivers are now placing "Bop It" toys in their backseats to help keep intoxicated passengers preoccupied during the drive. Danny Yadron & Nellie Bowles, *Uber Monitoring Drivers in US in Attempt to Flag Dangerous Driving*, GUARDIAN (Jan. 26, 2016), <http://www.theguardian.com/technology/2016/jan/26/uber-monitoring-drivers-us-passenger-safety-houston> [https://perma.cc/TRB7-B7J3].

<sup>107</sup> Joe Sullivan, *Announcing Uber's U.S. Safety Advisory Board*, UBER NEWSROOM (Nov. 24, 2015), <https://newsroom.uber.com/safetyadvisoryboard> [https://perma.cc/5CHE-UGUD].

<sup>108</sup> See Yadron & Bowles, *supra* note 106.

<sup>109</sup> See discussion *supra* Part III.A.

<sup>110</sup> Doe Complaint, *supra* note 69, at 2.

<sup>111</sup> See *Making Our Roads Safer—For Everyone*, UBER NEWSROOM (Jan. 27, 2015), <https://newsroom.uber.com/making-our-roads-safer-for-everyone-2> [https://perma.cc/BM6L-RA3Q].

DUI arrests since Uber entered Seattle in 2014.<sup>112</sup> Uber's "peak hours" were found to be at the same time as most DUI crashes and arrests, and 93 percent of respondents to a survey—after hearing the study's finding on Uber's impact on decreasing DUI's—said they would recommend Uber to their friends if they had been drinking.<sup>113</sup> Uber encourages intoxicated people to avoid the dangers of drinking and driving by promising a safe ride—by under-screened drivers.

To better protect Nevadans and tourists, and to support the decrease in drunk driving incidents, Nevada should require video recording in each TNC vehicle, fingerprint background checks, and an in-application emergency button, allowing passengers not only to feel safe, but also be more safe. Much of this note's suggestions stem from the public's reaction after an Uber driver in India allegedly raped his passenger.<sup>114</sup> India is Uber's second-largest market after the United States, and this incident had a detrimental effect on Uber's popularity in the country.<sup>115</sup> Protests sparked India's ban on the service in the capital of New Delhi when the young female victim filed suit against the company.<sup>116</sup> This devastating incident was the catalyst for Uber's introduction of new safety features in India, including the in-application emergency button.<sup>117</sup> However, the momentum to implement in-car video recording, conduct stricter background checks, and create safety alert buttons has slowed, as the majority of Uber's users are still lacking protection.

#### A. *Uber Driver Background Checks Should Require Fingerprinting*

In Nevada, taxi drivers are required to pay for and to comply with fingerprinting through the Nevada Repository; the fingerprints are subsequently transferred to the FBI for a full review of the driver's criminal history.<sup>118</sup> Uber routinely argues that fingerprint background checks are not worth the time and money, stating the process has faults.<sup>119</sup> However, Nevada's unique riders deserve a higher level of protection, which could be accomplished through requirements similar to those implemented in taxis after the 1969 taxicab riots.<sup>120</sup>

<sup>112</sup> UBER & MOTHERS AGAINST DRUNK DRIVING (MADD), MORE OPTIONS. SHIFTING MINDSETS. DRIVING BETTER CHOICES. 3 (2015).

<sup>113</sup> *See id.* at 4–10.

<sup>114</sup> Dan Levine, *Delhi Uber Passenger Who Alleges Driver Rape Sues in U.S.*, REUTERS (Jan. 29, 2015, 5:46 PM), <http://www.reuters.com/article/2015/01/29/us-india-uber-lawsuit-idUSKBN0L22NP20150129> [<https://perma.cc/SVQ7-NLKH>].

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

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Driver Permit Requirements*, *supra* note 60.

<sup>119</sup> Kate McGee, *After Sexual Assault Reports, Uber, Lyft May Face Expanded Background Checks*, KUT.ORG (Dec. 14, 2015), <http://kut.org/post/after-sexual-assault-reports-uber-lyft-may-face-expanded-background-checks> [<https://perma.cc/779T-24HG>].

<sup>120</sup> Velotta, *supra* note 27.

Background checks vary in intensity depending on the purpose of the review, from a simple criminal history search to drug testing and full criminal, civil, and economic review.<sup>121</sup> Several organizations and companies provide background check services; taxis utilize state-run repositories, while Uber uses third-party commercial companies.<sup>122</sup> However, the National Association of Professional Background Screeners urges that “[i]nformation provided by commercial databases should not be used as the *sole* source of information because of potential gaps in data, and the less than timely updates in some jurisdictions.”<sup>123</sup> Therefore, TNC drivers in Nevada should be screened more thoroughly to protect the vulnerable and unique users, and to be held at the same or similar standard as taxi drivers.

Fingerprinting is the most important element of a background check because it is the only identifier that cannot be falsified or stolen, and with increased technology, a national database will constantly grow and become more accurate.<sup>124</sup> “The FBI’s Integrated Automated Fingerprint Identification System (IAFIS) is the largest biometric database of criminals in the world. Clear, legible fingerprints form the foundation of the Fingerprint Master File, which continues to grow by approximately 13,000 records each day.”<sup>125</sup> Fingerprinting is an easy process for applicants. All that is required is a small fee and a short visit to an approved fingerprint location, where an applicant’s fingerprints are collected electronically using live scanning machines.<sup>126</sup>

Further, fingerprinting is more secure because fingerprints are made up of different patterns, ridge structures, and other characteristics, which are unique to each individual.<sup>127</sup> A fingerprint submission through IAFIS is processed in one hour and twelve minutes.<sup>128</sup> The FBI’s website encourages the use of fingerprinting for background checks because it provides positive identification and eliminates falsities found with name-only searches.<sup>129</sup> Uber, however, routinely rejects the importance of fingerprint background checks because they are

---

<sup>121</sup> NAT’L ASS’N OF PROF’L BACKGROUND SCREENERs, *supra* note 1, at 2.

<sup>122</sup> According to Uber’s website, California Uber applicants are reviewed through Checkr. *See Details on Safety*, *supra* note 78.

<sup>123</sup> NAT’L ASS’N OF PROF’L BACKGROUND SCREENERs, *supra* note 1, at 8.

<sup>124</sup> DAUS & RUSSO, *supra* note 71, at 11.

<sup>125</sup> FED. BUREAU INVESTIGATION, RECORDING LEGIBLE FINGERPRINTS,, <http://archstl.org/files/field-file/FBI%20FINGERPRINT%20INFORMATION%20AND%20TIPSHEET.pdf> [<https://perma.cc/JEU6-W6C5>] (last visited Nov. 5, 2016).

<sup>126</sup> DAUS & RUSSO, *supra* note 71, at 12.

<sup>127</sup> *Id.* at 16 (“There are at least 150 individual ridge characteristics on an average fingerprint. If between 10 and 16 points between two fingerprint images are matched up, they are considered to be from the same person.”).

<sup>128</sup> *Integrated Automated Fingerprint Identification System*, FED. BUREAU INVESTIGATION, [https://web.archive.org/web/20160612100902/https://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](https://web.archive.org/web/20160612100902/https://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis) [<https://perma.cc/T79T-NENG>] (last visited June 12, 2016).

