



# ONE STANDARD FOR ALL

## CRIMINAL BACKGROUND CHECKS FOR TAXICAB, FOR-HIRE, AND TRANSPORTATION NETWORK COMPANY (TNC) DRIVERS

### Authors

Professor Matthew W. Daus, Esq.

*The City College of New York, City University of New York (CUNY)*

Professor Pasqualino "Pat" Russo, Esq.

*John Jay College of Criminal Justice, City University of New York (CUNY)*

### Peer Review Panel Members

Hon. Michael A. L. Balboni

*former New York State Deputy Secretary for Public Safety*

Professor William J. DiVello

*John Jay College of Criminal Justice, CUNY*

Professor Lawrence Kobilinsky

*John Jay College of Criminal Justice, CUNY*

Professor Philip Zisman, Esq.

*Association of Inspectors General*



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COMPANY (TNC) DRIVERS**

***MAY 2015***

This monograph was published in the MPA Newsletter of John Jay College of Criminal Justice, of the City University of New York.

The findings and opinions in this monograph are those of the authors.

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## I. EXECUTIVE SUMMARY

“The rule and standard for all law-making is the public good.”

Locke, John. *A Letter about Toleration*. 1689.

In the last year or so, a nationwide discussion has been sparked regarding the accuracy, reliability, and adequacy of the public safety requirements that are imposed on for-hire vehicle (“FHV”) providers. Much of the debate has centered around whether the breadth and scope of driver vetting requirements imposed on drivers providing services through new transportation network companies, or “TNCs,” are comparable to those vetting requirements that have been established for traditional for-hire vehicle providers. This discussion is compounded by the fact that in several jurisdictions TNCs are operating “rogue,” or outside of the regulatory framework, which has many consumer rights advocates and law enforcement officials questioning whether TNCs are doing enough to protect the riding public.

The purpose of this report is to provide the reader with a comprehensive understanding of available background checks, and to then examine the types of checks in use to vet for-hire drivers in a variety of jurisdictions. Since there are differing standards for the types of checks in use by jurisdictions, there are legitimate concerns as to how these varying standards put the riding public at risk. Based on our review of the litigation and legal questions that have been raised concerning current practices for examining the criminal histories of driver-applicants, as well as the potential for disparate reporting of arrests of licensees, we seek to determine the “best practices” for ensuring that those who drive the public meet basic requirements in the local jurisdictions.

This study was prepared by several persons with a wide variety of experience in law enforcement, government, law, and technology. The effort was led by **Professor Pasqualino Russo, Esq.**, of John Jay College of Criminal Justice, CUNY, and **Professor Matthew W. Daus, Esq.**, Distinguished Lecturer at the University Transportation Research Center at the City College of New York, CUNY. Special recognition is made to **Frances Zelazny**, a subject matter expert with more than 15 years of experience in the biometrics field.

The study was presented and peer-reviewed by a blue ribbon panel of academics, criminalists, law enforcement officials, and security experts who reviewed the study, provided comments and, ultimately, provided their approval for the conclusions reached from the research. The panel includes: ***Hon. Michael A. L. Balboni*** (former Deputy Secretary for Public Safety for New York State, former New York State Senator and Chair of the New York State Senate Committee on Veterans, Homeland Security and Military Affairs); ***Professor William J. DiVello*** (former Executive Director, Office of Integrity and Oversight for the District of Columbia Chief Financial Officer (“CFO”), whose responsibilities included performing background investigations on CFO employees); ***Professor Lawrence Kobilinsky*** (Professor and Chairperson of the Department of Sciences, John Jay College of Criminal Justice); and ***Professor Philip Zisman*** (Executive Director, The Association of Inspectors General, former Inspector General for the City of Yonkers). Appendix J to this Report contains the biographies of the authors and the panelists.

The study begins with a primer concerning criminal background checks – describing for the novice what it means to “print” someone to providing details about the mechanism by which biometric “prints” come back to the entity requesting a background check. For the purposes of this discussion, it is important to differentiate between a “background check” and a “criminal background check.” A background check is typically a search of publicly-available records based on a person’s name, a process that may be done when applying for housing, employment, and, historically, for immigration purposes.

Further, this report provides a comparison between the types of checks, and identifies best practices for conducting these checks according to available studies and data, including the limits on legal access to government databases absent legislative changes allowing for an FBI-approved channeling agency.

Following this initial factual discussion, we set out to provide the reader with an overview of the regulatory standards and process for the background checks in a sampling of jurisdictions that: (1) have the same standards for all FHV drivers; (2) have different standards for TNC drivers; or (3) have “no standards” in that the TNCs self-regulate the driver background checks. The discussion herein offers a summary of the regulations involving driver

requirements, including criminal background and driver history checks. To date, TNC-specific regulations have been adopted in approximately twenty jurisdictions. We begin with a summary of the regulations imposed in New York City and Houston, Texas, where no special categories for TNCs exist and traditional FHV s and TNCs are subject to the same body of regulations. We then discuss and compare the traditional FHV regulations with the new TNC regulations in California; Chicago, Illinois; Colorado; the District of Columbia; and Seattle, Washington. Finally, we analyze and describe the different standards that are set by the TNCs themselves in jurisdictions like Boston, Massachusetts and Miami-Dade County, Florida, where TNCs are operating entirely outside of the regulatory framework. A comparison is offered of the breadth, speed, and accuracy of the traditional FHV regulations with those incorporated into new TNC regulations, and those standards that are imposed by the TNCs themselves. For the reader's convenience, Appendix A to this report is a reference guide with tables setting forth the background check requirements in these various jurisdictions; Appendix B is a flow chart representing the biometric check process.

In the next section of the report, we explain and examine the controversy that has been ignited by new TNC regulations and the advocacy by TNCs for self-regulation. Also, a discussion is set forth identifying and explaining the legal risks, issues, litigation, and public safety concerns, insofar as TNC background checks may not be as efficient or thorough as the traditional standards imposed by local and state regulators on taxicab and limousine drivers. We examine the recent California lawsuit initiated against TNCs by a group of the state's district attorneys. We then discuss the civil rights lawsuits initiated by TNC drivers in Massachusetts. This discussion is followed with an analysis of the equal protection and public safety concerns that have been raised in a spate of lawsuits that have been brought against TNCs within the past two years.

The last section of the study sets forth the conclusions reached by the select group of panelists who have reviewed the available evidence and determined that the varying standards for background checks required by TNC jurisdictions, as well as the self-regulatory model, fall short of the regulatory requirement to protect the riding public. In sum, the use of biometrics by transportation regulators in the driver vetting process provides efficient, cost-effective, and comprehensive results for those regulators to determine which drivers meet the standards for

licensure. Further, equal standards are required, regardless of the class or type of license being sought by the driver-applicant.

In summary, the recommendations in this report are not intended in any way to discourage the use of private criminal background checks by private companies or employers in general, or as an additional voluntary measure on the part of transportation companies in addition to government administered biometric fingerprinting. Our recommended best practices for conducting criminal background checks and making licensing decisions for all for-hire ground transportation drivers (taxicabs, limousines, liveries, black cars, TNCs, etc..), are as follows:

- (1) **Government must make the licensing decision:** the government transportation regulator responsible for licensing drivers should set driver fitness licensing standards via rulemaking or legislative process, and should make the decisions on who to license or not to license – not private companies self-regulating and exclusively making these decisions without any oversight;
- (2) **Government (directly or through a certified channeling agency) is responsible for fingerprinting:** the government transportation regulator or a sister governmental agency should administer a biometric based fingerprint check. Private sector certified channeling agencies and fingerprint service providers can provide a biometric-based fingerprint
- (3) **Biometric fingerprints preferred:** the government transportation regulator should mandate the use of biometric fingerprints, not name checks that are less accurate;
- (4) **Electronic fingerprinting preferred:** the government transportation regulator (or other government agency or private vendor acting on its behalf) should preferably use electronic digital fingerprint impressions (Live Scan) instead of manual ink-based fingerprinting of applicants;
- (5) **Specific criminal convictions can be a bar to licensure:** legislation and/or rulemaking can identify certain criminal convictions that have a direct nexus to the act of driving for hire such that a conviction can serve as either a lifetime ban on obtaining a license, or for a specific number of years (e.g., driving

while intoxicated, or serious felonies such as homicide, rape and armed robbery);

- (6) **Licensing decisions should be based on specific standards that may apply to any misdemeanor or felony conviction:** legislation and/or regulations, in addition to licensing preclusion for specific crimes, should set forth specific overall fitness standards (such as “good moral character” or “protection of public health and safety”) so that government transportation regulators can possess and exercise their discretion to analyze and bar licensure for drivers convicted of any crime that may bear a nexus to the licensed activity when applying said standard;
- (7) **Compliance with anti-discrimination laws must take place:** those states that have anti-discrimination laws that set forth substantive criteria and procedures to evaluate and consider the nexus between prior convictions and licensed activity, as well as any evidence of rehabilitation, must be complied with, and transportation licensing decisions and processes must be tailored to accommodate such laws where applicable;
- (8) **Drivers should have the opportunity to be heard and present evidence as part of licensing procedures evaluating criminal convictions:** government transportation regulators should put into place a process so that license applicants for driver licenses may offer evidence as to whether they were or were not convicted of certain crimes in all instances, as well as evidence of rehabilitation or a lack of nexus to licensed activity where there is fitness decision discretion and (no licensing preclusion for specific crimes);
- (9) **Rap-back service preferred to monitor licensed driver conduct:** the government transportation regulator should store and maintain, in a highly secure and confidential manner within accepted industry and government protocols, criminal conviction information for license applicants who subsequently become licensed for the duration of such license term, and should be notified of the arrest and conviction of licensed drivers for any crimes committed so that the agency may elect to either suspend or seek revocation of such license following a conviction, fitness hearing or procedure, after an opportunity to be heard is presented;

- (10) **“One standard for all drivers” in conducting and evaluating criminal backgrounds of taxi, limo and TNCs applicants:** all laws and rules that prescribe or detail criminal background checks processes, methods and criteria or licensing standards, should apply equally to all licensed for-hire vehicle drivers (however state or local regulations or laws classify them – limousines, taxicabs, TNCs, liveries, black cars, etc...), to ensure equal protection of the law, and no arbitrary, capricious or conflicting standards without a rational basis.

In the event that state and local legislatures continue to pass legislation creating separate TNC licensing categories, it is recommended that the foregoing best regulatory practices be adhered to and consistent with the crafting of such legislation. Historically, the regulation of for-hire ground transportation has been conducted at the local level and sometimes at the state level. Given the sovereign rights of states (and by delegation, municipal governments) to regulate such services within their borders pursuant to promoting the public health, safety and welfare of its citizens, there will undoubtedly be discretion to develop different licensing standards, procedures, and approaches for drivers, and these recommended best practices preserve the ability for local and state regulators to protect passengers, pedestrians and other drivers in accordance with existing laws, and to provide for their own regulatory flexibility without compromising their regulatory structure.

This report does not seek to preclude or discourage private TNC, taxicab or limousine operators from going above and beyond these best practices to conduct driver name background checks, “in addition” to government fingerprinting, or to otherwise develop further standards for monitoring driver conduct and performance beyond basic safety and conduct regulations, or rap-back services. Extra levels of safety and accountability are beneficial to the public interest and should be encouraged and promoted.

It is our hope that as the controversy surrounding TNCs continues and regulatory issues are being debated, that this report will provide policymakers, the media, the riding and general public with both factual information and expert opinions as to best regulatory practices. This report’s goal is to enlighten the public about existing, new and proposed laws, pending litigation,

the purpose for and systems for regulating, the accuracy measure of various criminal conviction background checks, as well as the considered opinions of experts in the field with extensive experience and understanding of the issues from both a forensic, law enforcement and transportation perspective. It is our hope that there will be "***one better and safer standard for all drivers,***" as a result of our extensive research, work and analysis of this issue.

## **II. Criminal Background Checks Facts 101 – Types, Scope and Reliability**

Making the right hiring decision is critical for any enterprise, whether a government agency or a private business. There are numerous costs to an organization associated with a bad hire, in addition to a fiduciary responsibility to promote public safety in the case of a transportation entity. If an employee or contractor comes into contact with an individual and causes any harm to a customer, the liability and consequences can be great – from a money, trust and legal standpoint. Pre-employment screening helps to weed out potential issues up front, and a background check can be an important component.

For the purposes of this discussion, it is important to differentiate between a “background check” and a “criminal background check.” A background check is typically a search of publicly-available records based on a person’s name, a process that may be done when applying for housing, employment, and, historically, for immigration purposes.

At the FBI, the National Name Check program, which dates back to the Eisenhower Administration and Executive Order 10450, involves a search of the FBI’s Central Records System Universal Index for any appearance of the name of the individual, as well as close variations, multiple spellings, and permutations of that name. If any such occurrences are found, the Name Check also involves retrieval and analysis of the relevant paper and electronic files from local FBI offices and from other law-enforcement agencies.<sup>1</sup> The primary use of the FBI National Name Check program is for immigration and federal employee background check purposes. In 2013, the FBI conducted more than 3 million name checks.

The process is described on the FBI web site:<sup>2</sup>

*When the name checks are submitted, the names are electronically checked against the FBI's Universal Index (“UNI”). The searches seek all instances of the individual's name appearing in both main files and reference files. A main file contains the name of an individual who is the subject of an FBI*

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<sup>1</sup> <http://www.fbi.gov/stats-services/name-checks/namechecks>

<sup>2</sup> <http://www.fbi.gov/stats-services/name-checks/name-checks-faqs>

*investigation, whereas a reference file contains the name of someone who is mentioned in an FBI investigation. Reference files may name associates, conspirators, or witnesses.*

*The majority of name checks submitted are electronically checked and returned to the submitting agency as having "no record" within 48-72 hours. A "no record" indicates that the FBI's UNI database contains no identifiable information regarding a particular individual. Duplicate submissions (i.e., identically spelled names with identical dates of birth submitted within the last 120 days) are not checked, and the duplicate findings are returned immediately to the submitting agency.*

*A secondary manual search of residuals from the original run is conducted within 10 days and identifies an additional number of names as a "no record" response. The remaining name checks (usually about 7 percent of the name checks originally submitted) are identified as possibly being the subject of an FBI record. At that point, the FBI record must be retrieved and reviewed. If the record is available in the FBI's electronic recordkeeping system, it can be reviewed quickly. If not, the relevant information must be retrieved from an existing paper record. Review of this information determines whether the information is positively identified with the name check request. If the information is not identified with the request, the request is closed as a "no record" and the requesting agency is notified as such.*

*The average time required to retrieve and review an FBI record for possible information related to a name check request is case specific—it depends on the number of files an analyst must obtain (which is dictated by the number of "hits" on a name), the location and availability of those files, and the amount of information contained in a file. If a file is stored locally, an analyst will be able to obtain the file within a matter of days. If a file is located in a field office or other FBI location, the applicable information*

*must be requested from that location. There are over 265 different FBI locations that could house information pertinent to a name check request. If a file is electronically available, an analyst will have immediate access to that file. Additionally, once an analyst receives the file or the pertinent information contained in a file, the analyst must review it for possible information related to the name check request.*

*Many times, the delay associated with the processing of the remaining name checks is not the actual time it takes to process a name check, but the time it takes for an analyst to retrieve the relevant information in the files in order to process it. Less than 1 percent of the requests are identified with a file containing possible derogatory information. If applicable, the FBI then forwards a summary of the derogatory information to the requesting agency. It is important to note that the FBI does not adjudicate the name check requests, but only provides available information to a requesting agency for its adjudication process.*

In addition to the FBI, there are many other sources of information that are available for background check purposes:

- Social security number validation;
- Address verification;
- Credit checks;
- Federal and county criminal courthouse records;
- Reference checks;
- Driving records;
- Workers' compensation claims; and
- Sex offender registries.

These records may include information on people with the same name, misspellings, or be out of date or otherwise unreliable. Sex offender registries offer a perfect example. In 2014, the State of Vermont conducted an audit, which exposed a significant number of errors in the sex

offender registry, explicitly calling into question its reliability.<sup>3</sup> The audit found that 11% of the records in the system contained critical errors. Critical errors were defined “as those that have resulted, or would have resulted if not corrected, in a sex offender 1) being incorrectly omitted, added, retained or deleted from the SOR [Sex Offender Registry] or 2) being incorrectly omitted, added, retained or deleted from the Internet SOR.”

A criminal background check, on the other hand is a search of confidential law enforcement databases, cross-referencing with a person’s name, social security number and other personal identifiers, like a fingerprint. The cross-referencing and the biometric identification ensures that even if a person uses multiple names or another person in the database exists with the same name, the result of the search will be accurate. The fingerprint component is the most important element of this process because it is the one true identifier that cannot be stolen or falsified by the applicant.

#### **A. Who checks and how does it work?**

Conducting a criminal history background check for employment or licensing purposes is governed by statute at both the federal and state level. At the federal level, the FBI has the authority under Public Law (Pub. L.) 92-544<sup>4</sup> to conduct what is referred to as an Identity History Summary check. The law allows for the “exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized, by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing.”

Since this law was passed in 1972, a significant number of laws have been passed requiring fingerprint checks for employment and licensing purposes – both on the federal and state level. The requirements differ from state to state and jurisdiction to jurisdiction but, in general, below are the types of jobs and licenses and other processes that may require a fingerprint background check:

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3 <http://www.leg.state.vt.us/reports/2014ExternalReports/301906.pdf>

4 <http://www.gpo.gov/fdsys/pkg/STATUTE-86/pdf/STATUTE-86-Pg1109.pdf>

- Government employees;
- Education (teachers, school volunteers, school bus drivers);
- Financial services (mortgage brokers, bank tellers, securities brokers, etc.);
- Caregivers (elder care, child day care, etc.);
- Adoption and foster care applicants;
- Medical professionals (doctors, nurses, chiropractors);
- Taxicab drivers;
- Security guards;
- Explosive and gun permits;
- Immigration (federal);
- Hazardous material truck drivers;
- Airport employees; and
- Transportation workers (seaports).

These background checks – whether a name check or a criminal history/fingerprint check – can be conducted by private vendors or directly by a government agency. According to public reports, up to 87% of employers today conduct some type of background check,<sup>5</sup> helping to support a \$2 billion background check services industry.<sup>6</sup> In fact, one source suggests that for every dollar spent on employment screening, the return on investment is \$5-\$16, given the sheer amount of fraud that is found on job applications.<sup>7</sup> Private vendors may amass their own databases by following court records and other publicly available records, but again, these are not official databases. The cost of conducting each element of the check can range from \$4.95 to \$29.95.

To conduct a criminal history check or a fingerprint background check, a more extensive process is required. The individual must have his or her fingerprints captured (on ink and paper or live scan – more on this below). If the process is performed with ink and paper, the card is then scanned and electronically submitted for search. Live scans are sent automatically for search. This process is conducted either at a police station or at a location operated by an

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<sup>5</sup> <http://www.crainsnewyork.com/article/20130623/FINANCE/306239972/background-check-industry-under-scrutiny-as-profits-soar>

<sup>6</sup> <http://www.ibisworld.com/industry/background-check-services.html>

<sup>7</sup> <http://www.openonline.com/Home/Resource-Center/Overview.aspx>

approved channeling agency. A channeling agency is authorized to submit fingerprints to the FBI and to receive the FBI criminal history record on behalf of an authorized recipient for authorized non-criminal justice purposes. There are currently 13 approved FBI channelers.<sup>8</sup>

In addition to the FBI criminal history check, fingerprints may also be checked at the state level. It is important to note that there are many more records at the state and local level than there are in the federal database.

Examples of records that are kept at the local level that would not necessarily appear in the FBI database are:

- Traffic charges;
- Minor misdemeanors;
- Civil charges;
- Applicant information;
- Officers' prints;
- Illegal aliens;
- Immigration or "ICE" holds; and
- Juveniles.

The State of California Department of Justice outlines the fingerprint submission process on its web site, which is typical for how this type of search is conducted:<sup>9</sup>

*The background check process begins when an applicant agency provides an applicant with a BCIA 8016, REQUEST FOR LIVE SCAN SERVICE form. The applicant completes the form with his/her personal information and takes the form to a live scan operator where the applicant must provide the appropriate identification. In California fingerprinting must be performed by a certified fingerprint roller or qualified law enforcement personnel.*

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<sup>8</sup> <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/list-of-fbi-approved-channelers>

<sup>9</sup> <http://oag.ca.gov/fingerprints>

*The live scan operator checks the applicant's identification, inputs the applicant's personal descriptor information, captures the applicant's fingerprints electronically, and transmits the data to the DOJ [Department of Justice]. At the conclusion of the session, the applicant should be provided an applicant transaction identifier ("ATI") number, a number used to identify the transaction. The assignment of an ATI number, generated by the live scan device, does not necessarily mean the fingerprint images and personal information was [sic] submitted to the DOJ. Although the fingerprint images and personal information are to be transmitted to the DOJ within 24 hours, the actual transmission of the information to the DOJ is at the control of the live scan operator; and varies in timeliness.*

*Once the transaction is received by the DOJ, the fingerprint images are used to automatically search against all other fingerprint images in the fingerprint database. If there are no fingerprints matching the applicant's fingerprints, the transaction is generally processed electronically without technician intervention within 48 to 72 hours. If an applicant's fingerprints match fingerprints in the database, the associated RAP sheet must be reviewed by a technician.<sup>10</sup> This is a manual process that can take an indeterminate amount of time. The applicant agency is automatically sent a delay notice response. Questions or status inquiries related to a delayed transaction cannot be responded to, as there is no pertinent information that can be statutorily provided until the manual review of the transaction is complete. The next communiqué the applicant agency will receive is their completed response.*

*A DOJ technician first reviews the RAP sheet to determine if there is a corresponding disposition for each arrest. If there is, the technician applies the dissemination criterion statutorily mandated for the applicant type, e.g., the type of employment, certification, or license, and prepares a background check response for the applicant agency pursuant to Penal Code section 11105 (k-p).*

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<sup>10</sup> RAP is the acronym for "record of arrests and prosecutions."

*The response may be sent electronically or via hard copy mail, depending on how the applicant agency requested to receive the responses.*

*If there is not a matching disposition for every arrest, the DOJ is mandated by statute and case law to perform a “genuine effort” to determine the disposition of each arrest that does not have a corresponding disposition. To fulfill this “genuine effort,” the DOJ must contact the booking [sic] police or sheriff’s department to determine who affected the arrest, and then the arresting agency is contacted to determine if the arrest was a “release detention only” encounter. Depending on what the technician learns, the DOJ may contact the District Attorney’s office to determine if the arrest was referred for review or action and to determine if any action was taken or if the District Attorney’s office declined to prosecute on the arrest. If there is no information available from the District Attorney’s office, the DOJ will contact the court to determine if this arrest event was handled in the court and if there is a disposition of that arrest event. The probation department may also be contacted to gather any missing information. Each contact is accomplished via telephone call or fax request. The research is labor intensive on the part of these agencies contacted, and as such, sometimes they limit the number of information requests the DOJ may make to them each day. Once the “genuine effort” is fulfilled, the criminal history record is updated, the RAP sheet is reviewed again, the dissemination criterion applied, and the background check response is prepared and sent to the applicant agency.*

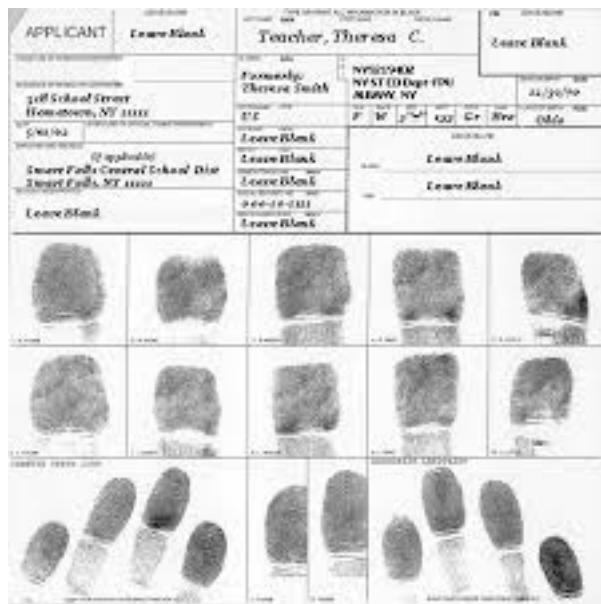
## **B. Biometric checks**

As stated earlier, fingerprints are an important component of criminal background checks. Fingerprints are a type of biometric, defined as the measurement and analysis of unique physical or behavioral characteristics (as fingerprint or voice patterns) especially as a means of verifying personal identity.<sup>11</sup> Biometrics are unique to an individual and cannot be forged, lost, or stolen.

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11 <http://www.merriam-webster.com/dictionary/biometrics>

Fingerprint biometrics have been used for more than 100 years as proof of identification, and for forensic and law enforcement purposes. The fingerprint contains different patterns, ridge structures and specific characteristics called minutiae. Their existence, relative location and number together make up the uniqueness to the individual. 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. An example of a fingerprint image is provided below.<sup>12</sup>



**Figure 1: Sample fingerprint card<sup>13</sup>**

Traditionally, fingerprints have been recorded on cards using ink; more recently, the fingerprints are captured with electronic live scan or other sensor equipment with much greater accuracy. The live scan equipment captures the fingerprint at a minimum of 500dpi per FBI standards, exposing the details of the ridges and valleys (minutiae) and making it searchable against a large database. Quality checks at the machine level ensure even greater accuracy.

12 <http://sites.bergen.org/forensic/fingerprint.htm>

13 <http://www.highered.nysed.gov/tsei/ospra/samplefpcard.html>



**Figure 2: Live Scan<sup>14</sup>**

The fingerprints themselves are stored in a database called an Automatic Fingerprint Identification System (“AFIS”), which is also used to catalogue the type of fingerprints (based on the shape of the swirls), to store the templates (which are the numerical representations of the fingerprints) and for searching. Today’s AFIS systems work with multiple servers to provide speeds upwards of millions per second, as opposed to 3.3 fingerprint cards per hour that were able to be processed manually by forensic specialists before the advent of this technology. Most law enforcement and government agencies use AFIS systems for identification purposes – criminal and civil agencies making fingerprints the go-to biometric when it comes to criminal background checks.

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14 Courtesy of MorphoTrust ([www.morphotrust.com](http://www.morphotrust.com))



**Figure 3: Sample fingerprint image**

The FBI maintains the largest AFIS, with more than 100 million criminal and civil fingerprint records. According to the agency's web site, a criminal search is processed in 27 minutes on average, whereas a civil applicant search is processed in an average of one hour and 12 minutes. Civil applicant searches are those conducted on behalf of people applying for various jobs and licenses. More than 61 million fingerprint searches were conducted during fiscal year 2010.<sup>15</sup> Fingerprint error rates are less than 1%.<sup>16</sup> A new system called Next Generation IAFIS was put in place in 2014 to support multiple types of biometrics and increase the speed and efficiency of the processing.

All states and many counties/regions and large cities also maintain their own AFIS systems, which tend to contain different data sets. This is due to the fact that some information is not needed or accepted at the higher level, and most crime scene prints are identified to criminals in the same geographic area; it is faster to search smaller, local databases.

The cost for a state AFIS is approximately \$12 per biometric check. The FBI charges a \$16 fee. This does not include the cost of capturing the fingerprint data. It is important to run

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15 [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

16 The FBI has reported that the Advanced Fingerprint Identification Technology (“AFIT”), completed February 25, 2011, has replaced the Automated Fingerprint Identification System AFIS segment of the IAFIS. With advanced matching algorithms, the AFIT increased identification performance and machine matching accuracy from 92 percent to more than 99 percent. <http://www.fbi.gov/about-us/cjis/cjis-link/october%202014/ngi-officially-replaces-iafis-yields-more-search-options-and-investigative-leads-and-increased-identification-accuracy>

both name and fingerprint checks for maximum reliability of the background check record. (An individual may not have a criminal record with fingerprints on file, but may be found to be using a false social security number, which could be problematic.)

One of the more interesting capabilities of using fingerprints for the criminal history check is the ability to automatically submit for renewal or for an agency to receive automatic updates or an altered criminal history status. This is known as a “Rap Back Service” that provides the agency with notification of criminal, and in some cases, civil activity that occurs after the initial processing of the criminal history. The benefit of the Rap Back Service is to provide agencies notice of subsequent activity in between the renewal cycles of the license. The second way to accomplish this goal is to store the applicant fingerprints at the taxi regulatory authority and resubmit the fingerprints for the full criminal history check on a regular basis.

### C. Comparison & Best Practices (Name vs. Biometrics) – How do they measure up?

According to the National Employment Law Project, 65 million adults in the United States have criminal histories.<sup>17</sup> This represents approximately 30-40% of the working population in the United States. Given the plethora of jobs that do require criminal history checks, by definition, people with criminal histories will gravitate towards opportunities that increase their chances of finding a job. These include jobs that do not require fingerprint background checks or any criminal history check.

A survey conducted in 2004 by the Society for Human Resources Advancement among their membership found that fifty-three percent (53%) of respondents reported that they, either sometimes or always, find inconsistencies in the criminal history check. As the report states, “these numbers do not account for the severity of the inconsistency, but are nonetheless eye-opening and should be kept in mind by organizations when deciding whether to verify applicant information.”<sup>18</sup>

Consider these additional facts, culled from a 2010 ADP Screening Index based on 6.5

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17 [http://www.nelp.org/page/-/65\\_million\\_need\\_not\\_apply.pdf?nocdn=1](http://www.nelp.org/page/-/65_million_need_not_apply.pdf?nocdn=1)

18 <http://www.shrm.org/Research/SurveyFindings/Documents/Reference%20and%20Background%20Checking%20Survey%20Report.pdf>

million individual background checks:<sup>19</sup>

- 46% of employment and reference checks revealed a difference between what was presented by an applicant and what was verified;
- 36% of driving records indicated one or more violations or convictions;
- 6% of criminal background checks revealed a criminal record in the last seven years, with 24% of those having two or more adverse records; and
- 9% of background checks revealed some sort of adverse record.

Given the number of potential “misses” due to inaccurate information, the true number of applicants with criminal histories is likely to be higher. In fact, the FBI has previously reported that the annual hit rate on civil submissions is 12%.<sup>20</sup> This figure was also verified in a 1999 study conducted by an Attorney General Task Force in which name-only and fingerprint checks were conducted on more than 90,000 state employees and state license applicants, which verified fingerprint records on people who stated they had a clear criminal history.<sup>21</sup> On a national basis, this rate would equate to approximately 900,000 checks per year being identified to individuals with existing criminal history records. More alarming, this number is based on the FBI database alone. As discussed earlier, state and local databases contain much more information that may be useful when conducting a thorough criminal history check.

It is more troubling that, according to recent media reports, for only \$5, one could obtain access to a usable name, credit card number and expiration date, social security and mother’s maiden name,<sup>22</sup> and again the only way to distinguish between this stolen identity and the actual person is the biometric.

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19 <http://www.slideshare.net/adp/compliant-preemploymentscreening>

20 <http://www.fbi.gov/congress/congress04/033004kirkpatrick.htm>

21 [http://www.search.org/files/pdf/III\\_Name\\_Check.pdf](http://www.search.org/files/pdf/III_Name_Check.pdf)

22 <http://newsfeed.time.com/2013/08/26/your-identity-is-worth-5-on-the-black-market/>

### **III. FOR-HIRE GROUND TRANSPORTATION REGULATION – DRIVER CRIMINAL BACKGROUND CHECKS**

#### **A. Overview**

The following section describes, in detail, the criminal background check process that transportation regulators in New York, Houston, California, Chicago, Colorado, the District of Columbia, Seattle, Boston, and Miami-Dade County have in place now for driver-applicants. This information was culled through research of the applicable governing statutes and regulations, a review of the available documentation published by those entities, and direct communications with each of these regulatory agencies to confirm the costs and additional details unavailable on their websites. For each jurisdiction, we have also researched the legal standard for review and the legal guidance to the regulators as to how to determine the fitness of an applicant for a ground transportation driver's license.

We begin with a discussion of New York City and its systems for the review of an applicant's background. We do so, not because New York City is the largest municipality, but because its standard for driver licensure ("good moral character"), as well as its rules and regulations, provide a comprehensive process that does not differentiate among various classes of drivers. Moreover, the process is one in which the New York City Taxi & Limousine Commission (the "TLC") requires the finger-imaging of applicants and submits those fingerprints to the state agency that can cross-reference the fingerprints against a criminal database. This standard operating procedure provides for an efficient and expeditious result for the TLC for all of its applicants. If there is a "flag" or a "hit" on the prints for a criminal conviction, the TLC may request from the applicant, through a letter, e-mail, telephone call or personal interview, additional information<sup>23</sup> to analyze the fitness of the driver-applicant to be licensed in light of the good moral character standard. These actions are undertaken with guidance from State law that involves a nexus between the conviction and driving. Specifically, Section 752 of the NYS Corrections Law prohibits applications for any license or employment, or employment or license held by an individual, to be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by

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23 [http://www.nyc.gov/html/tlc/downloads/pdf/fitness\\_rules\\_intro\\_%208\\_2\\_11.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/fitness_rules_intro_%208_2_11.pdf)

reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

- (1) "there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."<sup>24</sup>

"In making a determination pursuant to Section 752 of the NYS Corrections Law, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public. 2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein."<sup>25</sup>

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24 NYS Corrections Law, §752

25 NYS Corrections Law, §753

If the applicant disagrees with the determination, the applicant may file a legal action if ultimately denied licensure by the TLC. The only questions that may be raised in a proceeding under this article are: “1) whether the body or officer failed to perform a duty enjoined upon it by law; or 2) whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or 3) whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or 4) whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.”<sup>26</sup>

For those who have a license, the fingerprint on file may also be cross-matched if there is an arrest of the TLC licensee, and New York State’s Division of Criminal Justice Services will report this information to the TLC for a potential licensing suspension action, usually within 24-48 hours. Again, these actions are governed by the stated standards for revocation, and procedures for fitness revision.<sup>27</sup>

When an applicant applies for a TLC license, the TLC conducts a background check of the applicant’s criminal, driving, and TLC records. Where a driver’s application raises concerns about such driver’s fitness to hold a license, the TLC may schedule a fitness interview.<sup>28</sup> A TLC attorney/investigator conducts the interview and he/she decides whether the applicant is fit to hold a TLC driver’s license. The burden of proof is on the applicant to show that he/she can be trusted to transport the public safely, follow the law and be of good moral character.<sup>29</sup> The applicant is encouraged to submit documents showing that he or she has been rehabilitated, such as certificates of treatment or counseling, or if the applicant was in an accident, copies of the accident report.