<sup>129</sup> FED. BUREAU INVESTIGATION, NATIONAL FINGERPRINT BASED BACKGROUND CHECKS STEPS FOR SUCCESS (Nov. 2014).

logistically difficult and do not always include a court's final ruling if a charge is dismissed or altered, thereby discriminating against some applicants.<sup>130</sup> But the solution does not have to be black and white—namely fingerprint versus commercial checks. For example, if an applicant is flagged as having a criminal record after a fingerprint background check, a review process or commercial background check can be subsequently conducted. No matter how many searches or databases Uber claims to review in its commercial background checks, if Uber is not using biometrics, its applicant-review process will never be sufficiently accurate, nor equivalent to taxi-driver requirements.<sup>131</sup>

As explained in a letter from Houston's mayor's office to a few city council members, a recent TNC driver, who passed the Hirease background check, was found to have twenty-four aliases, five listed birthdays, ten listed social security numbers, and an active warrant for arrest, all through a City of Houston fingerprint background check.<sup>132</sup> Congressional representatives pushed Uber and similar TNCs to increase their background-check requirements because of the recent and horrific sexual assaults committed by their drivers.<sup>133</sup> "By using comprehensive fingerprint-based background checks, . . . companies can each do their part to reduce the likelihood of similar crimes from occurring in the future."<sup>134</sup> District attorneys also have asked their legislatures to require fingerprint background checks when creating regulations for TNCs.<sup>135</sup> National organizations have publicly pleaded for Uber to better protect women and other vulnerable populations from potentially dangerous drivers who have not been effectively screened.<sup>136</sup>

---

<sup>130</sup> See Woodward, *supra* note 77.

<sup>131</sup> As stated by Emily LeBlanc, Director of Safe Place, "[s]ometimes that means going above and beyond what is required of us by law to do the right thing because it's the right thing even if it costs us money or makes our jobs a little more difficult." McGee, *supra* note 119.

<sup>132</sup> Letter from Christopher Newport to Honorable Ann Kitchen, *supra* note 89.

<sup>133</sup> Letter from Rosa L. DeLauro, Member of Cong., et al. to Travis Kalanick, Co-Founder & Chief Exec. Officer, Uber Techs., Inc., et al., (Mar. 9, 2015) (on file with the author).

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

<sup>135</sup> Letter from David F. Capeless, Dist. Att'y, Berkshire, Mass., to Senator James B. Eldridge, Chair, Joint Comm. on Fin. Servs., & Representative Aaron Michlewitz, Chair, Joint Comm. on Fin. Servs. (Jan. 13, 2016) (on file with the author); see also Matt Murphy, *DAs Back Fingerprinting of Drivers for Uber and Lyft*, LOWELLSUN.COM (Jan. 22, 2016, 8:32 AM), [http://www.lowellsun.com/news/ci\\_29418219/das-back-fingerprinting-drivers-uber-and-lyft](http://www.lowellsun.com/news/ci_29418219/das-back-fingerprinting-drivers-uber-and-lyft) [https://perma.cc/5BQM-MGDT].

<sup>136</sup> See *Mass NOW INC Statement: Ride Hailing Services Have Responsibility to Address Safety Concerns*, MASS. CHAPTER NAT'L ORG. FOR WOMEN, <http://www.massnow.org/2015/mass-now-inc-statement-ride-hailing-services-have-responsibility-to-address-safety-concerns> [https://perma.cc/M34T-YW7D] (last visited Nov. 5, 2016); McGee, *supra* note 119.

*B. Video Recording in Vehicles Can Protect Both Drivers and Passengers*

The smaller cameras can be made, the more dialogue there is about implementing video recording for various safety purposes. For example, legislators around the country are pushing for mandatory body cameras on all law-enforcement officers because the cameras deter crime, keep officers and the public accountable, and can provide hard evidence for investigations.<sup>137</sup> The successful implementation of body cameras and dash cameras for police officers and cameras in taxis suggests the potential for similar success if cameras are required in TNCs. In the United States, large, crime-prone cities like Chicago, New York, Seattle, Los Angeles, Philadelphia, and San Francisco require cameras in taxis.<sup>138</sup> In the mid-2000s, the NTA rejected a proposed regulation requiring the NTA to implement cameras in taxis, and instead ordered “a one-

<sup>137</sup> See generally David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 362 (2010).

<sup>138</sup> See Daarel Burnette II, *In Chicago Cabs, More Cameras Will Be Along for Ride*, CHI. TRIB. (Apr. 22, 2010), [http://articles.chicagotribune.com/2010-04-22/news/ct-met-cab-cameras-20100422\\_1\\_cab-owners-bullet-resistant-partitions-cameras](http://articles.chicagotribune.com/2010-04-22/news/ct-met-cab-cameras-20100422_1_cab-owners-bullet-resistant-partitions-cameras) [<https://perma.cc/A8JE-ZY58>]. In Chicago,

[t]he tiny camera sits above the rear-view mirror and takes a panoramic picture of the cab when someone enters, or when the fare meter is turned on, and as they leave. Cabs must have signs informing passengers they will be photographed. Drivers who feel threatened can push a panic button to get more pictures of the passengers.

*Id.*; see also Stephanie Chuang, *Bay Area Taxi Cabs Add to Growing Trend of Using Dashcams*, NBC BAY AREA (Feb. 17, 2015, 11:43 PM), <http://www.nbcbayarea.com/news/local/Bay-Area-Taxi-Cabs-Add-to-Growing-Trend-of-Using-Dashcams-292146711.html> [<https://perma.cc/XZB5-PX2C>]; Paul Nussbaum, *Temporary OK for Ride-Share Firms in Pittsburgh; Cameras for Philly Cabs*, PHILLY.COM (July 26, 2014), [http://www.philly.com/philly/business/transportation/20140725\\_Temporary\\_OK\\_for\\_Uber\\_Lyft\\_cameras\\_for\\_Philly\\_cabs.html](http://www.philly.com/philly/business/transportation/20140725_Temporary_OK_for_Uber_Lyft_cameras_for_Philly_cabs.html) [<https://perma.cc/KUD4-GMTF>]. Additionally, some countries like Australia, Canada, and Sweden have required cameras in taxis for several years to protect their passengers. See, e.g., *Safety Cameras in Taxis*, TAXI SERVS. COMM'N, <http://taxi.vic.gov.au/drivers/taxi-drivers/driver-safety/safety-cameras-in-taxis> [<https://perma.cc/H4DA-HZFX>] (last visited Nov. 5, 2016) (implementing safety cameras into taxicabs by the State Government of Victoria, Australia began in 2001, finding that “[t]he cameras deter violence and assist Victoria Police in identifying and catching those responsible for attacks against drivers[.]”); Ho Shan et al., *Beijing’s Spy in the Cab*, RADIO FREE ASIA (Aug. 1, 2008), <http://www.rfa.org/english/news/china/taxi-08012008065129.html> [<https://perma.cc/R49K-QPNP>] (discussing the implementation of video cameras and satellite technology that transmits live audio feed from Beijing taxicabs “for monitoring and linguistic analysis”); *Taxi Cameras in British Columbia*, PASSENGER TRANSP. BD., <http://www.ptboard.bc.ca/cameras.htm> [<https://perma.cc/8MKD-V8Z3>] (explaining the use of taxi cameras throughout British Columbia and various other provinces in Canada, because “[t]axi cameras deter crime and help police identify suspects and prosecute offenders”) (last visited Nov. 5, 2016); *Taxi Cameras Prevent Robbery*, POINTGUARD, <http://www.pointguard.se/latest-news/taxi-cameras-prevent-robbery> [<https://perma.cc/WVT8-VBN8>] (last visited Nov. 5, 2016) (finding Swedish National Council for Crime Prevention statistics demonstrate the use of taxi cameras in Sweden has been an “important contributing factor” in the decrease of assault and robberies on taxi drivers).