TLC rules identify certain reasons where the chairperson can reject or deny an application.<sup>30</sup> Applicants will be rejected and banned for three years for applying for a license if in the prior three years, the applicant has committed any act, as prohibited by the TLC rules, of

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26 NYS Civil Procedure Laws and Rules, §7803

27 Title 35 of the Rules of the City of New York, , §54-08 (taxi drivers) and§55-08 (for-hire vehicle drivers)

28 *Id.* and see Sample TLC Notice of Fitness Interview Letter, attached as exhibit \_\_\_\_

29 *Id.*

30 Title 35 of the Rules of the City of New York, §54-08 (taxi drivers) and §55 (for-hire vehicle drivers)

“(i) driving a TLC licensed vehicle while impaired by intoxicating liquor or drugs; (ii) fraud, material misrepresentation, theft, threat against a person, harassment, abuse or use of physical force; or involving the possession of a weapon in a vehicle licensed by TLC. Applicants will be denied and banned for two years for applying for a license if in the prior two years, the applicant has committed any act (i) constituting for-hire operation of a motor vehicle without a valid TLC license (except the traffic infraction of unlicensed operation); or (ii) six or more violations of these Rules while holding any license issued by the TLC. Applicants will be denied and banned for one year for applying for a license if in the previous year, the applicant has committed (i) more than three traffic accidents within a single year; (ii) the traffic infraction of unlicensed operation of a motor vehicle; (iii) TLC will deny an application submitted within one year after the denial of a previous application if the previous application was denied because the applicant was found not fit to hold a license; and (iv) illegal use of drugs as determined by the TLC after a drug test. The TLC may also deny an application if (i) there is a mistake or omission in the application; (ii) the driver, at the time of licensure, would be subject to license suspension or revocation under the TLC’s points system; or (ii) the applicant has criminal charges pending.”<sup>31</sup>

Based on these unambiguous and uniform standards for all classes of drivers, we see that the New York City process rightly stands apart in comparison to the other jurisdictions listed in this section. The reader will note that there are keen differences where TNC laws have been enacted and in the jurisdictions without a regulatory framework for TNCs, and those companies are self-policing their drivers. For these jurisdictions, we identify these differences in process and oversight, and identify the gaps.

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31 The TLC retains wide discretion and latitude to deny or approve applications which does not exist for other commercial drivers in New York State. For instance, under State law, bus drivers must obtain a special license under Article 19A of the State Vehicle and Traffic Law. Article 19A drivers can be permanently disqualified, or for a period of time if they have been convicted of certain offenses. Vehicle and Traffic Law § 509-c.

## B. Jurisdictional Analysis

### 1. New York, New York

#### a. Legal or regulatory licensing standard

New York City has some of the most strict and thorough statutes and rules governing the operation of for-hire vehicles. Under the City Charter, the New York City Taxi and Limousine Commission (“TLC”) is given broad authority over for-hire vehicles, including establishing standards and criteria for the licensing of vehicles, drivers and chauffeurs, owners, and operators engaged in such services.<sup>32</sup>

New York City local laws extensively regulate for-hire vehicle service. Under the legislative findings to the laws, the legislature found that “. . . the business of transporting passengers for hire by motor vehicle in the City of New York is affected with a public interest, is a vital and integral part of the transportation system of the City and must therefore be supervised, regulated and controlled by the City.”<sup>33</sup> Under the local laws of New York City, for-hire vehicle drivers must be, among many other things, “of good moral character . . .”<sup>34</sup>

#### b. Background check process

For-hire vehicle drivers must apply for a new license by completing an application that they can complete in person or online.<sup>35</sup> In addition to standard questions asking for applicant information, such as address, date of birth, and contact information, the application also asks for information about whether the applicant has been convicted of a crime (misdemeanor or felony). Under the TLC rules, for-hire vehicle driver applicants must be fingerprinted for the purpose of obtaining criminal history records from the New York State Division of Criminal Justice

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32 City Charter § 2300, *et seq.*

33 NYC Ad. Code § 19-501.

34 *Id.* at § 19-505.

35 <http://www.nyc.gov/html/tlc/html/industry/drivers.shtml>

Services (“DCJS”).<sup>36</sup> New York City transmits fingerprints to the New York State Department of Criminal Justice Services, which accesses the FBI’s Integrated Automated Fingerprint Identification System (IAFIS).

The TLC captures fingerprints through “Live Scan.” Live Scan captures fingerprints electronically with a live scan machine.<sup>37</sup> This process replaced the old-fashioned ink and paper and is faster, cleaner and more accurate. The State Identification Bureau at DCJS processes the fingerprints to determine positive identification, past criminal history and warrant information.<sup>38</sup> DCJS processes background checks in fewer than two hours and the reports are returned electronically to the TLC to make suitability determinations regarding the applicant. The TLC receives the results usually within 48 hours.<sup>39</sup> DCJS also notifies the TLC if the licensed driver is later arrested.<sup>40</sup>

The TLC receives notification within 24 hours of a finger-printable offense being recorded.<sup>41</sup> There is no administrative appeal if the TLC denies an applicant. The applicant is responsible for paying the processing fees, which are currently \$75.<sup>42</sup> The records are stored in the TLC’s applicants’ files. In fiscal year 2014, which is from July 1, 2013 to June 30, 2014, the TLC had 33,000 driver applicants. The TLC does not track the number of applicants that are denied.<sup>43</sup> Appendix E contains a table setting forth the NYC TLC licensing requirements; Appendix F is a sample NYC TLC Notice of Fitness Interview determination letter.

c. Transportation Network Companies

New York City does not have a different category for Transportation Network Companies. All for-hire transportation providers, including Uber and Lyft, are treated the same and must comply with all licensing requirements for base, vehicle, and driver licensing. Taxicabs traditionally have had the strictest requirements for licensing. However, to ensure

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36 New York City Rules, Ch. 55, § 55-04.

37 <http://www.identogo.com/ProductsServices/LiveScanFingerprinting.aspx>

38 [http://www.criminaljustice.ny.gov/pio/fp\\_services.htm](http://www.criminaljustice.ny.gov/pio/fp_services.htm)

39 Email with New York City Taxi and Limousine Commission Public Affairs office dated March 18, 2015.

40 *Id.*

41 Email with New York City Taxi and Limousine Commission Public Affairs office dated March 18, 2015.

42 [http://www.nyc.gov/html/tlc/downloads/pdf/new\\_driver\\_checklist\\_partb.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/new_driver_checklist_partb.pdf)

43 Email with New York City Taxi and Limousine Commission Public Affairs office dated March 18, 2015.

fairness between taxis and other for-hire vehicles, the TLC has recently adopted rules mandating driver education requirements and providing trip data requirements for the for-hire vehicle industries, which it was not required to follow before. In January 2015, the TLC has also held a public hearing on how it should regulate dispatch apps and has indicated it will soon be working on rules for such licensing.

## **2. Houston, Texas**

### *a. Legal or regulatory licensing standard*

Chapter 46 of the Houston, Texas, Code of Ordinances regulates vehicles-for-hire in the city. In Houston, VFH means a taxicab, pedicab, sightseeing and charter vehicle, chauffeured limousine, school vehicle, jitney, low-speed shuttle, or transportation network vehicle used for the provision of transportation services for hire to the general public.<sup>44</sup> The term expressly excludes vehicles operated or regulated by other government entities. To obtain a vehicle-for-hire driver license, applications must be submitted to the director of the department of administration and regulatory affairs or the director's designee.<sup>45</sup> The applicant must provide the following information with each application:

- The applicant's full name, residence, places of residence for five years previous to moving to his present address, age, race, height, weight, color of eyes and hair, place of birth, and length of time he has resided in the city;
- The specific type of vehicle for hire license for which the applicant is applying;
- Whether the applicant is a citizen of the United States, and his record of employment for the five years prior to the date of the application, and social security number;
- Whether the applicant has ever been convicted of a felony or misdemeanor;
- Whether the applicant has previously been a licensee;
- Whether the applicant has ever had a license pursuant to this chapter denied, revoked or suspended;

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44 City of Houston, Texas Code of Ordinances, Chapter 46, Vehicle for Hire, § 46-1

45 City of Houston, Texas Code of Ordinances, Chapter 46, Vehicle for Hire, § 46-15

- Whether the applicant has ever had a state issued private passenger vehicle driver license or commercial vehicle driver license denied, revoked, or suspended;
- The permittee for whom the applicant intends to work;
- Evidence of compliance with all qualifications established in this article; and
- Any other information that may be reasonably requested by the director.<sup>46</sup>

Each new applicant for a license must have a valid state class A, B, or C Texas driver license. They must be 18 years of age or older and able to read and write the English language. A duly licensed physician must provide the certificate described in § 46-6(a) of this Code. Applicants must not have a criminal history that is allowed under section 1-10 of the Code. Each applicant must also provide a driving record, in a form to be specified by the director, from Texas and from any state that has issued the applicant a driver license that was valid at any time within the three years immediately preceding the submission of the application. Attendance and successful completion of a training course is also required to qualify for a for-hire vehicle license.<sup>47</sup>

*b. Background check process*

After the initial application for a license and at license renewal intervals, the director shall have a criminal history check conducted of each person designated as a driver in an application for a license.<sup>48</sup> Fingerprinting is required for FHV drivers, as well as a “Computerized Criminal History Verification” (“CCHV”) check, performed by accessing the Texas Department of Public Safety Secure Website, based on the fingerprint, name, and date of birth that is supplied.

The City of Houston recently approved Ordinance No. 2014-754, which became effective on August 6, 2014, providing that licenses shall be denied if the applicant:

- Has been convicted of any of the designated offenses within the ten-year period immediately preceding the date of the filing of the application or has spent time in

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<sup>46</sup> Ord. No. 2014-754, § 2 (Exh. A), 8-6-2104

<sup>47</sup> City of Houston, Texas Code of Ordinances, Chapter 46, Vehicle for Hire, § 46-16

<sup>48</sup> City of Houston, Texas Code of Ordinances, Chapter 46, Vehicle for Hire, § 46-7

jail or prison during the then-year period immediately preceding the date of filing of the application for such conviction, or

- Is subject to deferred adjudication in connection with any of the above offenses. Additionally, the following permits, certificates of registration, and licenses shall be subject to denial, revocation, or refusal for renewal, as applicable, if the permittee, registrant, or licensee has been convicted of any of the designated offenses since the application was filed. Provided, however, no such permit, certificate of registration, or license shall be denied, revoked, or refused for renewal if the conviction was set aside as invalid or if it is found that the license or permit should not be denied, revoked, or refused for renewal under Chapter 53 of the Texas Occupations Code:

- SGT licenses issued pursuant to § 9-58 of this Code and permits, certificates of registration, and licenses issued pursuant to chapter 46 of the City's Code of Ordinances (relating to Vehicles-For-Hire) (the "Code").
  - Any offense involving fraud or theft;
  - Any offense involving forgery;
  - Any offense involving the unauthorized use of a motor vehicle;
  - Any violation of state or federal laws regulating firearms;
  - Any offense involving violence to any person except for conduct that is classified as no greater than C misdemeanor under the laws of Texas;
  - Any offense involving prostitution or the promotion of prostitution;
  - Any offense involving rape, sexual abuse, sexual assault, rape of a child, sexual abuse of a child, indecency with a child, or resulting in designation of the individual as a "registered sex offender" by any state or by the federal government.
- In addition to the offenses listed above, the following is applied to SGT licenses and licenses issued pursuant to Chapter 46 of the Code:
  - Three or more moving violations of the traffic laws of this state or any other state if such violations occurred within the two years

- immediately preceding the application for or renewal of a license or of the notice of a hearing for revocation of a license;
- Any offense involving driving a motor vehicle while intoxicated, whether under the influence of alcohol or drugs, or both.<sup>49</sup>

“The above listed offenses shall be grounds for denial, revocation or refusal for renewal of the above referenced permits, certificates of registration, and licenses as they allow persons to engage in businesses and occupations in which there is a high degree of personal contact with and danger to the public and a serious need to protect the members of the public utilizing public transportation services from the type of criminal conduct represented by such offenses.”<sup>50</sup>

Each person designated as a driver in an application shall complete any forms required for the director to obtain the report, and the applicant must present the required completed forms to the director and cover the cost of any fees imposed by state or federal agencies for the report.<sup>51</sup>

c. Transportation Network Services

The City of Houston recently approved new regulations to protect public safety and improve customer service.<sup>52</sup> Ordinance No. 2014-754, which became effective on August 6, 2014, expanded existing vehicle-for-hire regulations to allow new transportation services to operate in Houston.<sup>53</sup> As a result, transportation network companies now fall within the definition of a “vehicle-for-hire” and are also regulated by Chapter 46 of the Houston, Texas Code of Ordinances with regard to the background check process and fingerprinting.<sup>54</sup>

Ordinance No. 2014-754 also expanded existing vehicle-for-hire regulations to allow new transportation services to operate in Houston.<sup>55</sup> As a result, transportation network companies now fall within the definition of a “vehicle-for-hire” and are also regulated by Chapter 46 of the

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49 Ord. No. 2014-754, §2 (Exh. A), 8-6-2104

50 Ord. No. 2014-754, §2 (Exh. A), 8-6-2104

51 City of Houston, Texas Code of Ordinances, Chapter 46, Vehicle for Hire, § 46-7

52 [https://www.houstontx.gov/ara/chapter46docs/vehicle\\_for\\_hire-faqs.pdf](https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf)

53 [https://www.houstontx.gov/ara/chapter46docs/vehicle\\_for\\_hire-faqs.pdf](https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf)

54 [https://www.houstontx.gov/ara/chapter46docs/vehicle\\_for\\_hire-faqs.pdf](https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf)

55 [https://www.houstontx.gov/ara/chapter46docs/vehicle\\_for\\_hire-faqs.pdf](https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf)

Houston, Texas Code of Ordinances with regard to the background check process and fingerprinting, and are subject to the same standards of review.<sup>56</sup>

### ***3. State of California***

#### ***a. Legal or regulatory licensing standard***

The California State Public Utilities Commission (the “CPUC”) has regulatory and safety oversight of for-hire passenger carriers (i.e., limousines, airport shuttles, charter and scheduled bus operators) used in the transportation of passengers for-hire on a prearranged basis within California (the “State”).<sup>57</sup> The CPUC enforces the “Passenger Charter-party Carriers’ Act,” California Public Utilities Code §§ 5351, *et seq.* Motor vehicles operating in California are also subject to the California Vehicle Code §§ 1- 42277 and the California Insurance Code §§ 1-16032. The CPUC views limousines as providing charter-party carrier (“TCP”) service to passengers.<sup>58</sup>

On the other hand, City regulatory bodies, such as the San Francisco Municipal Transportation Agency (“SFMTA”) and the Los Angeles Department of Transportation (“LADOT”), are responsible for the regulation of taxicabs.<sup>59</sup> Accordingly, we use San Francisco as an example of the local requirements imposed on taxicabs in California, while we discuss the statewide Public Utilities Code (or “CPUC regulations”) imposed on limousines, sedans and other TCPs.

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<sup>56</sup> [https://www.houstontx.gov/ara/chapter46docs/vehicle\\_for\\_hire-faqs.pdf](https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf)

<sup>57</sup> *Id.*

<sup>58</sup> Passenger stage corporations and private carriers must also obtain CPUC authority; however, based upon the facts presented, Lyft or SideCar’s contemplated service does not qualify either of them as a passenger state corporation or private carrier, and, therefore, these types of passenger authority are not discussed herein.

<sup>59</sup> It should be noted that California law affords the City authority to regulate intracity for-hire transportation service, including *inter alia*, livery and/or limousine service. To meet this exemption from CPUC regulation, all (100%) of the transportation service provided must meet the exemption, and no portion of transportation service provided may be outside of the City. The City of San Francisco does not have processes in place at present to regulate such intracity limousine/livery service. The City of Los Angeles has issued a small number of vehicle-for-hire permits for sedans and limousines operating exclusively in the City, which belong to car dealerships, grocery stores and hotels.

*b. Background check process (CPUC)*

An applicant for a TCP license must apply for a new license by completing an application in-person or online.<sup>60</sup> The applicant may be the TCP itself, or an individual driver. Drivers who do not hold the TCP permit must be under the *complete* supervision, direction and control of the operating carrier, and must be (A) an employee of the authority holder, or (B) an employee of a sub-carrier, or (C) an independent owner-driver who holds TCP authority and is operating as a sub-carrier.<sup>61</sup> In addition to standard questions asking for applicant information, such as address, date of birth, and contact information, the application also asks for information about whether the applicant has been convicted of a crime. The convictions that are required to be reported include vehicular manslaughter, operating a for-hire transportation service without proper licensure (punishable as a misdemeanor in California), an offense involving use or possession of controlled substances, a conviction of a felony offense when a commercial motor vehicle, was involved in or incidental to the commission of the offense, or a conviction of a violation of any other statute relating to the safe operation of vehicles.<sup>62</sup> California's Business and Professions Code (or "BPC"), Sections 480 through 489, regulates the denial, suspension, or revocation of licenses. A license may be denied based on the grounds that an applicant has been convicted of a crime.<sup>63</sup> A conviction (within the meaning of BPC Section 480), means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. A board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.<sup>64</sup>

The Clerk of the court is required to prepare, within five days after conviction, and immediately forward to the DMV an abstract of the record of the court covering the case in which the person was so convicted, which may then be accessed by the Commission. Even if one is an owner operator (a sole proprietor with no employee drivers) he or she must enroll.<sup>65</sup> Also under the California Vehicle Code, a driver must be licensed, and must comply with the driver

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60 <http://www.nyc.gov/html/tlc/html/industry/drivers.shtml>

61 [http://www.cpuc.ca.gov/NR/rdonlyres/D32FF001-F6B7-4682-9CFC-C0B0581A507B/0/CharterPartyApplication\\_rev02192015\\_lct.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/D32FF001-F6B7-4682-9CFC-C0B0581A507B/0/CharterPartyApplication_rev02192015_lct.pdf)

62 California Vehicle Code Section 1803 (a)

63 California Business and Professions Code Section 480 (a)(1)

64 California Business and Professions Code Section 480 (a)(3)

65 <http://www.cpuc.ca.gov/PUC/transportation/FAQs/psgfaqs.htm>

provisions of Title 13, California Code of Regulations (the latter regulations being those that are equally applied to private vehicle drivers in the state, generally).<sup>66</sup>

TCPs must also enroll in California’s Employer Pull-Notice (“EPN”) program, administered by the California Department of Motor Vehicles, which provides employers and regulatory agencies a means of promoting driver safety through the ongoing review of driver records. Through EPN, employers of drivers are notified of any of the following on the driving record of any employee driver: convictions, failures to appear, accidents, driver license suspensions or revocations, and any other actions taken against the driving privilege. An employer enrolled in the EPN program is assigned a requester code which is added to an employee’s driver license (“DL”) record. When an employee’s DL record is updated to record an action/activity, a check is made electronically to determine if a pull notice is on file. If the action/activity is one that is specified to be reported under the EPN program, a driver record is generated and mailed to that employer.