year test run to study the effectiveness of cameras deterring crime.”<sup>139</sup> Several groups, like the ACLU, opposed the regulations because of the potential Fourth Amendment violations with the implementation of such cameras;<sup>140</sup> even so, most Nevada taxis are now equipped with cameras.<sup>141</sup>

While this note focuses on the risks that passengers face, it is important to note that cameras also protect drivers. Consistently throughout the 1980s, 1990s, and 2000s, the national average of passenger-inflicted murders of taxicab drivers was thirty-eight per year.<sup>142</sup> The factors that create such a high-risk environment for taxi drivers are the same as those TNC drivers face because both types of drivers work with the public, alone, often at night, and in some high-crime areas.<sup>143</sup> Although, one of the major environmental differences between the two is that taxis still mostly utilize cash transactions, which is likely a promoter of passenger-inflicted crime. Taxi industries have tried to combat these dangerous conditions with different safety measures like shields, cameras, and driver panic buttons.<sup>144</sup> However, some of these safety measures may not translate smoothly to TNCs. For example, shields are unrealistic to place in personally owned vehicles,<sup>145</sup> and though shields are a deterrent of assaults in taxis, the goal of shields in taxis is primarily to protect against robbery and robbery-related assaults; this is not a significant danger with TNCs, given that drivers do not accept cash.<sup>146</sup>

---

<sup>139</sup> *Taxicab Authority Rejects Plan for Cameras in Cabs*, L.V. SUN (Feb. 25, 2004, 8:33 AM), <http://lasvegassun.com/news/2004/feb/25/taxicab-authority-rejects-plan-for-cameras-in-cabs/> [<http://lasvegassun.com/news/2004/feb/25/taxicab-authority-rejects-plan-for-cameras-in-cabs/>]; see Proposed Regulation of the Taxicab Authority, LCB File No. R114-03 (Aug. 25, 2003). With about 60 percent of taxicabs having camera systems installed, the NTA tried again in 2005 to create regulations to require cameras in all taxicabs. *Taxicab Authority Starts Over on Rules for Cameras in Cabs*, L.V. SUN (July 12, 2005, 9:33 AM), <http://lasvegassun.com/news/2005/jul/12/taxicab-authority-starts-over-on-rules-for-cameras/> [<https://perma.cc/9TH6-33ZE>].

<sup>140</sup> See Letter from Christine M. Guerci-Nyhus, Senior Deputy Att’y Gen., State of Nev., to Yvette G. Moore, Adm’r, Nev. Taxicab Auth. 1 (Oct. 5, 2005) (on file with the author).

<sup>141</sup> *Id.* at 2; Velotta, *supra* note 46.

<sup>142</sup> Letter on Proposed Regulation 126-8 from Brett A. Berman, on behalf of Freedom Taxi et al., to Dennis Weldon, Gen. Counsel, Phila. Parking Auth. 6 (Apr. 7, 2014) (on file with the author).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 7.

<sup>145</sup> It would be difficult to require shields in Uber vehicles because Uber drivers are currently not employees but independent contractors, thus Uber has less control over their vehicles. Further, it would be difficult to maintain large shields in almost every type of car, as taxi vehicles are mainly only a few models. Uber drivers likely would also not like the inflexibility of a shield in their personal vehicles as many drivers are part-time and pick up passengers on their way to work, or when it is convenient.

<sup>146</sup> See Letter on Proposed Regulation 126-8, *supra* note 142, at 6; see also Cammie K.C. Menéndez et al., *Effectiveness of Taxicab Security Equipment in Reducing Driver Homicide Rates*, 45 AM. J. PREVENTATIVE MED., no. 1, 2013, at 6.

However, the benefits of camera use in taxis would be replicated if they were required in all TNC vehicles. There are many cameras available, like dashboard replacement rearview-mirror cameras,<sup>147</sup> wide angle lens Go-Pros,<sup>148</sup> and even drivers' cellphone cameras. Because most drivers would be unwilling to purchase a separate camera, and the required maintenance and external enforcement may be easily neglected, a driver's cellphone camera is likely the best option. Drivers already use their phones to pick up drivers and navigate rides; therefore, the extra feature of video recording would be more convenient. Additionally, because Nevada's distracted driving statutes discourage drivers from using their cellphones while driving,<sup>149</sup> most drivers already have a cellphone stand located near the center console.<sup>150</sup> This placement may be an ideal means to record as much of a car's interior as possible while remaining plugged into a charging source in the vehicle. Further, this placement would make the phone visible to riders, alerting them of the video surveillance—along with some kind of posted warning of the video recording—which has been shown to be the most effective method of reducing crime in taxicabs.<sup>151</sup>

The safety features suggested here are not designed to solve all of the problems that may arise. Rather, this note intends to encourage increased safety measures, while still shedding light on the difficulties that may impede the implementation of the suggested safety measures. Requiring cameras in Uber vehicles invites discussion of both constitutional and logistical<sup>152</sup> issues.

---

<sup>147</sup> See e.g., *Falcon Zero F360 HD DVR Dual Dash Cam, Rear View Mirror, 1080p, 32GB SD Card*, AMAZON, [http://www.amazon.com/gp/product/B00E56WY18/ref=as\\_li\\_tl?ie=UTF8&camp=1789&creative=390957&creativeASIN=B00E56WY18&linkCode=as2&tag=you086-20&linkId=BNTTO43TMR4UJFZD](http://www.amazon.com/gp/product/B00E56WY18/ref=as_li_tl?ie=UTF8&camp=1789&creative=390957&creativeASIN=B00E56WY18&linkCode=as2&tag=you086-20&linkId=BNTTO43TMR4UJFZD) [https://perma.cc/429A-CFB9] (last visited Nov. 6, 2016).

<sup>148</sup> See e.g., *GoPro HERO3+: Silver Edition*, AMAZON, [http://www.amazon.com/gp/product/B00F3F0EIU/ref=as\\_li\\_tl?ie=UTF8&camp=1789&creative=390957&creativeASIN=B00F3F0EIU&linkCode=as2&tag=you086-20&linkId=4ZN6DQ5KY7VRSDD5](http://www.amazon.com/gp/product/B00F3F0EIU/ref=as_li_tl?ie=UTF8&camp=1789&creative=390957&creativeASIN=B00F3F0EIU&linkCode=as2&tag=you086-20&linkId=4ZN6DQ5KY7VRSDD5) [https://perma.cc/FCK8-AB6N] (last visited Nov. 6, 2016).

<sup>149</sup> NEV. REV. STAT. § 484B.165 (2015) ("Using handheld wireless communications device to type or enter text, send or read data, engage in nonvoice communication or engage in voice communications without use of hands-free device unlawful; exceptions; penalty; additional penalty for violation in work zone or pedestrian safety zone.").

<sup>150</sup> See Dom Esposito, *Like Opening an Apple Product: Here's What Uber Sends New Drivers (Video)*, 9TO5MAC (Aug. 18, 2014), <http://9to5mac.com/2014/08/18/like-opening-an-apple-product-heres-what-uber-sends-new-drivers-video> [https://perma.cc/UUE6-FKLM].

<sup>151</sup> Menéndez et al., *supra* note 146, at 5.

<sup>152</sup> The main logistical problem with implementing wide-view cameras in taxis was the shield's placement because it greatly reduced the interior view. See Letter on Proposed Regulation 126-8, *supra* note 142, at 7. Additionally, in 2005, spot checks in cities with cameras found that many cameras were non-functional and most had technical difficulties. *Id.* at 8; see also Menéndez et al., *supra* note 146, at 5. However, these problems are not likely to occur if cameras are required in TNCs because there is no shield, and updated technology since attempts to implement cameras in taxis lessens the likelihood of technical problems.

The next major problem is the price. As discussed above, the most effective camera would be the driver's phone. It would be a significantly less expensive and more reliable op-

### 1. *Constitutional problems with cameras in Uber cars*

The constitutional issues found throughout taxi-camera implementation debates will inevitably be raised if TNCs are required to have video recording.<sup>153</sup> However, the differences between taxis and TNCs, and the distinctions in the purposes behind using cameras, may alter the framework of the discussion. There are two avenues for cameras to be introduced in Uber vehicles: (1) through a mandate from Uber, or (2) through state legislation or regulation. If Uber mandates its drivers to use video recording, a passenger's privacy rights under the Fourth Amendment are not implicated, eliminating any constitutional

---

tion. However, the price of data is the main financial concern with requiring driver's to use their personal phones. Passing on the cost to the customers through a fare increase may be the best option. Otherwise, there is the looming issue of whether Uber or the state has custody of the footage if one pays for the data. For example, if the state lowers the mandatory tax on Uber to counter the increased data costs, in combination with the state's action of requiring cameras, it the state would likely have control of the footage. While not having control of the footage may benefit Uber in the employee v. independent contractor debate, it is doubtful that the company would not agree to this arrangement. On the other hand, for example, if Uber contracted a deal with a network company to supply the necessary data, then Uber would have some control of the footage. The state may disapprove of this in fear of Uber not cooperating in releasing footage or a similar legal battle like Uber is currently facing in California for failing to turn over detailed trip records. *See* Laura J. Nelson et al., *Uber Should be Suspended in California and Fined \$7.3 Million, Judge Says*, L.A. TIMES (July 15, 2015, 5:59 PM), <http://www.latimes.com/business/la-fi-uber-suspended-20150715-story.html> [<https://perma.cc/Z4V2-L8QK>]. While there may be many alternatives to combat the price of cameras, this is a major concern that could halt the implementation of cameras in Uber vehicles.

The third logistical problem is who has access to the footage. Similar to the debate surrounding requiring police officers to have body cameras, access to the footage must be protected. First, the footage should not be able to be saved on the driver's phone to avoid the possibility of a driver deleting footage. Second, it must be determined whether the footage would be sent and stored at a government agency like the NTA or local law enforcement, or at an Uber office. Third, as addressed above, the custody of the footage must be decided up-front to avoid potential legal issues after implementation. The fourth issue is in what situation could footage be released. This could be defined in the current Nevada regulations that already require drivers to turnover of trip records, for example if the footage is under Uber's discretion, then proper legal requests for footage will need to be outlined. Fifth, the amount of time footage would be stored for is an important consideration. This may depend on many factors, including who has custody of the footage, the average surveillance video life in other contexts like police body and taxicab cameras, and the situations where actual video recording in an Uber is allowed. These concerns may seem daunting but should be preemptively decided to avoid inevitable issues in the future.

Further, there may be enforcement issues in implementing cameras in vehicles because drivers may disable the camera feature, place their phone in a position where the video would not sufficiently record the vehicle's cabin, or attempt to block the camera. Additionally, problems may arise if the cameras malfunction, and the logistical and price concerns of guaranteeing functional cameras. While there are many logistical concerns for implementing cameras in Uber vehicles, the long-term benefits likely outweigh these hurdles.

<sup>153</sup> *See generally* Letter from Christine M. Guerci-Nyhus to Yvette G. Moore, *supra* note 140, at 1.

issues.<sup>154</sup> If the state requires video recording by, for example, the NTA introducing regulations that require it, Uber would be bound by the regulation to remain operating in Nevada. But when a government action directs a result, like requiring cameras, Uber actually implementing the cameras is considered a government action, and constitutional protections are triggered.<sup>155</sup> The Fourth Amendment protects individual privacy against certain government intrusions; therefore, requiring video recording in an Uber, initiated by the government, may be subject to Fourth Amendment protection.<sup>156</sup>

In a Fourth Amendment analysis, courts balance the extent of the surveillance against a passenger's legitimate expectation of privacy.<sup>157</sup> To invoke Fourth Amendment protections, and for the latter element of the balancing test, an individual must show that he or she had a reasonable or legitimate expectation of privacy.<sup>158</sup> To establish a legitimate expectation of privacy, an individual must demonstrate a personal expectation that his activities would be private, and he must show that his expectation was one that society is prepared to recognize as reasonable—that is, satisfying both a subjective and an objective test.<sup>159</sup> Courts have held that a passenger in a taxi has a reasonable expectation of privacy because the taxi temporarily becomes a private place.<sup>160</sup> The passenger has a significant degree of control over the taxi's services because the passenger pays a fare, decides the destination, and can exclude others from the ride.<sup>161</sup> The Courts' holdings in taxi privacy cases emphasized the passenger's

---

<sup>154</sup> *Vega-Rodriguez v. P.R. Tel. Co.*, 110 F.3d 174, 183 (1st Cir. 1997) (stating workplace video surveillance is not within personal privacy rights under the Fourth Amendment). However, Uber's other legal battles may deter the company from requiring cameras. For example, Uber is currently facing lawsuits regarding the issue of whether drivers are independent contractors or employees. *See O'Connor v. Uber Techs., Inc.*, 82 F. Supp. 3d 1133, 1135 (N.D. Cal. 2015). Uber is fighting to keep drivers as independent contractors and requiring drivers to use video recording would likely counter Uber's position as it would be increased control on its drivers. *See id.* at 1137 ("Uber contends it exercises minimal control over how its transportation providers actually provide transportation services to Uber customers, an important factor in determining whether drivers are independent contractors."); *see also* Tess Townsend, *Why Uber Doesn't Want to Fingerprint Drivers*, INC. (Aug. 20, 2015), <http://www.inc.com/tess-townsend/uber-rethink-backgrounds.html> [<https://perma.cc/QSK6-5PGJ>] ("If the company does adopt more rigorous background checks, which could include fingerprinting, drivers seeking classification as employees could try to use the move as evidence they are indeed employees and not private contractors.").

<sup>155</sup> *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

<sup>156</sup> *See United States v. Corona-Chavez*, 328 F.3d 974, 980 (8th Cir. 2003).

<sup>157</sup> *Hiiibel v. Sixth Judicial Dist. Court*, 59 P.3d 1201, 1205 (Nev. 2002).

<sup>158</sup> *United States v. Nerber*, 222 F.3d 597, 599 (9th Cir. 2000).

<sup>159</sup> *Id.*; *Young v. State*, 849 P.2d 336, 340 (Nev. 1993).

<sup>160</sup> *See, e.g., Chapa v. State*, 729 S.W.2d 723, 728 (Tex. Crim. App. 1987) (en banc) (holding a passenger in a taxi had a reasonable expectation of privacy because the passenger exercised a significant degree of control over the taxicab).