TCP drivers are not required to undergo a fingerprinting check in California and neither are TNCs; only local taxicab drivers are required to have their fingerprints “run” as part of the background check process.

c. Background check process (SFMTA)

In order to become a taxicab driver, one must apply for an SFMTA permit, or “A-card.” The application fee is \$255.50.<sup>67</sup> In addition to standard requirements such as providing proof of residency, holding a California driver’s license and undergoing a driver training course, in order to obtain an A-card a driver must also submit to a Live Scan fingerprint and background check from a Live Scan location designated by the SFMTA. The fingerprints are electronically transmitted to the U.S. Department of Justice (DOJ) for completion of a national criminal record check.<sup>68</sup> Digitizing the fingerprints enables the electronic transfer of the fingerprint image data

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<sup>66</sup> [http://www.cpuc.ca.gov/NR/rdonlyres/D5E763FD-5706-4F7D-9F95-1DE383C4F92C/0/BasicInformationforPassengerCarriersandApplicants\\_Nov2014\\_11172014lct.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/D5E763FD-5706-4F7D-9F95-1DE383C4F92C/0/BasicInformationforPassengerCarriersandApplicants_Nov2014_11172014lct.pdf) We separately confirmed with the CPUC that TCP permit holders are NOT required to be fingerprinted.

<sup>67</sup> Presently, due to a current shortage of taxi drivers, the SFMTA is waiving the \$255.50 application fee for new driver permit applicants until further notice

<sup>68</sup> [https://www.dmv.ca.gov/portal/dmv/?1dmy&urile=wcm:path:/dmv\\_content\\_en/dmv/vehindustry/ol/livescan](https://www.dmv.ca.gov/portal/dmv/?1dmy&urile=wcm:path:/dmv_content_en/dmv/vehindustry/ol/livescan)

along with personal descriptor information to computers at the DOJ in a matter of seconds, instead of the days required to send hard copy fingerprint cards through the mail. The DOJ's goal is to process 95% of the digitized fingerprints within three (3) days. The cost to electronically fingerprint the applicant is determined by the local Live Scan agency. The cost of fingerprinting for taxicab drivers is either \$57 or \$60, depending on the fingerprinting location:

- Live Scan Fingerprinting located at 601 Van Ness Ave, #E, San Francisco, CA 94102: \$60
- Live Scan Fingerprinting located at 77 Van Ness Ave, Ste 101, San Francisco, CA 94102: \$57
- Live Scan Fingerprinting located at 6748 Mission St, Daly City, CA 94014: \$57

According to DOJ, local facilities can charge a fee sufficient to recover their costs. The \$32 DOJ criminal record check fee is collected at the Live Scan site.<sup>69</sup> SFMTA runs this LiveScan fingerprint check against the DOJ's national criminal database, but does not run a check against the FBI's AFIS.

Further, driver-applicants must obtain a ten-year printout of his/her driving record from the DMV, and the printout must be dated within 30 days of the application.<sup>70</sup> The driver-applicant must not have any prior convictions of a crime that would, in the judgment of the SFMTA, present a risk to public safety if the permit is granted, including, but not limited to, convictions involving sexual assault, the use of a vehicle in the commission of a felony, fraud, violence against a person, reckless disregard for public safety, two or more recent convictions of drug-related offenses, or two or more recent convictions of driving under the influence within the previous five years, whether or not such convictions occurred while driving a motor vehicle for hire.

*d. Transportation Network Companies*

In September 2013, the CPUC promulgated new rules establishing regulations for TNCs

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<sup>69</sup> According to a representative of the SFMTA

<sup>70</sup> <http://www.sfmta.com/services/taxi-industry/become-taxi-driver#7>

and drivers providing TNC services.<sup>71</sup> TNCs require a sub-type of the TCP license, to provide prearranged transportation services for compensation using an online-enabled application or platform (such as smart phone apps) to connect drivers using their personal vehicles with passengers. If a driver wishes to drive his or her own vehicle for a TNC, the driver is not required to have his or her own “P” permit, but rather, may contact the TNC, and complete its process for enrolling as a driver.

A TNC is required to, *inter alia*, (i) conduct national criminal background checks on all of its driver-applicants using the applicant’s social security number; (ii) register in the EPN program; (iii) require a one-year driving history from TNC drivers. Fingerprinting is not required. If a background check indicates a driver-applicant has any serious convictions, such as driving under the influence, fraud or sexual offenses, within seven years prior to the submission of his/her application, that driver-applicant is automatically denied approval as a TNC driver.<sup>72</sup> However, the CPUC does not provide a standard for those driver-applicants whose convictions occurred more than seven years prior the submission of his or her application.

It should be noted that, in March 2015, California Assemblyman Adrin Nazarian, D-Sherman Oaks reintroduced Assembly Bill 24 (“AB 24”) (after it died in committee in 2014 (formerly AB 612)), which proposes that TNC drivers must submit to the same requirements imposed on SFMTA taxi drivers, including drug and alcohol testing, undergoing a criminal background check overseen by the California Department of Justice, (which includes fingerprinting), and enrolling in the EPN program alerting employers after DUI arrests, although the latter is already an existing requirement imposed on TNCs.<sup>73</sup>

#### **4. Chicago, Illinois**

In Chicago, the Department of Business Affairs and Consumer Protection (the “BACP”) is tasked with issuing public chauffeur licenses. New applicants for a public chauffeur license

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71 CPUC Decision 13-09-045 Adopting Rules and Regulations on TNCs; available at <http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC+Application+Form.htm>

72 [http://www.cpuc.ca.gov/NR/rdonlyres/1788F1F1-EA38-4B68-B221-4116994F2252/0/TNC\\_App\\_Instrctns.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/1788F1F1-EA38-4B68-B221-4116994F2252/0/TNC_App_Instrctns.pdf)

73 See <http://www.sacbee.com/news/politics-government/capitol-alert/article12632915.html>; AB 612 available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB612&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB612&search_keywords=)

must meet the requirements set out in the Municipal Code of Chicago (the “MCC”) chapter 91-04, and the Public Chauffeurs Rules and Regulations issued by the BACP in 2008 and as amended in 2012 (“BACP Regulations”).<sup>74</sup>

*a. Legal or regulatory licensing standard*

In general, to become a licensed public chauffeur, the applicant must be at least 21 years of age, attend the Public Chauffeur Training Institute course,<sup>75</sup> (unless applicants meet the course exemption criteria), and pass a written exam, a physical exam, and a criminal background check.<sup>76</sup> Pursuant to Chapter 91-04 (030) of the MCC, to qualify for a public chauffeur license, an applicant must:

- Possess a valid Illinois State driver's license which has not, at any time within the five years prior to application for the issuance or renewal of a public chauffeur license, been suspended or revoked or, possess a valid driver's license of another state, district or territory of the United States, for at least three years prior to application for the issuance or renewal of a public chauffeur license;
- Be at least 21 years of age;
- Be able to speak, read, and write the English language;
- Not be subject to health issues which may substantially impair the ability to operate a public vehicle, and is not addicted to the use of drugs or intoxicating liquors;
- Have successfully completed a mandatory Public Chauffeur Training Institute course; and
- Not have, within 5 years prior to filing the public chauffeur licenses application, had a public chauffeur's license issued under Chapter 91-04 of MCC and was later revoked for any reason.

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<sup>74</sup> <http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/publicchauffeursrulesregs20121203.pdf>

<sup>75</sup> All new applicants must complete the approved Public Chauffeur Training Course offered at the City Colleges of Chicago Olive Harvey College and/or other City Colleges of Chicago College.

<sup>76</sup> MCC 91-04-030 (1-7)

Applicants also must fulfill the requirements set out in the Public Chauffeur Rules and Regulations issued by the BACP in 2008 and amended in 2012.<sup>77</sup> All new applicants for a public chauffeur license must meet the following requirements:

- Be current with any child support payments;<sup>78</sup>
- Complete the approved Public Chauffeur Training Course offered at the City Colleges of Chicago, Olive Harvey College and/or other designated City Colleges of Chicago college;<sup>79</sup>
- Pass a written examination as prescribed by the BACP;<sup>80</sup>
- Complete a Driver Training Course;<sup>81</sup>
- Submit certification by an Illinois-licensed physician that based on a physical examination conducted within the past four months by the physician the applicant is capable of operating a public passenger vehicle;<sup>82</sup>
- Take a chemical detection test, conducted by authorities approved by the Commissioner, to ascertain whether the applicant is using a controlled substance;<sup>83</sup> and
- Pass a vision examination by meeting a minimum of 20/40 visual acuity in each eye with or without glasses or contact lenses.<sup>84</sup>

*b. Background check process*

Further, with respect to criminal background vetting, pursuant to the MCC, a driver must not have, within the five (5) years immediately preceding his application, been either found guilty by a court of any jurisdiction, in custody, under parole, or under any other noncustodial supervision resulting from a finding or determination of guilt by a court of any jurisdiction for the commission of any forcible felony as defined by Article 2 of the Illinois Criminal Code of 1961, any crime involving moral turpitude, or for the illegal sale or possession of any controlled substance, indecent solicitation of a child, criminal sexual abuse or operating a motor vehicle

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77 <http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/publicchauffeursrulesregs20121203.pdf>

78 Chapter 1.02 of the Public Chauffeurs Rules and Regulation (2012)

79 Chapter 1.04 of the Public Chauffeurs Rules and Regulation (2012)

80 Chapter 1.05 of the Public Chauffeurs Rules and Regulation (2012)

81 Chapter 1.07 (a-e) of the Public Chauffeurs Rules and Regulation (2012)

82 Chapter 1.08 of the Public Chauffeurs Rules and Regulation (2012)

83 Chapter 1.09 of the Public Chauffeurs Rules and Regulation (2012)

84 Chapter 1.10 of the Public Chauffeurs Rules and Regulation (2012)

while under the influence of alcohol or narcotic drugs. The Criminal Identification Act states that an employer cannot reject an applicant because of a conviction record unless the nature of the individual's convictions, considered together with the surrounding circumstances and the individual's subsequent behavior, reveal the individual as objectively unfit for the job in question.<sup>85</sup>

The qualification of each applicant as specified above is investigated by the Chicago Police Department and a report of such investigation containing any facts relevant to the applicant's qualifications is submitted to the commissioner to determine the applicant's suitability to obtain a public chauffeur license.<sup>86</sup> Pursuant to the BACP Regulations and the MCC, a driver-applicant must submit a fingerprint and photograph to the Superintendent of Police for examination unto the applicant's criminal record, if any.<sup>87</sup> The Superintendent of Police will keep and maintain these fingerprints as part of the police department's permanent record. The BACP may subcontract the actual performance of the background check to an approved third-party, as indicated on its website.<sup>88</sup>

There are notice requirements to the BACP that if a chauffeur has been charged with the commission of a felony, as defined in Article 2 of the Illinois Criminal Code of 1961, arising in connection with the provision of Public Passenger Vehicle services, the BACP will suspend the chauffeur's license until a final adjudication is made with respect to such charges.<sup>89</sup> Moreover, at the time of renewal, a review of the chauffeur's criminal history will be made. If requested by the BACP, an applicant for renewal may be re-fingerprinted. If the applicant has been arrested or convicted of any criminal offense that by statute or ordinance would preclude the issuance of a license, and less than five years have elapsed from the time of discharge from any sentence imposed therefore, a license may not be renewed.<sup>90</sup>

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<sup>85</sup> Illinois Compiled Statutes, Chapter 20, Executive Branch, Section 2630 – Criminal Identification Act

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

<sup>87</sup> If the applicant has been convicted of, or is currently under investigation for, a forcible felony or of any other offense that by statute or ordinance would preclude the issuance of a license, and less than five (5) years have elapsed from time of discharge from any sentence imposed therefrom, no license will be issued. Chapter 1.13 of the Public Chauffeurs Rules and Regulation (2012)

<sup>88</sup> <http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/publicchauffer/bacpprovedfingerringencies01302015.pdf>

<sup>89</sup> Chapter 5.14 of the Public Chauffeurs Rules and Regulation (2012)

<sup>90</sup> Chapter 3.02 of the Public Chauffeurs Rules and Regulation (2012)

c. Transportation Network Companies

On May 28, 2014, the City of Chicago enacted the Transportation Network Provider (“TNP”) Ordinance - Chapter 9-115 of the MCC.<sup>91</sup> This ordinance created a new “transportation category” for TNCs operating in Chicago. The ordinance also creates a two-tier system that allows part-time drivers to escape rigid screening, and it opens access to the airport market. Ridesharing companies are prohibited from picking up street hails or riders at McCormick Place and O’Hare and Midway airports “unless the commissioner determines, in duly promulgated rules, following consultation with the commissioner of aviation, that such pick-ups can be accomplished in a manner that preserves security, public safety and the orderly flow of traffic; and . . . designated taxicab stands or loading zones.”

Under the TNP Ordinance, there are two classes of TNP licenses, Class A and Class B.<sup>92</sup> Background check and drug testing for Class A license applicants are performed by the TNP through a City of Chicago-approved process, whereas Class B license applicants must comply with the City of Chicago public chauffeur licensing process background check requirements, discussed *supra*.<sup>93</sup> To obtain a Class A TNP licensee, an applicant must:

- Possesses a valid Illinois State driver's license, or a valid driver's license of another state, district, or territory of the United States, for at least one year prior to applying to become a transportation network driver;
- Be at least 21 years of age;
- Not have been convicted of reckless driving, hit and run, or driving with a suspended or revoked license; and has not been convicted of or placed on supervision for two or more offenses involving traffic regulations governing the movement of vehicles, or whose Illinois driver's license has not been suspended or revoked pursuant to § 6-206 of the Illinois Vehicle Code within the 12 months immediately prior to applying to become a transportation network driver;

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91 [http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/tnp\\_ord\\_clerk9115etal.pdf](http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/tnp_ord_clerk9115etal.pdf)

92 These licenses are differentiated based on the average hours worked by all TNP company drivers on the TNP digital platform. If a driver works 20 hours or less on TNP digital platform per week the TNP will receive Class A license, whereas if driver works more than 20 hours on TNP digital platform per week, the company will receive a Class B license from BACP.

93 9-115-150 (b) (2) MCC

- Have successfully completed a transportation network driver's training program approved by the BACP and conducted by the licensee or other authorities approved by the BACP. In addition to other applicable requirements, such training program must cover topics related to providing service to people with disabilities; and
- Have not, within the five years immediately preceding his application to be a driver, been either found guilty by a court of any jurisdiction, in custody, on parole, or under any other non-custodial supervision resulting from a finding or determination of guilt by a court of any jurisdiction for:
  - (i) the commission of any felony as defined by Article 2 of the Illinois Criminal Code of 2012,
  - (ii) any crime involving moral turpitude,
  - (iii) the illegal sale or possession of any controlled substance,
  - (iv) indecent solicitation of a child or any criminal sexual abuse or similar crime, or
  - (v) operating a motor vehicle while under the influence of alcohol or narcotic drugs; and
- Have not had a public chauffeur license or restricted public chauffeur license suspended, revoked or non-renewed by the city within the five years immediately preceding his application to be a driver.

Further, a Class A TNP licensee is required to perform a criminal background check on each TNP driver applicant and obtain each TNP driver applicant's driving record. The licensee is also required to maintain and enforce a zero-tolerance policy for intoxicating substances. Such policy should promote zero tolerance using a combination of appropriate means that may include education, random testing, assistance programs, and counseling, among other measures. One year after engaging a driver, and annually thereafter, each Class A TNP is required by the Ordinance to ascertain whether the driver is still eligible to be a TNP driver by verifying that the driver meets all of the requirements specified under Chapter 9-115-150 (b) (1), including the criminal background check requirement specified in subsection Chapter 9-115-150 (b)(2), and keep records of verification for a period of three years and submit said records to the BACP upon request.<sup>94</sup>

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<sup>94</sup> Chapter 9-115-150 (b) (2) (3) (4) TNP Ordinance

Pursuant to the BACP Regulations and the MCC, a driver-applicant must submit a fingerprint and photograph to the Superintendent of Police for examination unto the applicant's criminal record, if any. The criminal background search will include the NICS database.<sup>95</sup> The Superintendent of Police will keep and maintain these fingerprints as part of the police department's permanent record. The BACP may subcontract the actual performance of the background check to an approved third-party agency.<sup>96</sup> Third-party agencies are licensed by the State of Illinois and can access the NICS database to identify applicant's criminal background history; they submit their findings to a secure server managed by the Illinois State Police. The BACP then pulls the background check results of the driver-applicant, processed by these agencies and the Illinois State Police.<sup>97</sup>

## ***5. State of Colorado***

### ***a. Legal or regulatory licensing standard***

Regulations for the standards to which taxicab drivers and other traditional for-hire vehicles drivers are accountable are set forth in the local ordinances of the cities in Colorado. As such, we have selected the city of Denver and summarized its regulations as an example of how cities regulated FHV drivers in Colorado.

FHVs in Denver are governed by the city's Municipal Code of Ordinances. The rules for licensing are specifically outlined in Chapter 55, Transportation and Motor Vehicles. Under the Municipal Code of Ordinances, FHV drivers must:

- Be at least 18-years old;
- Submit to a physical examination and be found to be of sound physique, with good eyesight, and not subject to epilepsy, vertigo, heart trouble, or any other

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<sup>95</sup> Email correspondence with BACP on March 23, 2015.