<sup>161</sup> NEV. REV. STAT. § 706.8846 (2015) (stating taxicab drivers cannot take a passenger to a destination other than the one requested by the passenger); NEV. REV. STAT. § 706.8849(1)(e) (2015) (stating a taxicab driver cannot allow another person in the taxi unless the original

control over the taxicab, demonstrating a reasonable expectation of privacy, which is the same control held by an Uber passenger. The TNC customer pays a fare and determines the location through the application, and, unlike ridesharing, the passenger can exclude others from riding. Additionally, Uber's policy against ride solicitation<sup>162</sup> further establishes a passenger's control over the vehicle.<sup>163</sup> In sum, since the passenger pays a fare, decides the destination, and can exclude others from entering, an Uber passenger would have an objective expectation of privacy just like a passenger in a taxi.

While Nevada has not specifically addressed privacy rights in taxicabs, case law involving locations where an individual may have an expectation of privacy provide a guide. For example, there is no expectation of privacy when two employees are recorded when "talk[ing] too loudly" in the workplace.<sup>164</sup> The Court reviewed several factual circumstances to determine whether there was a subjective expectation of privacy, including the individual's inability to exclude others from a retail store, the ability of other employees to hear, and the size of the store.<sup>165</sup> Further, the Nevada Supreme Court has held that a driver has no reasonable expectation of privacy for the bumper of their car because the exterior of the car is open to public view and subject to visual inspection by anyone.<sup>166</sup> The Nevada Supreme Court has also held that there is no reasonable expectation of privacy for an individual engaged in sexual activity in a doorless stall in a public restroom because Fourth Amendment protection is not afforded to activities that a person knowingly exposes to the public.<sup>167</sup> Converse-

---

passenger requests it). Both statutes emphasize a passenger's control over the vehicle by way of restricting taxicab drivers from having control over the destination or additional passengers. *See Katz v. United States*, 389 U.S. 347, 352, 361 (1967) (finding a public telephone booth to be a temporarily private place and using a taxicab as an example for similar places where an individual may rely upon the protection of the Fourth Amendment); *United States v. Woodrum*, 202 F.3d 1, 6 (1st Cir. 2000) (holding that passenger has a reasonable expectation of privacy because the passenger, by paying a fare in a taxicab, has contracted the right to exclude others from the car and determine its destination); *United States v. Santiago*, 950 F. Supp. 590, 598 (S.D.N.Y. 1996) (recognizing a passenger's Fourth Amendment privacy rights in a taxicab because in effect, the passenger area belongs to the passenger); *Chapa*, 729 S.W.2d at 728 (holding a passenger in a taxi had a reasonable expectation of privacy because the passenger exercised a significant degree of control over the taxicab).

<sup>162</sup> *Driver Deactivation Policy*, UBER, <https://www.uber.com/legal/deactivation-policy/us-multi-lingual/en> [<https://perma.cc/5Q4G-S64Z>] (last visited Nov. 6, 2016) ("To maintain the transparency and safety of the Uber platform for all users, activities conducted outside of the monitored system of the Uber app—like anonymous pickups—are prohibited.")

<sup>163</sup> In 2014, Uber introduced UberPool, a new service that allows for users to share rides to similar destinations for a cheaper price. In this service, a Fourth Amendment analysis may differ because with UberPool, a passenger does not have the same level of control over the ride, lessening their reasonable expectation of privacy. *See Announcing UberPool*, *supra* note 18.

<sup>164</sup> *Kemp v. Block*, 607 F. Supp. 1262, 1265 (D. Nev. 1985).

<sup>165</sup> *Id.* at 1264.

<sup>166</sup> *Osburn v. State*, 44 P.3d 523, 526 (Nev. 2002).

<sup>167</sup> *Young v. State*, 849 P.2d 336, 342 (Nev. 1993).

ly, a passenger preserves reasonable privacy rights by entering an Uber with the intention of shutting the door to separate oneself from the public.

However, passengers cannot expect total privacy because of the driver's presence. But the driver is a non-public service provider who must abide by the passengers' instructions;<sup>168</sup> therefore, while passengers may not expect complete privacy, they may expect privacy from government surveillance during the ride. Nevertheless, even if passengers have a reasonable expectation of privacy, it must be balanced against the extent and purpose behind the video recording.<sup>169</sup>

Not all government surveillance violates the Fourth Amendment.<sup>170</sup> For example, video recording public places is no more than documenting what can be viewed by the naked eye.<sup>171</sup> Thus, a passenger's entry and exit from an Uber is not subject to protection because it is open to visual and auditory observation. However, governmental recording of a passenger within the vehicle is very different. Courts review the reasonableness of the governmental intrusion<sup>172</sup> by balancing the intrusion against legitimate government interests.<sup>173</sup> Courts have recognized the differing degrees of intrusion and have generally held that a defendant has a reasonable expectation to be free of constant surveillance.<sup>174</sup> Some of the government's interests in having cameras in Uber vehicles would be to ensure the safety of the drivers and passengers and to provide identification of suspects if an incident occurred. While the government's goals in the taxi-camera debate were almost the same, one key difference is in those debates, the government focused only on the safety of the driver, not the passenger. Many courts acknowledge the legitimate public interest in preventing crime against taxicab drivers.<sup>175</sup> The recent crimes against Uber passengers and the several pending criminal cases would likely be enough to demonstrate legitimate government interests in ensuring passenger safety as well as driver safety. Therefore, the government's interest in protecting both drivers and passengers in Uber vehicles may tip the scale in favor of the increased intrusion inherent in the use of in-vehicle cameras.

By this analysis, if a passenger were only recorded for a minimal portion of their ride, it would likely be considered a reasonable intrusion into the passenger's privacy rights. But, the reasonable amount of time to record a passenger—without violating the passenger's Fourth Amendment rights—would be

---

<sup>168</sup> NEV. REV. STAT. § 706.8846 (2015).

<sup>169</sup> *Hiibel v. Sixth Judicial Dist. Court*, 59 P.3d 1201, 1205 (Nev. 2002).

<sup>170</sup> *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991).

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

<sup>172</sup> *Hiibel*, 59 P.3d at 1204–05.

<sup>173</sup> *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 188 (2004) (internal citation omitted).

<sup>174</sup> *United States v. Cuevas-Sanchez*, 821 F.2d 248, 251 (5th Cir. 1987).

<sup>175</sup> *United States v. Woodrum*, 202 F.3d 1, 11 (1st Cir. 2000); *State v. White*, 818 A.2d 361, 366 (N.J. Super. Ct. Law Div. 2002); *People v. Abad*, 771 N.E.2d 235 (N.Y. 2002).

longer in an Uber compared to in a taxi, because the government's main interest would be passenger safety, as opposed to solely driver-safety interests in taxis. Uber should mirror taxi regulations and limit the amount of time surveillance is conducted. This would include recording the entry and exit of the passenger, the interior cabin once a passenger presses an SOS button in the application, and minimal recording in the event of a G-Force occurrence, meaning sudden stops, swerving, and excess braking.<sup>176</sup> First, as discussed *supra*, the Fourth Amendment does not protect the surveillance of a passenger's entry and exit because it is already visible to the public. Second, pressing an SOS button demonstrates the passenger's consent to recording and presumably does not violate the driver's rights because the driver is aware of this feature, and, in most states, one party can consent to recording.<sup>177</sup> Third, minimal recording in a G-Force event promotes the government's interest in the safety of the driver and passenger, and the limited recording is not a significant intrusion on the passenger's privacy rights.<sup>178</sup> Further, additional deterrent measures could be added to advance the government's goal, like a visual red light when the camera is recording and posted signs explaining which portions of the ride may be recorded.