<sup>96</sup><http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/publicchauffer/bacpprovedfingerprintagencies01302015.pdf>

<sup>97</sup> Email correspondence with BACP on March 23, 2015.

infirmity of mind and body which might render applicant unsafe for the operation of a taxicab;

- Be literate – able to speak, read, write in English; and
- Be clean in dress.

Every applicant for a driver's license must also be examined by the Director of Excise and Licenses as to skill and ability to operate a vehicle for hire, knowledge of the provisions covering the operation of vehicles for hire and other motor vehicles, and general knowledge of the streets and public places and institutions of the city.

With regard to background checks, each applicant must:

- Produce affidavits of good character from two (2) reputable persons who have known the applicant personally during two (2) years next preceding the date of the application, and a further testimonial from the last employer, unless sufficient reason is given for its omission; and
- Fill out a statement giving full name, residence for eight (8) years previous to moving to the present address, age, color, height, color of eyes and hair, place of birth, length of time the applicant has resided in the city, whether a citizen of the US, places of previous employment, whether married or single, whether the applicant has ever been arrested for, charged with, or convicted of a felony or misdemeanor, and, if so, the circumstances thereof, whether the applicant has previously been licensed as a driver or chauffeur, and, if so, whether a license has ever been revoked and for what cause.

The Director of Excise and Licenses, at the director's discretion, may:

- Investigate each applicant to determine the record of such applicant; and
- Fingerprint and photograph applicants, in passing upon any application for driver's licenses.

No driver's license shall be issued to any applicant who has been convicted of a felony or been an inmate of a reform school or penitentiary as a result of a conviction for a felony within five (5) years prior to the application for such license except that if the applicant has received a pardon or been placed on probation, the director of excise and licenses may, at the director's discretion, issue the license if all other provisions of this section are fully complied with. The director of excise and licenses may refuse to issue a license to any applicant whose police record shows convictions for drunkenness, repeated moving violations, or for any other good and just cause, which, in the opinion of the director, would be inimical to the public health, safety, or morals.

*b. Background check process*

Colorado law prohibits employers from requiring applicants to disclose information contained in sealed conviction records.<sup>98</sup> According to the Colorado Civil Rights Commission, inquiries about convictions are limited to those that are job-related.<sup>99</sup> It would not be discriminatory to inquire about actual convictions which are substantially related to an applicant's ability to perform a specific job, if this question is addressed to every applicant.<sup>100</sup>

In Denver, the specific process for conducting criminal background checks on FHV driver-applicants begins with the applicant submitting the Applicant Criminal History Form<sup>101</sup> with the rest of the application materials. Denver does not require an FBI fingerprint check. Instead, a Colorado Bureau of Investigations ("CBI") Name Check<sup>102</sup> is run using the applicant's name and date of birth; this name check is a service provided by the CBI as a division of the Colorado Department of Public Safety, through a centralized database of criminal history records

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98 Colo. Rev. Stat. § 24-72-308.

99 <http://cdn.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%20+filename%20%22Pre-Employment+Inquiries.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252053493437&ssbinary=true>

100 <http://cdn.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%20+filename%20%22Pre-Employment+Inquiries.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252053493437&ssbinary=true>

101 <http://www.denvergov.org/Portals/723/documents/ApplicantCriminalHistoryForm.pdf>

102 <http://www.denvergov.org/businesslicensing/denverbusinesslicensingcenter/businesslicenses/taxicabdriver/tabid/441664/default.aspx>

for the State called the Computerized Criminal History database (“CCH”).<sup>103</sup> A fee of \$6.85 is charged for each name, provided by the applicant along with the rest of the application materials and fees. The required criteria for the criminal background check as outlined by the CBI<sup>104</sup> are:

- First and last name (mandatory);
- Date of birth (mandatory);
- Social security number is optional *but is not required*; and
- Additional identifiers such as gender and race of individual are helpful *but are not required*.

Once the name check and criminal history form are submitted, the documents are reviewed to ensure the applicant meets the qualifications discussed *supra*. If the background check is fully approved and accepted by the Department of Excise and Licenses Office, a license may then be issued.

c. Transportation Network Companies

On June 5, 2014, Colorado Governor John Hickenlooper, signed Senate Bill 14-125 (“SB-125” or the “Bill”)<sup>105</sup> into law, allowing ridesharing services like UberX and Lyft to operate as recognized businesses in Colorado. The Bill places the ridesharing services under the oversight of Colorado’s public utilities commission (“PUC” or the “Commission”). The bill also outlines the requirements for TNCs with regards to driver vetting; the requirements are less stringent than those for FHV drivers in Denver, and allow TNCs to conduct their own background testing using private companies.

TNC companies are now required to confirm that their drivers are at least 21-years old; possess a valid driver’s license; provide proof of automobile insurance; provide proof of a Colorado vehicle registration; and, within ninety days of the effective date of Part 6 of the Bill, and pursuant to the commission rules, submit proof that the person is medically fit to drive. The

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103 <https://www.cbirecordscheck.com/index.aspx?AspxAutoDetectCookieSupport=1>

104 <https://www.cbirecordscheck.com/Question/faq.htm#faqg>

105 The full text of the Bill is available at

<http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont3/70364091166B28FC87257C4300636F6B?open&file=125app.pdf>

Commission will also determine the maximum number of hours a driver is permitted to provide his services over a specific period of time.

SB-125 also sets forth the procedure for obtaining the full criminal and driving history records for any potential driver. Drivers will be required to obtain a criminal history check every five years while serving as a driver (to be maintained for at least five years by the TNC), and are permitted to use privately-administered national criminal history record checks that must then be provided to the company. If the criminal history records check reveals that the person has ever been convicted of or pleaded guilty or *nolo contendere* to any of the following felony offenses (or of a comparable offense to the below listed in another state or in the United States), the person shall not serve as a driver:

- An offense involving fraud;
- An offense involving unlawful sexual behavior;
- An offense against property; or
- A crime of violence.

Drivers with moving violations of certain types (including three moving violations in the three years preceding the driver's application) shall not serve as drivers, nor shall drivers with major moving violations (including reckless driving, eluding, and driving under restraint).

## **6. Washington, District of Columbia**

### *a. Legal or regulatory licensing standard*

In order to obtain a “hack” license to drive a taxi in Washington, DC, one must submit the following to the DC Department of Motor Vehicles:

- A completed District of Columbia Taxicab Commission (“DCTC”) application;
- A completed Public Vehicle For Hire Vehicle Registration One Stop Form;

- An inspection verification form;
- A valid D.C. driver's license;
- A vehicle's registration;
- A photo ID; and
- A business license, if applicable.

The Chairperson of the District of Columbia Taxicab Commission oversees the licensing process, and will not issue any license to anyone under 18-years old. The applicant must also be able to read, write, and speak English.

The Chairperson will also not issue or renew a license to a person who has been convicted of offenses against traffic regulations of the District of Columbia or any jurisdiction with a frequency or of such severity as to indicate a disrespect for traffic laws, that fact being established by the point system described in § 303 of Title 18 DCMR, or for a serious traffic offense or offenses which indicate a disregard for the safety of other persons or property. Applicants with eight (8) or more points on their license from any jurisdiction will not be issued a new or renewal license.

The Chairperson shall not issue nor renew a license under this chapter to a person who, in the judgment of the Chairperson, is not of good moral character, under the standards provided in the D.C. Municipal Regulations. An applicant shall not be considered of good moral character if he or she is any of the following:

- An alcoholic;
- Addicted to the use of drugs; or
- On parole or probation at the time of the filing of his or her application for a license, except as provided in the Regulations.

If an applicant is on parole or probation that arose out of a conviction other than those listed in § 1001.15, the parolee's or probationer's application may be considered for approval by the Chairperson if a letter from the appropriate parole or probation officer is submitted with the application affirmatively expressing his or her recommendation and support for the issuance of a

hack license to the applicant.

An applicant shall not be considered of good moral character if he or she has been convicted of or has served any portion of a sentence for the following crimes, or an attempt to commit any of the following crimes, within the three (3) years immediately preceding the filing of the application:

- Murder, manslaughter, mayhem, malicious disfiguring of another, abduction, kidnapping, burglary, theft, breaking and entering, robbery, or larceny;
- Assault with the intent to commit any offense punishable by imprisonment in the penitentiary;
- Assault on a hack inspector, police officer, or other government official, without regard to level of sentencing;
- A sex offense; or
- A violation of the narcotic laws, except simple narcotics possession without intent to distribute (misdemeanor) or possession of drug paraphernalia.

*b. Background check process*

Each application must be accompanied by three (3) sheets of fingerprints of the applicant taken at the headquarters of the Metropolitan Police Department. The fingerprinting fee for FHV driver-applicants in Washington, D.C. is \$49.50, to be submitted at the time of the application with all other required processing fees.<sup>106</sup> Applicants must be fingerprinted by the Civilian Prints Division of the Metropolitan Police Department, between the hours of 9 am and 5 pm, Monday through Friday. The applicant's license application must be presented at the time of fingerprinting. Upon receipt of the fingerprints, the applicant shall also receive the Police Clearance (PD70).<sup>107</sup> One (1) sheet of fingerprints will be furnished to the FBI for a fingerprint background check. The application must also include individual letters from the applicant's most recent employer and from at least three (3) responsible residents of the Metropolitan Area

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106 <http://dctaxi.dc.gov/service/driver-licensing>

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[http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/service\\_content/attachments/Driver%20Licensing%201-5-15.pdf](http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/service_content/attachments/Driver%20Licensing%201-5-15.pdf)

who are engaged in a business profession, who have known the applicant for at least one (1) year, and who can vouch for the sobriety, honesty, and general good character of the applicant. If the driver-applicant passes the fingerprint background check without any of the violations listed *supra*, a license may then be issued.

c. *Transportation Network Companies*

In October, the District of Columbia Council approved new legislation regulating ridesharing companies: the “Vehicle-for-Hire Innovation Amendment Act of 2014” (the “Innovation Act”).<sup>108</sup> Under the Innovation Act, drivers who seek to provide services as a “private for hire vehicle” through a TNC are not required to be licensed by the DCTC. Instead, drivers may simply submit an application to the TNC and once approved, may begin to provide private for hire vehicle service. The Innovation Act does impose some standards upon TNCs with respect to the drivers they may accept, requiring that, *inter alia*, the TNC shall perform the background checks on each applicant before private vehicle-for-hire service is provided and update those checks every three (3) years thereafter, though fingerprinting is not required as it is for FHV drivers. The background checks must be performed by a third party that is accredited by the National Association of Professional Background Screeners or a successor accreditation entity; the following examinations must be conducted:

- A local and national criminal background check;
- The national sex offender database background check; and
- A full driving record check.

A private vehicle-for-hire company shall reject an applicant who:

- Has been convicted within the past 7 years of:
  - An offense defined as a crime of violence under D.C. Official Code § 23-1331(4),

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<sup>108</sup> The full text of the Act is available at: [https://legiscan.com/DC/text/B20-0753/id/1048630/Washington\\_D\\_C - 2013-B20-0753-Engrossed.pdf](https://legiscan.com/DC/text/B20-0753/id/1048630/Washington_D_C - 2013-B20-0753-Engrossed.pdf)

- An offense under Title II of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et seq.*),
  - An offense under section 3 of the District of Columbia Protection Against Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-3102),
  - Burglary, robbery, or an attempt to commit robbery under An Act To Establish a Code of Law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code §§ 22-801, 22-2801 and 22-2802),
  - Theft in the first degree, as defined in § 22-3212(a) of the D.C. Official Code,
  - Felony fraud or identity theft under §§ 121 or 127b of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code §§ 22-3221, 22-3227.02), or
  - “An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described above;”
- Is a match in the national sex offender registry database;
- As shown in the national background check or driving record check conducted in accordance with subsections (b)(1) and (b)(3) of this section, has been convicted within the past 7 years of:
  - Aggravated reckless driving under section 9(b-1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-2201.04(b-1)),
  - Fleeing from a law enforcement officer in a motor vehicle under section 10b of the District of Columbia Traffic Act, 1925, effective March 16, 2005 (D.C. Law 15-239; D.C. Official Code § 50-2201.05b),

- Leaving after colliding under section 10c of the District of Columbia Traffic Act, 1925, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code § 50- 2201.05c),
  - Negligent homicide under section 802(a) of An Act To Amend an Act of Congress entitled “An Act to Establish a Code of Law for the District of Columbia”, approved March 3, 1901, as amended, by adding three new sections to be numbered 802(a), 802(b), and 802(c), respectively, approved June 17, 1935 (49 Stat. 385; D.C. Official Code § 50-2203.01),
  - Driving under the influence of alcohol or a drug, driving a commercial vehicle under the influence of alcohol or a drug, or operating a vehicle while impaired under sections 3b, 3c, or 3e of the Anti-Drunk Driving Act of 1982, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code §§ 50-2206.11, 50-2206.12, and 50-2206.14),
  - Unauthorized use of a motor vehicle under section 115 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3215), or
  - “An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described above if committed in the District;” or
- Has been convicted within the past 3 years of driving with a suspended or revoked license under section 13(e) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-1403.01(e)), according to the driving record check conducted in accordance with subsection (b)(3) of this section.

## **7. Seattle, Washington**

### *a. Legal or regulatory licensing standard*

A King County for-hire license or permit (“FHV Permit”) is required of any taxicab, TNC, or for-hire vehicle whose driver(s) operate(s) in the following areas: all of unincorporated King County, Port of Seattle including Seattle-Tacoma International Airport (requires port authority) and within the city limits of Auburn, Bellevue, Burien, Covington, Enumclaw, Federal Way, Issaquah, Kenmore, Kent, Kirkland, Maple Valley, Redmond, Renton, Sammamish, SeaTac, Seattle, and Shoreline.<sup>109</sup> In 2014, the City of Seattle passed an ordinance regulating for-hire vehicle drivers, shifting regulatory authority of FHV from the state of Washington Department of Licensing to the King County licensing service (“Licensing Dept.”).<sup>110</sup>

### *b. Background check process*

Taxicab, FHV, and TNC drivers must meet the same requirements in order to obtain a FHV Permit to operate in and throughout Seattle.<sup>111</sup> For an initial for-hire driver’s license and annually thereafter, a for-hire driver, or a taxicab association, for-hire vehicle licensee or company, or TNC on behalf of the for-hire driver, must complete, sign, swear to, and file with the Licensing Dept. a for-hire driver’s license application (“FHV driver application”). For-hire driver’s licenses approved through applications received online or through email must be picked up directly from the licensing agency, whereupon the licensee applicant must show proof of photo identification. When issued to an applicant affiliated with a TNC, the for-hire license shall read “for-hire permit” on the associated, private driver’s license, but shall remain subject to all for-hire driver licensee duties and obligations in the Seattle Municipal Code.

The FHV driver application requires that the driver provide, *inter alia*, information indicating whether or not the applicant has ever had a for-hire or driver’s license suspended, revoked, or denied and for what cause; a copy of the applicant’s driving abstract from the Washington State Department of Licensing or a signed statement authorizing the Director to

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109 <http://www.kingcounty.gov/transportation/Licensing/ForHire.aspx>

110 See Seattle Municipal Code §§6.310, *et seq.*

111 See Seattle Municipal Code §§ 6.310.400 – .470

obtain a current copy of the applicant's driving abstract from the Washington State Department of Licensing; and a statement by the applicant listing all reportable accidents and all moving violations the applicant was involved in during the previous three years. The licensing fee is \$500.<sup>112</sup>

Seattle runs a fingerprinting check against the State criminal records and the FBI database for all FHV driver-applicants. Further, all FHV driver applicants must consent to a criminal background check through the Washington State Patrol and Federal Bureau of Investigation ("FBI") criminal databases conducted by the Director, or have a copy of a criminal background check provided directly from a Director-approved third party vendor.<sup>113</sup> The applicant may either be fingerprinted for a state and national Washington State Patrol and FBI criminal background check by the Licensing Dept. pursuant to State regulations, or have a copy of a criminal background check provided directly to the Licensing Dept. from an approved third party vendor.<sup>114</sup> The Licensing Dept. will annually issue the list of approved third party background check vendors. Approved vendors, at a minimum must: (i) include local, state, and national databases; (ii) access at least five years of database history; and (iii) demonstrate competency in providing accurate information.

The Washington Pre-Employment Inquiry Guide provides that inquiries regarding convictions will be considered justified by business necessity if the crimes inquired about reasonably relate to the job duties, and if such convictions (or release from prison) occurred within the last 10 years.<sup>115</sup> In Seattle, the applicants' criminal history record information shall be forwarded to the Licensing Dept. The fingerprinting fee is \$50.00.<sup>116</sup>

Approval of an FHV driver application will be denied if the driver has had a bail forfeiture, conviction, or other final adverse finding for crimes pertaining to hit-and-run, or for crimes pertaining to driving under the influence of alcohol or controlled substances while operating a vehicle within three (3) years of the date of application, or if he/she is required to

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112 Seattle Municipal Code § 6.310.415.

113 Seattle Municipal Code § 6.310.405

114 *Id.*

115 See Washington Administrative Code § 162-12-140.

116 See Seattle Municipal Code § SMC 6.310.150.

register as a sex offender pursuant to state law.<sup>117</sup> Further, any FHV driver's license application may be denied if the Director of Licensing determines that the applicant:

- Has had a bail forfeiture, conviction, or other final adverse finding involving crimes pertaining to prostitution, gambling, physical violence, or other crimes directly related to the applicant's honesty and integrity, including but not limited to hit-and-run, fraud, larceny, burglary, extortion and/or directly related to the drivers ability to operate a taxicab, including without limitation driving under the influence of alcohol or controlled substances, provided that such bail forfeiture or conviction was within five (5) years of the date of application; or
- Has been found, either through a criminal conviction, bail forfeiture, or other final adverse finding (including in a civil suit or administrative proceeding), to have exhibited past conduct in driving or operating a vehicle that causes the Director reasonably to conclude that the applicant will not comply with the provisions of the chapter related to driver/operator conduct and the safe operation of the vehicle.

c. Transportation Network Companies

TNC drivers must obtain a King County Permit after completing the FHV driver application and complying with the requirements set forth therein, as outlined *supra*, including submitting to a fingerprint for a state and national Washington State Patrol and Federal Bureau of Investigation criminal background check by the Licensing Dept. or, having a copy of a criminal background check provided to the Licensing Dept. directly from an approved third party vendor.