Additionally, to avoid any possibility of a Fourth Amendment violation, Uber could give notice of video recording prior to a customer's accepting a ride. For example, when a user opens the Uber application to request a ride, an identifying mark on the visual depiction of the closest vehicle would alert users which vehicles feature video recording. Then, the customer would be prompted to overtly accept that the vehicle has video recording. A notice warning may be a win-win for both Uber and the state because more people may be inclined to use Uber if there is video recording, especially intoxicated travelers or solo riders. Further, with gradual implementation, users who do not want to be recorded can still choose an Uber without a camera.

---

<sup>176</sup> Michael A. Litschi, Video-Based Driver Risk Management Systems: Evaluating Effectiveness at Improving Transit Safety 5 (June 2011) (unpublished M.S. thesis, San José State University).

<sup>177</sup> See generally Letter from Christine M. Guerci-Nyhus to Yvette G. Moore, *supra* note 140. With increased technology, it is possible that new surveillance triggers may be even more effective. For example, with Apple's new iPhone 6 feature of no-touch voice activated "Siri," Uber's application may be able to incorporate a similar feature where a voice signal can trigger recording, like multiple uses of "no," "stop," or a yell or scream.

<sup>178</sup> Litschi, *supra* note 176, at 44. Recording would be triggered when "atypical vehicle movements occur, such as sudden braking or acceleration, swerving, sharp turns, or the impact of a collision." *Id.* This information can then be used for training purposes, self-evaluation, or other data driven purposes. *Id.*; see also Letter from Christine M. Guerci-Nyhus to Yvette G. Moore, *supra* note 140, at 11. Further, recording these events can help determine what happened during an accident or incident on the road. Uber has already begun monitoring the movements of its drivers through their phones' accelerometers. See Yadron & Bowles, *supra* note 106.

Ultimately, cameras are worth the constitutional and logistical hurdles because they safeguard passengers by deterring crime and providing identification for investigations. Surveillance cameras are known to deter crime,<sup>179</sup> and a visible camera in an Uber vehicle may allow passengers—and drivers—to think twice before doing anything inappropriate in the vehicle. In-vehicle video recording can also help police solve disputes or crimes that may occur in the course of a ride. Many taxi drivers and passengers already enjoy the benefits of in-vehicle cameras, and despite the differences between taxis and Uber, the goal of safe rides remains the same for both. In sum, this note suggests either requiring constant video surveillance when a user requests an Uber, or allowing limited video recording in three situations: (1) entry and exit of passengers, (2) when a passenger pushes the SOS in-app button, and (3) when a G-Force event has occurred.

*C. Safety-Alert Buttons Should Be Available on the Uber App*

In mid-2015, Uber unveiled its new SOS technology in India.<sup>180</sup> The SOS button connects users with local law enforcement almost instantaneously once pressed.<sup>181</sup> When a user enters the vehicle, the passenger's phone displays the driver information—name, vehicle type, and license plate number—and a map display of the vehicle's current location.<sup>182</sup> The SOS button is located on the home screen, and when users feel in danger, pressing the button will immediately connect the passenger to law enforcement—essentially speed dialing 911—and a real-time alert with the vehicle's GPS location is sent directly to a local police control room.<sup>183</sup> According to Uber's website, this alert will then be “projected on a dedicated screen in the control room of local law enforcement which has been set up by Uber's safety experts.”<sup>184</sup> The SOS button was beta-tested in Kolkata, but the program requires a collaborative effort between the TNC and local law enforcement in order to be replicated in other cities.<sup>185</sup> After similar reports of sexual assault in Chicago, Uber planned to integrate an

---

<sup>179</sup> NANCY G. LA VIGNE ET AL., URBAN INST., EVALUATING THE USE OF PUBLIC SURVEILLANCE CAMERAS FOR CRIME CONTROL AND PREVENTION—A SUMMARY 2 (2011).

<sup>180</sup> *Introducing an Integrated SOS Alert Solution for Law Enforcement*, UBER NEWSROOM (Apr. 30, 2015), <http://newsroom.uber.com/india/introducing-an-integrated-sos-alert-solution-for-law-enforcement> [https://perma.cc/B4VZ-9VWY].

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

<sup>182</sup> Alex Fitzpatrick, *Uber Rolling Out 'SOS Button' That Helps Cops Track Cars*, TIME (Apr. 30, 2015), <http://time.com/3841811/uber-sos-button-india> [https://perma.cc/WPQ7-XCGU].

<sup>183</sup> *Introducing an Integrated SOS Alert Solution for Law Enforcement*, *supra* note 180.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

SOS button into its application servicing Chicago by 2015.<sup>186</sup> However, the SOS button has yet to expand beyond a few cities in India.

The SOS button should be featured and required in Uber's application in Nevada. Clearly the technology is available, as it has been implemented in India, so the only reason it hasn't been integrated is likely because of the necessity for collaboration with local law enforcement, potential costs, and presumably, Uber's refusal to exert what may be perceived as control over its drivers because of the ongoing independent contractor and employee debate.

First, the control center and logistical hurdles to coordinate and implement an SOS button costs money and requires cooperation and testing. The specific SOS-button system Uber has designed requires a control center, with computers and employees, at a local law enforcement agency.<sup>187</sup> This type of program is very similar to proposed taxi-alert buttons, except that taxi panic buttons are physically located in the taxicab for the driver while Uber's button is in its application.<sup>188</sup> In one private company's proposal for a taxi-alert button, when the button is pressed, GPS coordinates are routed to a central service location where the information is quickly sent to local law enforcement, and an operator can make a one-way call to the cab to assess the severity of the situation.<sup>189</sup> This one-way call may not help in all incidents, but two-way communication from the SOS button is possible because it would be conducted through the user's cellphone. A few cities already require, or plan to require, similar, physical panic buttons in their taxis and for-hire vehicles, and new safety-focused phone applications offer similar panic button features, so the premise and need are well established.<sup>190</sup>

Specifically, in Nevada, the NTA currently has a Public Safety Dispatch in place that receives emergency calls and employs approximately twenty-five en-

---

<sup>186</sup> *Uber 'Panic Button' to Be Available in Chicago*, CHI. TRIB. (Feb. 13, 2015, 9:25 AM), <http://www.chicagotribune.com/bluesky/technology/chi-uber-panic-button-chicago-20150213-story.html> [<https://perma.cc/TM2U-JWG6>].

<sup>187</sup> Fitzpatrick, *supra* note 182.

<sup>188</sup> WIT SOFTWARE, TAXI ALERT: EMERGENCY SYSTEM AND TRACKING SOLUTION FOR TAXICAB DRIVERS, <http://www.taxi-library.org/taxi-alert.pdf> [<https://perma.cc/9KQ6-8S77>] (last visited Nov. 6, 2016).