According to the TNC ordinance, drivers convicted of drug and alcohol related offenses or driving offenses within 7 years are denied TNC driving privileges. In addition, any drivers convicted of offenses such as sex crimes, assault and robbery are forever barred from providing TNC services.<sup>118</sup> However, the same ordinance does not provide a standard for those drivers whose driving-related convictions occurred more than seven years prior the submission of his or her application.

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117 Seattle Municipal Code § 6.310.430.

118 See Seattle, Washington Council Bill Number 118140, Ordinance Number 124524, Section 6.310.270

## **8. Boston, Massachusetts**

### *a. Legal or regulatory licensing standard*

The Commonwealth of Massachusetts and the City of Boston delegated authority to regulate for-hire vehicles and drivers to the Boston Police Department (the “Boston PD”). Under this grant of authority, the Boston PD promulgated “Hackney Carriage Rules and Regulations,” which is Rule 403 of the Boston PD’s Rules and Procedures, and was last updated on August 29, 2008. Section two of Rule 403 governs the license application procedure for a hackney carriage driver’s license, which is required to operate a for-hire vehicle.

Under Rule 403, applicants seeking a hackney license must personally appear at the Boston Police Department and complete an application for a new hackney driver’s license. The application is available at the Hackney Carriage Unit.

### *b. Background check process*

Among the extensive requirements to obtain a license to operate a FHV are that an applicant must pass a background check showing that he/she does not have:

- Any operating under the influence of drugs or alcohol convictions or dispositions under Massachusetts General Law Chapter 90 section 24D within the past five years or the equivalent in any jurisdiction;
- Any felony convictions in the last five years in any jurisdiction;<sup>119</sup>
- Any drug conviction in the last five years in any jurisdiction;

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<sup>119</sup> The Massachusetts Criminal Offender Records Information (CORI) process allows employers to request CORI on an applicant to determine if the applicant has a criminal record in Massachusetts. In 2010, Massachusetts made significant legislative reforms to an employer’s access to, use of, and inquiry into an applicant’s criminal history. The law prohibits employers from asking questions on an “initial written application form” about an applicant’s “criminal offender record information,” which includes information about criminal charges, arrests, convictions and incarceration. Employers, therefore, are urged to remove all inquiries regarding criminal history from their employment applications. The only exceptions expressly provided in the CORI reform law are for: 1. Positions for which federal or state law or regulation disqualifies an applicant based on a conviction; or 2. Employers who are subject to an obligation under a federal or state law, regulation, or accreditation not to employ persons who have been convicted.

- Any dispositions for a criminal offense, in any jurisdiction that would result in the denial of a license, including admissions to sufficient facts or continuations of an offense without resolution, unless the circumstances of such incident are reviewed by the Inspector of Carriages as to the specific facts and circumstances and the applicant is thus approved by the Inspector of Carriages;
- Been required to register as a sex offender in any jurisdiction; or
- Any outstanding or unresolved criminal court cases in any jurisdiction which could result in the license being denied if the applicant was convicted of the alleged offense.

Applicants must undergo a criminal records check. The City of Boston Municipal Code requires the Boston Police Department to establish a civilian fingerprinting system for the purpose of conducting state and national criminal history records of persons applying for certain licenses from the City of Boston, including to operate a taxicab or other private for-hire vehicle.<sup>120</sup> Despite the local law requiring fingerprinting, it does not appear that this system has been implemented yet. Responding to questions posed concerning their procedures, the Boston Hackney Unit wrote, on March 26, 2015 that “[a] [p]lan [is] in progress to fingerprint applicants and drivers.”<sup>121</sup> Currently, if an applicant is later arrested in Boston, the Hackney unit would receive notification within 24 hours, otherwise, they may not receive notification until the driver renews his application.

Hackney licenses must be renewed annually and, even if an applicant meets all of the requirements, the Inspector of Carriages may make a determination that such applicant is not suitable to have a hackney carriage driver’s license, as long as such determination is not arbitrary and capricious. Where an applicant’s license is denied, he/she may appeal to the Inspector of Carriages, then to the Police Commissioner.<sup>122</sup> When these administrative remedies are exhausted, the applicant can file a lawsuit.

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<sup>120</sup> Boston Municipal Code §11-1.8.

<sup>121</sup> Email from Boston Police Department dated March 26, 2015.

<sup>122</sup> Id.

c. *Transportation Network Companies*

Boston currently does not regulate TNCs like other for-hire vehicles, and has been considering how TNCs should be regulated. At the end of 2014, the Boston City Council held a hearing on how to regulate TNCs. At this hearing, taxicab drivers and Uber and Lyft sparred over proposals for regulating ridesharing companies.<sup>123</sup> Council members asked questions about the number of drivers and ridership, whether ridesharing companies should pay livery fees, and about surge pricing, but received few answers. Uber's representative stated the company supported reasonable regulations and cited recently-passed regulations in Washington D.C. as a model. Taxi industry officials blasted ridesharing as unfair and stated they should be illegal.

Boston's attempt to regulate TNCs may be preempted by State action. In January, State regulators filed rules and regulations recognizing transportation network companies in Massachusetts. Under these new regulations, the Massachusetts Department of Public Utilities would license the TNCs.<sup>124</sup> TNCs would also not be allowed to make street hails, drivers must be at least 21 years old, possess a valid driver's license and proof of personal car insurance, along with other requirements put forth by DPU. DPU would have the power to conduct or have a third party conduct criminal background checks and driving records.

In February 2015, recently-elected Governor Charlie Baker announced that, in the next six months, his administration will develop guidelines for licensing TNCs that will include driver background checks, vehicle safety inspections, and adequate auto insurance.<sup>125</sup> Governor Baker directed the Department of Public Utilities to work under temporary TNC regulations enacted by his predecessor, Governor Deval Patrick, that allow TNCs to operate largely unfettered until the new guidelines go into effect.<sup>126</sup>

The Boston Taxi Owners Association, and Raphael Ophir and Joseph Pierre, (two Massachusetts-based owners of taxi medallions) filed a complaint against the City, State, and

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123 <http://www.boston.com/business/innovation/2014/12/01/boston-city-council-talks-uber-lyft-regulations/Y9AlVrsDXILXS1ajiIzgO/story.html>

124 <http://bostinno.streetwise.co/2015/01/03/uber-regulations-massachusetts-department-or-public-utilities-ridesharing-regulations/>

125 <http://www.cio.com.au/article/565678/uber-lyft-face-licensing-regulations-massachusetts/>

126 <http://www.bostonglobe.com/business/2015/02/05/governor-baker-says-state-licensing-for-uber-other-ride-hailing-services-coming/7672aN6CA0ieFhpDkJGLQJ/story.html>

local public officials, alleging TNCs are allowed to operate in Boston without the same oversight as traditional taxis and their drivers.<sup>127</sup> The complaint cited the many requirements for medallion owners, such as annual financial reports, disclosure of liabilities, and disclosure of all owners, while TNCs are not subject to such requirements.

## ***9. Miami-Dade County, Florida***

### ***a. Legal or regulatory licensing standard***

All FHV<sup>128</sup> drivers in Miami-Dade County (“Miami”) must obtain a chauffeur registration license from the Miami-Dade Consumer Protection Department (“CPD”).<sup>89</sup> Drivers must meet eligibility qualifications, such as driving record and criminal background checks, and must attend training programs conducted by the CPD. The specific requirements are set out in Chapter 31 of the Miami-Dade County Code of Ordinances (the “County Code”).<sup>130</sup>

While §31-303 (a-l)<sup>131</sup> of the County Code provides chauffeur’s registration requirements for both taxicab and FHV drivers, Section 31-304 and Section 301-307 of the County Code provide additional, and specific driver requirements for taxicab and limousine drivers, respectively.<sup>132</sup> Both taxi and FHV drivers must meet the following requirements in order to obtain a chauffeur’s license issued by the CPD:

- Be 18 years of age or older;
- Hold a current, valid State of Florida driver's license of the class required for the type of for-hire vehicle to be operated;

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127 <http://www.courthousenews.com/2015/01/21/traditional-boston-taxis-sue-over-uber-lyft.htm>

128 For-hire vehicles include taxicabs, limousines, passenger motor carriers, jitneys, non-emergency vehicles, special transportation services vehicles and private school buses.

89 Before October 2012, the Consumer Protection Department was named the Consumer Services Department (“CSD”) and operated as a stand-alone entity. Throughout this document, we used the name, CPD, even though CSD was responsible for the changes and the administration of taxis and for-hire vehicles prior to October 2012. According to a new webpage it seems the CPD was reorganized as “The For-Hire Transportation and Omit Division” under the “Regulatory and Economic Resources Department”

<http://www.miamidade.gov/licenses/business-licenses-for-hire-transportation.asp>

130 Miami-Dade County, Florida Code of Ordinances, Part III, Chapter 31, Vehicles for Hire, Article II – Licensing and Regulation of For-hire Motor Vehicles.

131 [http://miamidade.fl.eregulations.us/code/coor\\_ptiii\\_ch31\\_artv\\_sec31-303](http://miamidade.fl.eregulations.us/code/coor_ptiii_ch31_artv_sec31-303)

132 Available at [http://miamidade.fl.eregulations.us/code/coor\\_ptiii\\_ch31\\_artv\\_sec31-304;](http://miamidade.fl.eregulations.us/code/coor_ptiii_ch31_artv_sec31-304;)  
[http://miamidade.fl.eregulations.us/code/coor\\_ptiii\\_ch31\\_artv\\_sec31-307](http://miamidade.fl.eregulations.us/code/coor_ptiii_ch31_artv_sec31-307)

- Have taken a one day course which will ensure the applicant is able to speak, read, and write the English language sufficiently, and pass the required CPD oral and written exams demonstrating knowledge of the English language, Miami-Dade County geography, traffic regulations, defensive driving techniques, and chauffeur responsibilities;
- Complete a physical examination within the most recent twelve-month period, including any drug test required by the CPD by a licensed physician or advanced registered nurse practitioner showing the applicant to be free of any physical or mental defect and to be of sound health;
- Certify under oath that he or she is not a user of alcohol or drugs and is free from any physical or mental defect or disease that would constitute a direct threat to the property or safety of others or that would impair his or her ability to drive a for-hire vehicle; and
- Have attended a National Safety Council Defensive Driving Course or equivalent; provided, however, that renewal applicants shall only be required to take an additional defensive driving course approved by the CPD if, in the most recent two-year period, the renewal applicant has been found guilty, or pled guilty or *nolo contendere* to two or more moving violations.

*b. Background check process*

In the State of Florida, a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.<sup>133</sup>

Under Section 31-303 of the Miami Dade County Code, an application may be denied for any applicant who:

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133 Florida Statutes, Title X, Chapter 112, Section 011 (1)(a)

- Within the last five years pleaded *nolo contendere*, pleaded guilty, been found guilty, or been convicted of a felony, unless his or her civil or residency rights have been restored;
- Has pleaded *nolo contendere*, pled guilty, been found guilty, or been convicted, regardless of whether adjudication has been withheld, of any criminal offense involving moral turpitude relating to sex crimes, the use of a deadly weapon, homicide, violent offense against a law enforcement officer under Sec. 775.0823, Florida Statutes, or is a habitual violent felony offender under Sec. 775.084, Florida Statutes;
- Has been convicted of an offense involving moral turpitude not relating to sex crimes when, in the discretion of the CPD Director, approval of such registration would constitute a threat to health, welfare or safety of the public or property and therefore would not be in the public's interest;
- During the five years prior to application has had his or her driver's license suspended for or has pled *nolo contendere*, pled guilty or been found guilty or been convicted, regardless of whether adjudication has been withheld, of:
  - (i) Driving under the influence of drugs or intoxicating liquors ("D.U.I."),
  - (ii) Three or more traffic infractions resulting in accidents,
  - (ii) Fleeing the scene of any accident, or
  - (iv) Vehicular manslaughter or any death resulting from driving;
- During the five years prior to application has accumulated twenty-four points; or
- Has within the last ten (10) years pleaded *nolo contendere*, pleaded guilty, been found guilty or been convicted, regardless of whether adjudication has been withheld, of any offense involving trafficking in narcotics. After said ten-year period, applicant shall only be eligible if and when his or her civil or residency rights have been restored.

Pursuant to Section 31-303 (c) of the County Code, a chauffeur license applicant shall have his or her fingerprints and photograph taken by the Miami-Dade Police Department.<sup>[1]</sup> The CPD and the Miami-Dade Police Department investigate each applicant and report all findings. However, according to the CPD, new driver applicant criminal background checks are conducted by the CPD using name, social security, and driver license information against the statewide data of the Florida Department of Law Enforcement ("FDLE").<sup>134</sup> As an agency with no law

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[1] [http://miamidade.fl.eregulations.us/code/coor\\_ptiii\\_ch31\\_artii\\_sec31-82](http://miamidade.fl.eregulations.us/code/coor_ptiii_ch31_artii_sec31-82)

134 Telephone conversation with Steven Bobes, Administrative Officer at CPD. (March 20, 2015)

enforcement authority, the CPD does not have access to the FBI National Instant Criminal Background Check System (“NICS”). As such, new applicant information is not currently checked for any non-Florida related criminal history. Licensees who are renewing their chauffeur’s license are only required to submit to a local criminal background check, as opposed to FDLE statewide checks.

c. *Transportation Network Companies*

Earlier this year, SB 1326 was filed by Sen. Jeff Brandes, followed by a companion bill in the house, HB 817, filed by Rep. Matt Gaetz, as an attempt to legalize the ridesharing services. The bills would require TNCs to perform background checks on their drivers.<sup>135</sup> Sex offenders, drivers with a DUI in the past seven years, and drivers with three moving violations or one major violation in the past three years would not be allowed to be hired.<sup>136</sup> Currently, TNCs are operating in Miami-Dade County outside of the regulatory framework, or in a “rogue” manner. These companies are voluntarily conducting driver checks on a self-regulated basis.

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135 <http://www.miaminewtimes.com/news/bills-to-legalize-uber-and-lyft-filed-in-florida-legislature-6546612>

136 <http://www.miaminewtimes.com/news/bills-to-legalize-uber-and-lyft-filed-in-florida-legislature-6546612>

## **IV. CRIMINAL BACKGROUND CHECK LITIGATION AND LEGAL ISSUES**

The advent of TNCs has raised several public safety and consumer protection issues that are currently being litigated across the nation. There are numerous claims, although many of the overarching theories of these claims overlap. Indeed, cases involving TNCs are varied and include the following: (i) personal injury litigation and insurance coverage issues; (ii) labor law violations and worker misclassification claims; (iii) contractual claims; (iv) false advertising, unfair business practices and consumer protection lawsuits; (v) racketeering; (vi) antitrust violations; (vii) disability discrimination; (viii) tortious interference with business; (ix) government actions; (x) constitutional challenges against TNCs and municipalities for alleged equal protection violations; (xi) environmental law violations; and (xii) other legal claims and forms of relief. Of particular relevance to this study, the issues of whether the criminal background checks relied upon by TNCs are: (i) adequate; (ii) violate a driver's civil rights; and (iii) unfairly allow for TNCs to avoid the same standards as other for-hire transportation companies; are being fiercely litigated in lawsuits across the country.

### **A. District Attorneys' Lawsuit – Adequacy of Background Checks**

In September 2014, the San Francisco ("SF") and Los Angeles ("LA") district attorneys ("DAs" or "prosecutors") commenced an investigation of Uber, Lyft and Sidecar claiming that the TNCs were operating illegally and warning them that legal action could follow if they did not make major changes.<sup>137</sup> The offices of Jackie Lacey ("LA DA"), and George Gascón ("SF DA") conducted a joint investigation into the companies and found a number of practices that violate California law.<sup>138</sup> The prosecutors say the practices represent "a continuing threat to consumers and the public."<sup>139</sup> The DAs allege that all three companies misled customers by claiming their background checks of drivers screen out anyone who has committed driving violations, including DUIs, as well as sexual assault and other criminal offenses, which the DAs alleged is "patently untrue."<sup>140</sup> One of the incidents that prompted the investigation was a criminal complaint in June 2014, in which San Francisco DA George Gascón charged an Uber driver of

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<sup>137</sup> <http://sanfrancisco.cbslocal.com/2014/09/25/san-francisco-los-angeles-das-warn-ride-service-companies-uber-lyft-sidecar-to-halt-illegal-practices/>

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

striking a passenger. The Uber driver had passed the company's background check, but court records showed he had previously been convicted of felony drug dealing and misdemeanor battery. Gascón has demanded that the companies remove all statements from their mobile apps, websites and other publications that imply their background checks reveal a driver's complete criminal history.

Lyft ultimately settled the DAs' allegations and agreed to pay up to \$500,000 in civil fines. As part of the settlement, Lyft must, among other things, remove language that claims its background checks are industry leading. The lawmakers' negotiations with Sidecar are ongoing.<sup>141</sup> Uber, on the other hand, refused to cooperate with the prosecutors. A press release was issued by the LA DA's office, stating, “[u]nfortunately, Uber, unlike Lyft, has refused to comply with reasonable regulations as required by California law,” District Attorney Lacey said. “As a result, Uber continues to put consumers at risk by misleading the public about the background checks of its drivers and its unwillingness to ensure that correct fares are charged.”<sup>142</sup>

As a result, in December 2014, the DAs' offices filed a complaint against Uber for alleged unlawful business practices and allegations that Uber misleads the public about the safety of its service and overcharges passengers.<sup>143</sup> The suit asks for, *inter alia*, an injunction to stop Uber from saying its background checks are “industry-leading” since Uber does not include fingerprint checks.<sup>144</sup> “Background checks that don’t include fingerprints can’t be sure to be tied to the right person, and therefore can’t be secure,” Gascon said.<sup>145</sup> However, because the CPUC allows for non-fingerprint checks of TNC drivers, prosecutors are somewhat limited in their ability to address this issue until new rulemaking takes place. “At the end of the day, you cannot conduct the most comprehensive background check possible if the information you have

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141 <http://www.cnet.com/news/california-sues-ride-sharing-service-uber-settles-with-rival-lyft/>

142 [http://da.co.la.ca.us/mr/pdf/120914\\_San\\_Francisco\\_and\\_Los\\_Angeles\\_County\\_DAs\\_Announce\\_Settlement\\_With\\_Lyft\\_Filing\\_Against\\_Uber.pdf](http://da.co.la.ca.us/mr/pdf/120914_San_Francisco_and_Los_Angeles_County_DAs_Announce_Settlement_With_Lyft_Filing_Against_Uber.pdf)

143 See *The People of the State of California v. Uber Technologies, Inc., et al.*, Case No. CGC 14-543120 (Ca Sup. Ct., City and County of San Francisco); See also <http://www.latimes.com/business/technology/la-fi-tn-uber-lyft-20141209-story.html>.

[A federal consumer class action was also filed asserting the same allegations as the DAs' lawsuit. See \*Philliben, et al. v. Uber Tech., Inc., et al.\*](#) Case No. 4:14-cv-05615-DMR (N.D. Ca)

144 <http://www.forbes.com/sites/ellenhuet/2014/12/09/sf-la-district-attorneys-sue-uber-and-lyft-over-misleading-business-violations/2/>

145 <http://www.forbes.com/sites/ellenhuet/2014/12/09/sf-la-district-attorneys-sue-uber-and-lyft-over-misleading-business-violations/>

obtained has nothing to do with the person that is signing on with you to be a driver,” Gascon said. “It is completely worthless.”<sup>146</sup> Appendix H to this report includes a copy of the joint press release by the SF DA and LA DA announcing the settlement with Lyft and the lawsuit filed against Uber.

On January 27, 2015, Uber filed a Demurrer to Plaintiff’s Complaint, essentially asking the Court to dismiss the lawsuit on the basis that the prosecutors have failed to state a claim upon which relief can be granted because, among other things, the State cannot prove that Uber’s statements about the adequacy of its background checks are untrue and, moreover, the State fails to prove the Live Scan fingerprinting makes background checks safer.”<sup>147</sup> The prosecutors have not yet filed their response as of the date of this report.

Also in January of this year, a civil lawsuit was filed in California, relating to an incident in India in December of 2014, in which a female passenger took a 45-minute Uber ride home.<sup>148</sup> She fell asleep in the car and claims to have awakened with the car parked in a secluded area and the driver on top of her.<sup>149</sup> According to the lawsuit, she was raped and assaulted for more than 30 minutes.<sup>150</sup> The passenger filed a civil lawsuit against Uber Technologies in California based on Uber’s Terms and Conditions. In response, Uber said it had no relationship with the alleged assailant who had a contract with Uber BV, a Netherlands-based entity with no US operations and which is not party to the lawsuit.<sup>151</sup>

## B. Potential Civil Rights Violations for Unlawful Background Checks

TNC rules and regulations do not fully address certain anti-discrimination laws with respect to driver background checks, where persons with a criminal record are discriminated against solely on the basis of their criminal past. On April 25, 2012, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued its Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act

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<sup>146</sup> *Id.*

<sup>147</sup> Uber’s Motion, at p. 6 lines 18-20.

<sup>148</sup> <http://www.techworld.com.au/article/572063/uber-seeks-dismiss-india-rape-lawsuit/>

<sup>149</sup> <http://www.techworld.com.au/article/572063/uber-seeks-dismiss-india-rape-lawsuit/>

<sup>150</sup> <http://www.techworld.com.au/article/572063/uber-seeks-dismiss-india-rape-lawsuit/>

<sup>151</sup> <http://www.hindustantimes.com/newdelhi/uber-asks-us-court-to-dismiss-lawsuit-in-alleged-delhi-rape/article1-1334714.aspx>

of 1964, as amended, 42 U.S.C. § 2000e (“Title VII”).<sup>152</sup> Title VII does not regulate the acquisition of criminal history information. However, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (“FCRA”), does establish several procedures for employers to follow when they obtain criminal history information from third-party consumer reporting agencies.<sup>153</sup> In addition, some state laws provide protections to individuals related to criminal history inquiries by employers.<sup>154</sup>

As a brief summary, Title VII prohibits: (i) employers from treating people with similar criminal records differently because of some Title VII-protected classification (including race, sex, and origin); (ii) employers from using policies or practices that screen individuals based on criminal history information if (a) they significantly disadvantage Title VII-protected individuals such as African-Americans and Hispanics, and (b) they do not help the employer accurately decide if the person is likely to be a responsible, reliable, or safe employee.<sup>155</sup> Further, an individual’s arrest record, standing alone, may not be used by an employer to take a negative employment action (e.g., not hiring). However, an arrest may trigger an inquiry into whether the conduct underlying the arrest justifies such action.

With regard to ridesharing companies, Uber Technologies, Inc. has recently faced increased pressure from rejected drivers over their allegedly illegal background checks. Following a rejected application for a position as a driver for UberX, a Boston resident and former Uber-Black service driver filed suit against Uber,<sup>156</sup> alleging that the company’s hiring decision was based on a criminal record showing up on a background check when he applied for the new job (hereinafter referred to as the “*Mohamed Suit*”). According to the suit, Uber never notified the applicant of any background-check policies, nor provided him with a copy of the relevant report. The suit accuses Uber of impermissibly using consumer reports to make hiring decisions in violation of federal and state credit-reporting laws, and not providing appropriate disclosures about the background check process. The suit follows less than a month after a Massachusetts resident sued Uber in Massachusetts state court making similar allegations

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<sup>152</sup> [http://www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm)

<sup>153</sup> [http://www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm)

<sup>154</sup> [http://www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm)

<sup>155</sup> See [http://www.eeoc.gov/laws/practices/inquiries\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm)

<sup>156</sup> *Mohamed v. Uber Technologies Inc. et. al.*, No. 14-5200, complaint filed (N.D. Cal., S.F. Div. Nov. 24, 2014).

regarding Uber's background checks<sup>157</sup> (hereinafter referred to as the "Goldberg Suit"). Both suits name Rasier LLC and Hirease LLC as additional defendants. Rasier LLC is an Uber subsidiary that insures the company's drivers, and Hirease LLC provides the background screening services for Uber.

When an employer bases a hiring decision on a report from a CRA, it must provide the applicant with notice that the employer will be using the information contained within the report from the CRA as a basis for not hiring the applicant prior to making any adverse determination. As noted in the Goldberg Suit, the pre-adverse action notice requirement is unqualified. "Employers must comply with the pre-adverse action disclosure requirement even where the information contained in the consumer report (such as a criminal record) would automatically disqualify the individual from employment or lead to an adverse employment action."<sup>158</sup>

In the realm of TNCs, where many issues are focused on whether drivers are treated as employees or independent contractors, the FTC has issued an advisory opinion on this distinction: "when an employer enters into a bona fide independent contractor relationship with an individual, it must comply with the applicable provisions of the FCRA pertaining to consumer reports obtained for employment practices."<sup>159</sup> This issue is currently being litigated in class action suits around the country.<sup>160</sup> However, it should be noted that authority exists where an "independent contractor" has brought similar claims and the court, in re-examining the nature of the relationship, determined that the "independent contractor" is actually an employee. If that is the case in this context, much like the facts of the Goldberg Suit and Mohammed Suit, then TNCs could possibly be leaving themselves open to anti-discrimination suits by their drivers based on using prior criminal convictions as a basis for hiring when they have no clear policies or procedures and may be doing so on an arbitrary basis.

In the Goldberg Suit, the plaintiff alleges that the FTC opinion demonstrates that Uber and Rasier are employers and are "users" of consumer reports for the purposes of the FCRA and

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<sup>157</sup> *Goldberg v. Uber Techs. et al.*, No. 14-3388, 2014 WL 5474945, complaint filed (Mass. Super. Ct., Suffolk County Oct. 30, 2014).

<sup>158</sup> FTC, *40 years of Experience with the Fair Credit Reporting Act* (July 2011) p. 53.

<sup>159</sup> FTC, *Advisory Opinion to Allison* (02-23-98) available at <http://www.ftc.gov/policy/advisory-opinions/advisory-opinion-allison-02-23-98>. (last viewed March 3, 2015).

<sup>160</sup> See, e.g., *O'Connor, et al. v. Uber Technologies*, 2013-cv-03826 (California)

it is therefore a regulated entity under the FCRA. According to the complaint, prior to the decision not to hire plaintiff, plaintiff was aware that certain Federal charges could appear on a consumer report. He therefore e-mailed Uber's Boston location in an effort to provide details of the situation. In the e-mail plaintiff states, “[while] I may have been charged, I have not been tried nor have I ever been convicted of any crimes.”<sup>161</sup> Uber's response, which was its first response to plaintiff, stated that it was unable to consider the application at that time and that the decision was in part, a result of information obtained through the CRA. Plaintiff therefore is asserting that Uber did not issue a pre-adverse notification to plaintiff. When plaintiff questioned Uber regarding the legality of its refusal to hire on the basis of the information contained in the consumer report, Uber responded by stating “Uber does not employ any drivers or own any vehicles.”<sup>162</sup> Despite Uber's contention, the basis for the plaintiff's suit is that Uber's FCRA obligations apply regardless of whether Uber views the plaintiff as a prospective “employee” or an “independent contractor” and that Uber knew or should have known its duties under FCRA, including that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute as applicable to independent contractors.

Further, state laws, such as New York State Corrections Law (“N.Y. Corr. Law”) § 752, apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in New York or in any other jurisdiction, and prohibits an employer from making an adverse decision on the basis of an applicant's criminal past without establishing the “**direct relationship**” which is the basis and grounds for making an adverse hiring determination. The direct relationship requirements must show that there are certain criminal convictions which bear a direct connection to the requirements of a position, and after carefully reviewing an applicant's prior convictions, the employer may make the determination that the applicant is unqualified. This is a targeted and narrow set of guidelines an “employer” should use as part of an employer's policy, to ensure compliance and thus not subject themselves to anti-discrimination suits.

However, in places such as Alameda County in California, the county has implemented a “ban the box” law. These laws limit how and when employers can consider an applicant's

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161 See Goldberg, at Paragraph 42.

162 See *Id.* at Paragraph 54.

criminal history in the hiring process. The specifics of these laws vary, but most of them require employers to remove from their job applications the checkbox asking about criminal history information. Only later in the hiring process can employers inquire into an applicant's record, discouraging the practices of indiscriminately weeding out applicants with any criminal record. Applicants applying to work in Alameda County are not asked about convictions on the job application, and no applicant is screened for a criminal background check until after being determined to be qualified for the job. In addition the County analyzes whether the convictions, if any, are related to the specific duties of the job in question. In 2012, five years after the policy went into effect, the interim directors of Alameda County's Human Resources Services Department noted that the County had not had any problems with the policy, and had actually "benefitted from hiring dedicated and hardworking County employees because of the policy change."

While there often appears to be a disconnect between what TNCs believe is required of them under Federal and state law and what prospective drivers believe to be the case, there is the opportunity for a smarter and more holistic approach to screening processes – one that considers the information in criminal background checks as one factor of many. If an applicant has a criminal history, it may not be legal to reject him or her automatically. Taking into consideration the seriousness of the conviction, how long ago it happened, and whether it actually has anything to do with the job in question, are all factors that are relevant to a case-by-case inquiry. Thus, at the moment (before we have a clear determination about the nature of the relationship between TNCs and drivers), it seems like the best recommendation to make is that "TNCs should acknowledge and endeavor to fully comply with rules and regulations relating to discrimination against persons previously convicted of criminal offenses, as set forth in EEOC guidelines, Title VII of the Civil Rights Act, the Federal Fair Credit Reporting Act and applicable state and local law."

### C. Equal Protection Constitutional Litigation and Concerns

Moreover, there are a number of lawsuits in which government agencies or municipalities are being sued for violating state and/or federal constitutional rights that require laws to be enforced equally amongst similarly-situated persons or businesses. As new regulations are introduced to address the advent of TNCs, cases have been filed which argue that because TNCs are not a new/innovative service, but rather a re-packaged traditional transportation service, the new laws are treating TNCs differently than, and to the detriment of, traditional for-hire vehicle companies. Plaintiffs in these cases allege that the government is not adequately or equitably enforcing its laws against TNCs- laws that are equally applicable to all transportation companies.

Protection from unlawful government action is rooted in many state statutes as well as state constitutions. With respect to the latter, the 14<sup>th</sup> Amendment of the U.S. Constitution, as well as many state constitutions, prohibits states from denying any person within its jurisdiction the equal protection of the laws. *See U.S. Const. Amend. XIV.* On a basic level, this requires that a state must treat an individual in the same manner as others in similar conditions and circumstances. The equal protection clause is not intended to provide “equality” among individuals or classes but only “equal application” of the laws. Unless the classification upon which a claimant believes he is treated differently is based on one of the protected classes (*e.g.*, race, travel, alienate, national origin, gender), the government must only prove that it has a rational basis for differentiating between the two similarly situated classes that relates to a legitimate government interest. Plaintiffs in *Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California*<sup>163</sup> (the “TPAC case”) and *Illinois Transportation Trade Association et al., v. City of Chicago*,<sup>164</sup> allege that the government is not adequately or equitably enforcing its laws against TNCs, laws that are equally applicable to all transportation companies.

In the TPAC case, plaintiff trade association alleges that the CPUC violated its members rights to equal protection under the U.S. and CA constitutions by passing Decision 13-09-045, discussed *supra*, which adopted rules and regulations for TNCs. Specifically, the deviations

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<sup>163</sup> Case No. C076432 (Court of Appeal of the State of California, Third Appellate District)

<sup>164</sup> Case No. 1:14-cv-00827 (N.D. Illinois)

under the new TNC law from existing requirements imposed upon charter-party carriers regarding insurance and background checks for drivers are alleged to deprive members of the Taxicab Paratransit Association of California (“TPAC”) from the fair application of California laws.

In *Illinois Transportation Trade Association et al., v. City of Chicago*, the plaintiffs are taxi medallion owners, as well as a Chicago resident who is also a long-time advocate for the rights of disabled persons. Plaintiffs assert that the City of Chicago’s new regulations for TNPs, discussed *supra*, violate, *inter alia*, the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution because TNP may perform a criminal background check on each TNP driver applicant, rather than requiring that the affiliated driver submit to a fingerprinting or background check administered by the BACP, as is required of all other FHV drivers.

Both cases are still pending before their respective courts.

## **V. CONCLUSION & BEST PRACTICES**

### **A. The TNC Model Has Already Failed the Public Safety Test**

The advent of ridesharing apps has raised several public safety and consumer protection issues. Regulators in many jurisdictions are debating whether the business model of ridesharing apps meet the definition of ridesharing under their local rules, or whether the operations are more similar to for-hire vehicle service. Also, the provision of for-hire transportation services by persons who are required to meet a differing standard with respect to background and driving history checks, or in some cases, no standard at all, to provide for-hire transportation service, has given rise to a plethora of criminal allegations and legal complaints against TNC drivers and in some cases, the TNCs themselves. On April 12, 2015 the Massachusetts chapter of the National Organization for Women (“NOW”) has announced its concern for quality of background checks after the reports of recent Uber drivers being arrested for alleged assaults against their passengers. Appendix G to this Report contains a copy of the NOW press release.

The following are examples of some of the most egregious cases of alleged criminal and objectionable activity by TNC drivers with some prior criminal, driving, or licensure history that may have led to such drivers not qualifying as taxi drivers if the prior history was found as part of a background check. The incidents are listed by jurisdiction, and are by no means exhaustive.<sup>165</sup>

#### **Chicago, IL**

1. According to a filed police report, a woman told police she had been out with friends from work when she called for an Uber car at 2:50 a.m. on Nov. 16, 2014. She sat in the back seat, but the driver allegedly asked that she sit in front because he was unfamiliar with the area, police said. When they reached Lawrence and Western avenues, the driver began assaulting the woman and she blacked out, according to the report.<sup>166</sup> After the arrest, it was discovered that Maxime Fohounhedo only had a temporary driver's license issued three months prior to the

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165 See: <http://www.chron.com/news/houston-texas/article/Uber-driver-had-federal-drug-conviction-6184061.php>

166 <http://www.chicagotribune.com/news/local/breaking/chi-chicago-investigating-uber-driver-20141209-story.html>

arrest, which may not meet the Chicago requirements that a driver hold a valid regular driver's license for one year.

2. A former driver for the Uber rideshare service faces battery charges for allegedly fondling a passenger last month. Jigneshkumar Patel, 31, allegedly touched the woman's legs and breast after picking her up about 1:40 p.m. March 8, 2014 in the 100 block of West Cermak Road, according to a Chicago Police report.<sup>167</sup> The Investigative Unit found Patel should never have been hired by Uber in the first place under their policy because of a 2012 DUI conviction.<sup>168</sup>

3. On July 31, 2014 Uber driver Adnan Nafasat overpowered and choked his 21-year-old male victim after asking him to sit in the front of his personal car because the back seats were dirty, Cook County prosecutors said.<sup>169</sup> The driver had a 2010 driving conviction and 2 dozen driving violations, but these were not considered part of the review allegedly conducted by Uber at the time.