<sup>189</sup> *Id.*

<sup>190</sup> *See, e.g.*, N.Y.C. COUNCIL, DISTRESS SIGNALS FOR PASSENGERS IN TAXICABS, STREET HAIL LIVERIES, AND FOR-HIRE VEHICLES, INT. 0762-2015 (Apr. 28, 2015) (a bill introduced to the New York City Council requiring emergency buttons in the passenger compartments of taxis); Martin Di Caro, *Passenger 'Panic Buttons' Coming to D.C. Cabs Over Industry Opposition*, WAMU 88.5 AM. UNIV. RADIO (Apr. 7, 2016), [http://wamu.org/news/16/04/07/passenger\\_panic\\_buttons\\_coming\\_to\\_dc\\_cabs\\_over\\_industry\\_opposition](http://wamu.org/news/16/04/07/passenger_panic_buttons_coming_to_dc_cabs_over_industry_opposition) [<https://perma.cc/6PQM-TV89>]. Also, new smart phone applications provide similar panic buttons to be used in various situations when an individual does not feel safe. SAFETREK, <https://www.safetrekapp.com> [<https://perma.cc/S2W4-JQAG>] (last visited Nov. 6, 2016). SafeTrek is an application that allows a user to hold their thumb on the in-app safe button then, once they feel safe again, the user enters a pin number. *Id.* If a user ever feels unsafe while pressing the button, they simply release the button and the local police are notified. *Id.*

forcement agents.<sup>191</sup> However, to implement the SOS button, Uber must still collaborate with local law-enforcement agencies. This collaboration could be achieved if the NTA or Uber worked directly with local law-enforcement agencies to accept Uber alerts in their control rooms. Trained police dispatch personnel would be the best option to respond to alerts and to relay the information to law enforcement officers.

One problem is accidental usage of the SOS button. Since it is located on the application and not a physical button, it may be easier to press accidentally when entering the vehicle, throughout the ride, exiting, and—all too often in Nevada—by those who are intoxicated. Since dispatch personnel are trained to deal with accidental and false contacts, the instant phone connection once the button is pressed—similar to the one-way call in proposed taxi panic buttons—may provide dispatch with enough information to efficiently and effectively assess the situation and determine whether the alert is accidental or real.

Currently, Nevada taxicabs have panic buttons accessible only to the driver.<sup>192</sup> As previously discussed, in implementing cameras in Uber, the pressing of the panic button is one way the camera would be turned on.<sup>193</sup> While there is no pending legislation or public pressure for passenger-activated taxi panic buttons in Nevada, Uber's voluntary implementation of such safety features could put pressure on taxis to follow. Even though an SOS button may be the most difficult and logistically complicated safety suggestion, Nevada should aggressively push for implementation of this technology to further protect tourists and locals.

#### V. UBER HAS THE MONEY, SO WHAT'S STOPPING IT FROM IMPLEMENTING THESE SUGGESTIONS?

One of the major reasons Uber has not already implemented these safety features in almost all of its worldwide markets is allegedly the cost. However, the Uber has access to safety-specific funds collected from rides, and the implementation of the safety features pay for themselves in a relatively short amount of time. The benefits of introducing new safety features are worth the expense and can greatly improve Uber's public image.

Specifically regarding background checks, the excuse that they are expensive is mostly unsound. In Nevada, a criminal history check, without finger-

---

<sup>191</sup> See TOM ELY, NEV. TAXICAB AUTH., *THE MISSION OF THE NEVADA TAXICAB AUTHORITY* (2015).

<sup>192</sup> *Revises Provisions Governing the Regulation of Taxicabs: Hearing on S.B. 432 Before the S. Comm. on Transp.*, 2013 Leg., 77th Sess. 6–7 (Nev. 2013) (statement of D. Neal Tomlinson, Frias Transp. Mgmt. Co.).

<sup>193</sup> See generally Letter from Christine M. Guerci-Nyhus to Yvette G. Moore, *supra* note 140.

prints, through the Nevada Repository costs \$38.25,<sup>194</sup> but if Uber follows the same process as used by Nevada taxi companies, the background screening, including fingerprinting, costs \$91.25 per applicant.<sup>195</sup> Since Uber already pays a large amount of money to commercial background companies, it is unlikely the price per applicant with a private company is significantly less than the \$100.00 fee for the process used by taxi companies.<sup>196</sup> In conclusion, because of the scientific proof and public perception that fingerprint background checks provide the most accurate review of an applicant, the legal pressure in regard to the already-practiced “safe-rides fee,” and the push from congressional representatives, Nevada should mandate Uber drivers be subject to fingerprint background checks.

Uber, and other TNCs, charge riders a “Safe Rides Fee.”<sup>197</sup> The Safe Rides Fee supports “the operation of the Uber platform, including a background check process, development of safety features in the application, incident response and other operational costs.”<sup>198</sup> This Safe Rides Fee varies, but, on average, it is \$1.55 per ride.<sup>199</sup> Originally, the Safe Rides Fee was designed to fund background checks and twenty-four hours, seven days a week user service, but the varying fees around the country seem to reflect Uber’s assessment of what cities are more dangerous and require more money to provide safe-

---

<sup>194</sup> Memorandum from Tammy Trio, Admin. Servs. Officer II, Nev. Dep’t of Pub. Safety, on FBI Fee Change Effective February 1, 2015, to Civil Applicant Customer, [http://gsd.nv.gov/uploadedFiles/gsd.nv.gov/content/FeesForms/Fingerprint\\_Fees\\_1\\_Feb\\_15/Fingerprint%20Fee%20Change%20Eff%20Feb%201%202015.pdf](http://gsd.nv.gov/uploadedFiles/gsd.nv.gov/content/FeesForms/Fingerprint_Fees_1_Feb_15/Fingerprint%20Fee%20Change%20Eff%20Feb%201%202015.pdf) [<https://perma.cc/JKZ8-NG8R>] (last visited Nov. 6, 2016).

<sup>195</sup> *Driving Permit Requirements*, *supra* note 60.

<sup>196</sup> According to Checkr’s website, a commercial background check website used by Uber, a background check costs \$35 for a “pro search” with an added charge of county court fees of \$3.50 and an \$8.00 DMV fee for Nevada, meaning approximately \$50.00 per search. See Ryan Lawler, *Y Combinator-Backed Checkr Automates Background Checks for the New, On-Demand Economy*, TECHCRUNCH (July 24, 2014), <https://techcrunch.com/2014/07/24/checkr> [<https://perma.cc/H57C-B4V9>]; see also *Additional Pricing Information*, CHECKR, <https://checkr.com/pricing/additional-pricing-information> [<https://perma.cc/PL2E-VQHK>] (last visited Nov. 6, 2016).

<sup>197</sup> At the time this article was written, and discussed *infra*, Uber used the term “Safe Rides Fee.” However, Uber lost a class-action lawsuit over this fee and now refers to a similar fee as a “booking fee.” Uber’s website states that this booking fee “helps support safety initiatives for riders and drivers as well as other operational costs.” *I Was Charged a Booking Fee*, UBER HELP, <https://help.uber.com/h/2949c48a-dc4c-4c2b-a389-2e2f5be5b0c6> [<https://perma.cc/4MC4-2T5W>] (last visited Nov. 6, 2016).

<sup>198</sup> Mario Trujillo, *Uber to Pay \$28 Million to Settle Safety Lawsuits*, HILL (Feb. 11, 2016, 5:56 PM), <http://thehill.com/policy/technology/269175-uber-to-pay-28m-to-settle-safety-lawsuits> [<https://perma.cc/ay2M-CATN>].

<sup>199</sup> The safe ride fee ranges from \$1.00 to more than \$2.50 per ride. See Biz Carson, *Here’s How Much Uber Charges for a ‘Safe Ride’ in Different US Cities*, BUS. INSIDER (Oct. 16, 2015, 12:11 PM), <http://www.businessinsider.com/us-cities-with-highest-uber-safe-rides-fees-2015-10> [<https://perma.cc/TME8-QJ7A>].

guards.<sup>200</sup> For example, during a southwest Las Vegas Uber ride in the early morning hours of January 1, 2016, a passenger paid \$9.81 for a less than four mile, nine minute long ride, which included charges of \$2.00 for base fare, \$4.34 for distance, \$1.77 for time, and \$1.70 for a “Safe Rides Fee.”<sup>201</sup> Assuming it is a flat fee, the amount of money Uber collects from this fee is astounding. For example, the average Uber fare in mid-2015 was \$13.36 per trip,<sup>202</sup> and Uber’s website states there were 140 million rides in 2014.<sup>203</sup> Assuming an average Safe Rides Fee of \$1.50 per ride, this amounts to \$210 million annually.<sup>204</sup> While this is not a specific or guaranteed amount reflecting what Uber has actually collected from this fee, even a small percentage of this figure would easily fund the more extensive background checks, data for video recording, and funding to execute the SOS-button technology.

Since the implementation of this extra fee in 2014, several lawsuits have sprung up around the country. Lawsuits filed in the U.S. District Court for the Northern District of California in 2015 seek to hold Uber accountable for charging users this fee while claiming to provide “industry leading” background checks.<sup>205</sup> Another suit in the same district alleges that Uber materially misrepresents to riders that it provides the “safest rides on the road.”<sup>206</sup> These lawsuits claim that the Safe Rides Fees are not used for biometric-based background checks, regular motor vehicle checks, driver safety education, or any in-application safety features.<sup>207</sup> After this note was initially written, Uber settled two class-action lawsuits for \$28.5 million for misleading customers on its safety procedures and fees.<sup>208</sup> Additionally, per the settlement, Uber agreed to

---

<sup>200</sup> *Id.*

<sup>201</sup> This example is a personal experience of the author.

<sup>202</sup> Jacob Davidson, *Here’s How Much the Average Ride Costs on Uber and Lyft*, TIME (July 15, 2015), <http://time.com/money/3959091/uber-lyft-price-per-trip> [<https://perma.cc/HH5K-GMNK>].

<sup>203</sup> Ellen Huet, *Uber Says It’s Doing 1 Million Rides Per Day, 140 Million in Last Year*, FORBES (Dec. 17, 2014, 4:08 PM), <http://www.forbes.com/sites/ellenhuet/2014/12/17/uber-says-its-doing-1-million-rides-per-day-140-million-in-last-year> [<https://perma.cc/U3SJ-DGKE>].

<sup>204</sup> There are many factors that could add or subtract from this number, but, after simple math of an average fee of \$1.50 multiplied by 140 million rides, the total is \$210,000,000. In First Amended Class Action Complaint at 2, *Mena v. Uber Techs., Inc.*, No. 3:15-CV-00064-JST (N.D. Cal. Apr. 13, 2015) (ECF No. 28), plaintiffs calculated \$20 million dollars in revenue from Safe Rides Fees received based on a \$1 per ride assessment.

<sup>205</sup> See generally *Sabatino v. Uber Techs., Inc.*, No. 3:15-CV-00363 (N.D. Cal. Jan. 26, 2015); *Pappey v. Uber Techs., Inc.*, No. 3:15-CV-00064 (N.D. Cal. Jan. 6, 2015); *Philliben v. Uber Techs., Inc.*, No. 4:14-CV-05615-JST, 2014 WL 7384981 (N.D. Cal. Dec. 23, 2014).

<sup>206</sup> Doe Complaint, *supra* note 69, at 11.

<sup>207</sup> First Amended Class Action Complaint, *supra* note 204, at 2.

<sup>208</sup> *Uber Agrees to Payout to Clients over Safety Claims*, CBS NEWS (Feb. 12, 2016, 5:11 AM), <http://www.cbsnews.com/news/uber-settle-lawsuits-safety-procedures-fees-cash-payout-to-customers> [<https://perma.cc/T8G2-GRLF>].

“stop using certain ‘safety-related’ advertising language and would rename its ‘Safe Rides Fee’ as a ‘Booking Fee.’”<sup>209</sup>

If Uber implements more rigorous background checks and safety features, it can avoid future lobbying and lawsuit costs. For example, as of 2014, Uber spent over \$650,000 lobbying in California and at least \$60,000 in Colorado, essentially to ensure that stricter background checks requirements did not pass the legislatures.<sup>210</sup> The legal costs associated with the lawsuits in California, and future similar lawsuits, could exceed hundreds of thousands of dollars, if not millions, if Uber is unsuccessful in this fight.<sup>211</sup> Further, if Uber refuses to improve its safety features, cities and countries may refuse to allow Uber services to enter their market or may remove pre-existing services from their markets.<sup>212</sup>

### CONCLUSION

Uber’s fast growth and high profits are commendable, but it can only be sustained if the company proactively protects its customers. By putting state regulations and increased safety provisions in place, Uber’s goal of “safe rides, safer cities”<sup>213</sup> can be achieved. The recent California court rulings on Uber’s safety claims and practices is a win for consumers, as the company’s safety advertising will no longer be misleading. But the major victory would come from Uber living up to its promises of having “industry leading” background checks and truly creating the safest experience for its consumers.

However, if Uber does not implement necessary safety initiatives on its own, Nevada must be prepared to protect its unique population and consider requiring these features as current regulations do not require important safeguards like “FBI or state-enhanced criminal background checks . . . drug testing . . . [d]river training . . . [d]river physicals . . . [c]ameras in vehicles to ensure driver and customer safety and surveillance . . . [and] [c]onspicuous markings

---

<sup>209</sup> *Id.*

<sup>210</sup> See Mike Isaac, *Uber’s System for Screening Drivers Draws Scrutiny*, N.Y. TIMES (Dec. 9, 2014), <http://www.nytimes.com/2014/12/10/technology/ubers-system-for-screening-driver-s-comes-under-scrutiny.html> [<https://perma.cc/PL62-5PSM>].

<sup>211</sup> In early 2016, several of these lawsuits settled for \$28.5 million, with Uber stating, “We are glad to put these cases behind us and we will continue to invest in new technology and great customer services so that we can help improve safety in the cities we serve.” See *Uber Agrees to Settle Lawsuits Over Safety Claims Worth \$28.5 million*, BGR (Feb. 12, 2016, 12:42 PM), <http://www.bgr.in/news/uber-agrees-to-settle-lawsuits-over-safety-claims-worth-28-5-million> [<https://perma.cc/FK2H-STYA>].

<sup>212</sup> See generally Tracey Lien, *Uber Is on Growth Fast Track, Leaked Document Shows*, L.A. TIMES (Aug. 21, 2015, 4:52 PM), <http://www.latimes.com/business/la-fi-0822-uber-revenue-20150822-story.html> [<https://perma.cc/HQ5Z-MR7Y>] (“[Uber] punches itself into markets and spends big on advance teams, lawyers and lobbyists to fight opposition and gain a foothold in markets around the world.”).

<sup>213</sup> See *Safe Rides, Safer Cities*, UBER, <https://www.uber.com/ride/safety/> [<https://perma.cc/Q266-W2LG>] (last visited Nov. 6, 2016).

on the vehicles for law-enforcement identification.”<sup>214</sup> Ultimately, only time will determine Uber’s ultimate success or failure in Nevada, but it is almost guaranteed to be a wild ride.

---

<sup>214</sup> Velotta, *supra* note 46.