### **Houston, TX**

1. An Uber driver faces sexual assault charges for the alleged rape of a passenger in January 2015. Court filings claim that the driver took the passenger to his home, where the assault occurred, after picking her up through the Uber app.<sup>170</sup> During the investigation, it was revealed that although the driver had allegedly passed Uber's background check, he had served time in federal prison for conspiracy to possess with intent to distribute cocaine.<sup>171</sup> This conviction may have prevented the driver from passing Houston's permit application process. It was determined that he did not possess a permit, as is required of all taxi, limousine, and TNC drivers in Houston. Mayor Annise Parker said in a statement on April 8, 2015 (the day after the driver was

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<sup>167</sup> <http://www.nbcchicago.com/news/local/Former-Uber-Driver-Charged-With-Fondling-Passenger-254799501.html>

<sup>168</sup> <http://www.nbcbayarea.com/investigations/Is-Uber-Keeping-Riders-Safe-256438921.html>

<sup>169</sup> <http://www.myfoxchicago.com/story/27851122/another-uber-driver-charged-with-sexually-assaulting-customer>

<sup>170</sup> <http://abc13.com/news/houston-considers-punitive-actions-against-uber/642042/>

<sup>171</sup> <http://www.chron.com/news/houston-texas/article/Uber-driver-had-federal-drug-conviction-6184061.php>

arrested), that the city of Houston is considering punitive measures against Uber related to the incident and its background check process.<sup>172</sup>

### **San Francisco, CA**

1. On New Year's Eve, 2013, Uber driver Syed Muzaffar was arrested for hitting and killing 6-year-old Sofia Liu. Muzaffar had a reckless driving record from almost 10 years ago.<sup>173</sup> He was arrested in Florida for driving into oncoming traffic at 100 mph while trying to pass another car. His wife and children were in the car, according to the arrest record. Uber's alleged failure to uncover that, featured in the Liu family's lawsuit, which charges Uber with negligent hiring and negligence with a motor vehicle, as well as wrongful death. Attorneys for Uber said the company was not liable for the death, because the driver was an independent contractor and had no reason to be actively engaged with the app at the time.<sup>174</sup>

The Liu family suit alleges that, at the time of the crash, the Uber driver was logged onto the UberX smartphone app and was available to provide rides. As such, Uber is alleged to have breached its duty of care by entrusting the driver to provide transportation services for the company, and by failing to learn, through background checks, that the driver may cause a danger to the public. Further, because he may have been in the course of providing such services for Uber when the accident occurred, and Uber requires its drivers to use a smartphone to pick-up trips, such requirement may have distracted the Uber driver and resulted in damages to the family. As such, the company is alleged to be liable for the accident involving the Uber driver.

2. Daveea Whitmire, a 28-year-old San Francisco resident, was charged with two misdemeanor battery counts, one of which stems from a fight with a passenger he picked up through Uber's low-cost UberX platform. Whitmire allegedly picked up his passenger in San Francisco's Castro District early on Nov. 24, 2014 and the two began to argue while riding in the car, authorities said. Whitmire pulled over, told the passenger to get out, and when the passenger tried to take a photo of the car, Whitmire allegedly punched him in the hand and elbowed him in

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172 <http://abc13.com/news/houston-considers-punitive-actions-against-uber/642042/>

173 <http://www.nbcbayarea.com/news/local/UberX-Driver-Involved-in-New-Years-Eve-Manslaughter-Had-A-Record-of-Reckless-Driving-240344931.html>

174 <http://www.sfgate.com/bayarea/article/Uber-denies-fault-in-S-F-crash-that-killed-girl-5458290.php>

the chest. Whitmire's alleged assault could lead one to conclude that maybe he should not have been driving for Uber at all. Whitmire has a felony conviction from 2009 for selling marijuana, a felony charge from 2012 for selling cocaine, and is currently on probation for a battery charge.<sup>175</sup>

## B. Biometric Checks are the Safer and More Accurate Standard

The evidence is clear. Biometric-based background checks are the only way to provide maximum assurance on the accuracy of a criminal history background check.

The Integrated Automated Fingerprint Identification System, ("IAFIS"), is a national fingerprint and criminal history system that responds to requests 24 hours a day, 365 days a year to help local, state, and federal partners solve and prevent crime and catch criminals and terrorists.<sup>176</sup> IAFIS provides automated fingerprint search capabilities, latent search capability, electronic image storage, and electronic exchange of fingerprints and responses.<sup>177</sup> Other than fingerprints, IAFIS also includes corresponding criminal histories; mug shots; scars and tattoo photos; physical characteristics like height, weight, hair color, and eye color; and aliases.<sup>178</sup>

Since 1924, the FBI has been the national repository for fingerprints and related criminal history data.<sup>179</sup> Today, the FBI's master criminal fingerprint file contains the records of approximately 47 million individuals, while their civil file represents approximately 30.7 million individuals (the civil file predominantly contains fingerprints of individuals who have served or are serving in the U.S. military or have been or are employed by the federal government).<sup>180</sup> Employers request what is known as an "Identity History Summary", which is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service.<sup>181</sup>

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<sup>175</sup> <http://www.forbes.com/sites/ellenhuet/2014/06/03/uber-driver-with-felony-conviction-charged-with-battery-for-allegedly-hitting-passenger/>

<sup>176</sup> [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

<sup>177</sup> [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

<sup>178</sup> [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

<sup>179</sup> <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks>

<sup>180</sup> <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks>

<sup>181</sup> Id.

If the fingerprints are related to an arrest, the Identity History Summary includes name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known to the FBI.<sup>182</sup> All arrest data included in an Identity History Summary is obtained from fingerprint submissions, disposition reports, and other information submitted by agencies having criminal justice responsibilities.<sup>183</sup>

Because of the way they structure their businesses and the way most statutes are written, TNCs are largely exempt from commercial licensing requirements faced by traditional taxi and limousine companies. Their policy of relying on name checks for checking courthouse records, multi-state criminal records and driving records opens them up to the possibility of errors and perhaps to the possibility that at least 12% of their new drivers each year have a federal offense listed in their criminal record.<sup>184</sup> According to the FBI, this equates to approximately 900,000 checks annually being identified to individuals with existing criminal history records for all civil submissions.<sup>185</sup>

The National Association of Background Screeners makes a counter-argument on its web site in a paper titled, “Myths and Myth Busters about Background Screening and Fingerprinting,”<sup>186</sup> which has been cited by the TNCs to defend their position against the need to fingerprint drivers. Most of the arguments in the paper focus on the cost and potential inconvenience of the fingerprinting process. The argument, however, fails to address the following:

1. For many job categories, like an office receptionist, there may be limited risk from a safety perspective. However, for a driver that is picking up random passengers, there is the major element of public trust to be considered. A background check is an important way of establishing and maintaining that trust.
2. Because there are so many job categories where fingerprinting is mandated, there is a national network of centers where individuals can go to carry out the enrollment process.

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182 Id.

183 Id.

184 According to the FBI figure on annual hit rate of civil submissions.

185 According to the FBI figure on annual hit rate of civil submissions.

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[http://portal.napbs.com/files/resource\\_library/Government%20Relations/Documents/NAPBS%20Myth%20Busters%20Leave%20Behind.pdf](http://portal.napbs.com/files/resource_library/Government%20Relations/Documents/NAPBS%20Myth%20Busters%20Leave%20Behind.pdf)

These centers are run by the private sector under the auspices of state and local contracts and provide a safe, clean, and efficient experience for the individual. There are centers in almost every state and these can be leveraged by the TNCs to outsource the fingerprinting of their drivers with minimal inconvenience.<sup>187</sup>

3. Finally, as stated earlier in this report and in the chart below, it is recommended that BOTH fingerprints and name checks be conducted. A fingerprint check at the FBI or State level will uncover criminal events; a name check may reveal other issues. Neither individually provides a full picture, but undoubtedly, a fingerprint alone is more accurate than solely a name check.

	BEST PRACTICE	TNC PRACTICE
FBI Check	Yes <sup>188</sup>	No
State AFIS Check	Yes <sup>189</sup>	No
Courthouse Records	Yes	Yes
Driving Records	Yes	Yes
Sex Offender Registries	Yes <sup>190</sup>	Yes
Social Security Verification	Yes <sup>191</sup>	Yes
Potential Error Rate	1% <sup>192</sup>	43% <sup>193</sup>

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187 Examples: <https://www.cogentid.com/index.htm>, <http://www.identogo.com/>, <http://www.accuratebiometrics.com/index.asp#>,

188 <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks>

189 [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

190 The Sex Offender Registration and Notification Act (“SORNA” or “the Act”), which is title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), provides a new comprehensive set of minimum standards for sex offender registration and notification in the United States.

See: [http://www.smart.gov/pdfs/final\\_sornaguidelines.pdf](http://www.smart.gov/pdfs/final_sornaguidelines.pdf)

191 Employers, organizations or third-party submitters can verify Social Security numbers for wage reporting purposes only. See: <http://www.ssa.gov/employer/verifySSN.htm>

192 [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis)

193 Based on audit of Terrorist Screening Center in 2007. Source: <http://www.gpo.gov/fdsys/pkg/CHRG-110hrg48979/html/CHRG-110hrg48979.htm>

### **C. Government Administration and Vetting is Necessary**

The way the TNCs operate is yet another case of technology getting ahead of policy, but it is imperative to update state laws and regulations to require that a driver affiliated with a TNC or picking up passengers for a paid ride should undergo a similar background check vetting process as a taxicab driver in that jurisdiction. Self-regulation and the current processes conducted for background checks today by the TNCs simply do not reach the level of accuracy that the taxi industry and other industries that are trusted with public safety and trust maintain as best practices today, especially since, absent approvals to use a channeling agency, these private companies do not have the same access as government or law enforcement agencies. This applies not to the initial background check process but also to any automated and/or continuous checks (i.e., Rap Back Service) to ensure that there is no subsequent criminal activity after the applicant is approved to drive. The fact that a TNC provides a marketplace and does not employ the individual drivers may be akin to a self-employed mortgage broker that is still required by law to undergo a fingerprint background check. As discussed above, not conducting a fingerprint background check endangers the public and may violate citizens' and driver's civil rights. Regardless of whether the driver is an employee or an independent contractor (or whether the driver is working one hour per month or 40 hours per week), any person engaged to drive the riding public should meet the best standard to ensure public safety. This may be accomplished in two manners: 1) require such checks for any driver; or 2) require that any TNC meet the same best standard applied to operators of a taxi (or limousine company, if the limousine company drivers meet the same standards as taxi drivers – like New York or Houston).

The importance of adequate background checks to ensure public safety cannot be understated. On March 9, 2015, eight members of the House of Representatives: Rosa L. De Lauro (D- CT), Louise M. Slaughter (D- NY), Niki Tsongas (D- MA), Lucille Roybal-Allard (D - CA), Keith Ellison (D -MN), Yvette Clarke (D – NY), Corrine Brown (D - FL), and John Garamendi (D - CA) wrote a letter addressed to Uber, Lyft and Sidecar asking them to adopt fingerprint-based background checks for drivers.

Citing the recent spate of sexual assaults, a kidnapping and violent attacks involving TNC drivers, the Members of Congress stated “it is clear that there is an urgent need to improve

screening standards currently in place.”<sup>194</sup> The letter further stated that “the current screening methods do not utilize all of the available tools to ensure passenger safety . . . [and that the] companies should implement fingerprint-based background checks . . . that are already required by many of the largest state regulators across the United States.”<sup>195</sup> The letter is included in Appendix F of this report.

Lyft, in a statement, said that it uses independent experts to screen potential drivers and provides customers with in-app photos of drivers and vehicles, real-time tracking, digital receipts, two way rating systems and an “around the-clock Trust and Safety team.”<sup>196</sup> The Company did not comment on the congressional letter, but suggested its safety measures should be the standard.<sup>197</sup>

#### **D. Broad- Not Narrow- Licensing Standards are Needed**

One of the most important and basic responsibilities of government is to exercise its police powers to protect the public. One such area where government exercises this power is through the regulation of for-hire vehicles and drivers. These for-hire vehicles and drivers pick-up members of the public, who rely on the government to ensure that the vehicles they are entering have been inspected and are mechanically sound. More importantly, the public relies on the government to determine that the driver is qualified to drive the vehicle and to conduct a thorough criminal background check to ensure that the driver does not pose a danger to the public.

This responsibility cannot be delegated to a private third party, who may skimp on the background check or use a process that is sub-standard, less accurate than a biometric check, and less comprehensive than the criminal background checks in use by law enforcement and regulators alike. New York City has one of the largest taxi fleets in the world, and the standard

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<sup>194</sup> Members of Congress Rosa L. De Lauro (D- CT), Louise M. Slaughter (D- NY), Niki Tsongas (D- MA), Lucille Roybal-Allard (D - CA), Keith Ellison (D -MN), Yvette Clarke (D – NY), Corrine Brown (D - FL), and John Garamendi (D - CA). Letter to Travis Kalanick, Uber Technologies, Incorporated; Logan Green, Lyft, Incorporated; Sunil Paul, Sidecar Technologies, Incorporated, dated March 9, 2015.

<sup>195</sup> *Id.*

<sup>196</sup> <http://www.pcworld.com/article/2894772/uber-lyft-sidecar-asked-by-us-lawmakers-to-use-fingerprint-checks-of-drivers.html>

<sup>197</sup> *Id.*

for background checks is so important it is codified under local statutes and requires drivers to “[b]e of good moral character.” This broad standard allows the local regulator, the New York City Taxi and Limousine Commission, to promulgate extensive rules and institute procedures to deny the applications of bad drivers with criminal backgrounds.

The consequences of less than thorough background checks can be seen in the many examples of TNC drivers attacking passengers, a sampling of which we have described herein. These many examples illustrate why “private” background checks, often performed under narrow licensing standards, are inadequate to protect the public. Based on these horrific examples, it is critically important for municipalities and legislative bodies to adopt broad licensing standards to provide regulators with oversight of ground transportation licensing the power to weed out the bad drivers from the good drivers and protect the public.

#### **E. Equal Standards are Required- TNCs, Taxis, and Limousines All Should Have the Same Type of Check**

As is highlighted in the cases discussed above which assert equal protection violations, there is no rational basis for distinguishing between the classes of for-hire vehicle drivers—regardless of the type of vehicle they use to transport passengers, or the method by which they accept trip requests. At the end of the day, with all the legal theories, briefs and legislation, the underlying acts being regulated are essentially the same – a passenger, getting into a vehicle, either pre-arranged or hailed by a smartphone app, and being transported from point A to point B. There are no other variants or differences between traditional taxicab and limousine companies and the new breed of TNCs other than a smartphone app – which is also being used by the incumbent industry in a legal manner. If laws that apply to taxicab and limousine companies and their drivers require safety vetting, biometric background checks, drug testing, or driving record review, there must be an underlying public policy rationale that justifies having two sets of standards for TNCs (regardless of which standard of legal scrutiny applies). Other than vague references to “innovation” and “sharing economies,” no logical rational basis for creating two classes of licenses has emerged. A passenger’s safety in one vehicle should not be any less valuable based on these arbitrary and insignificant differences.

## **APPENDIX A**

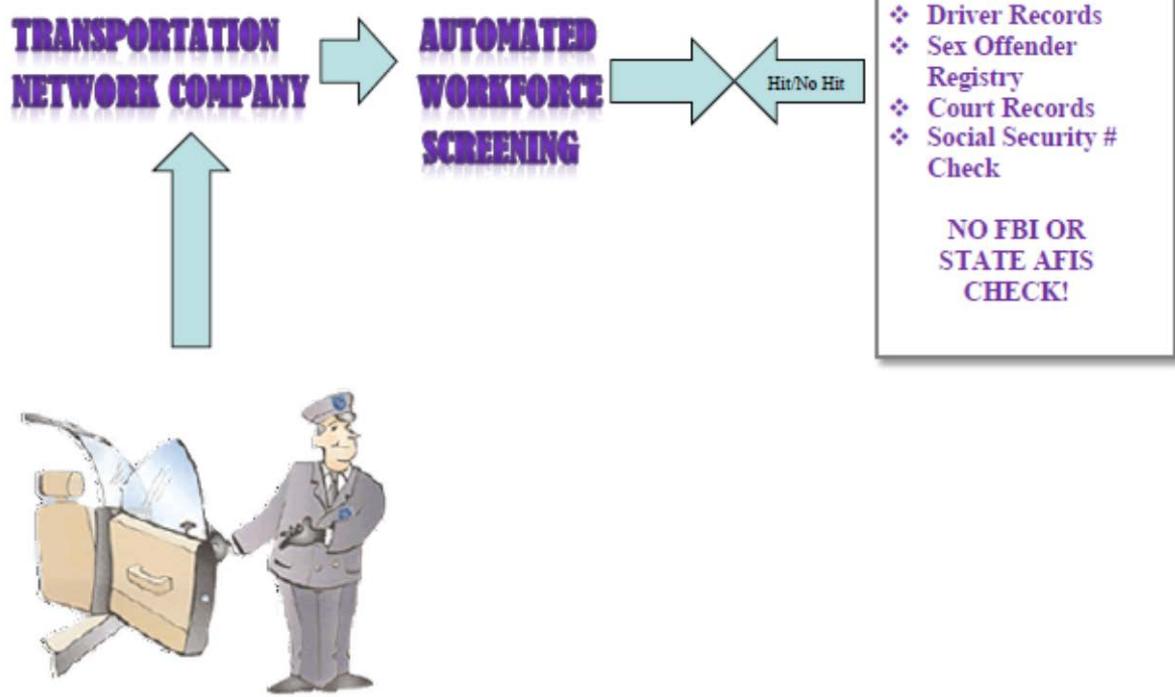
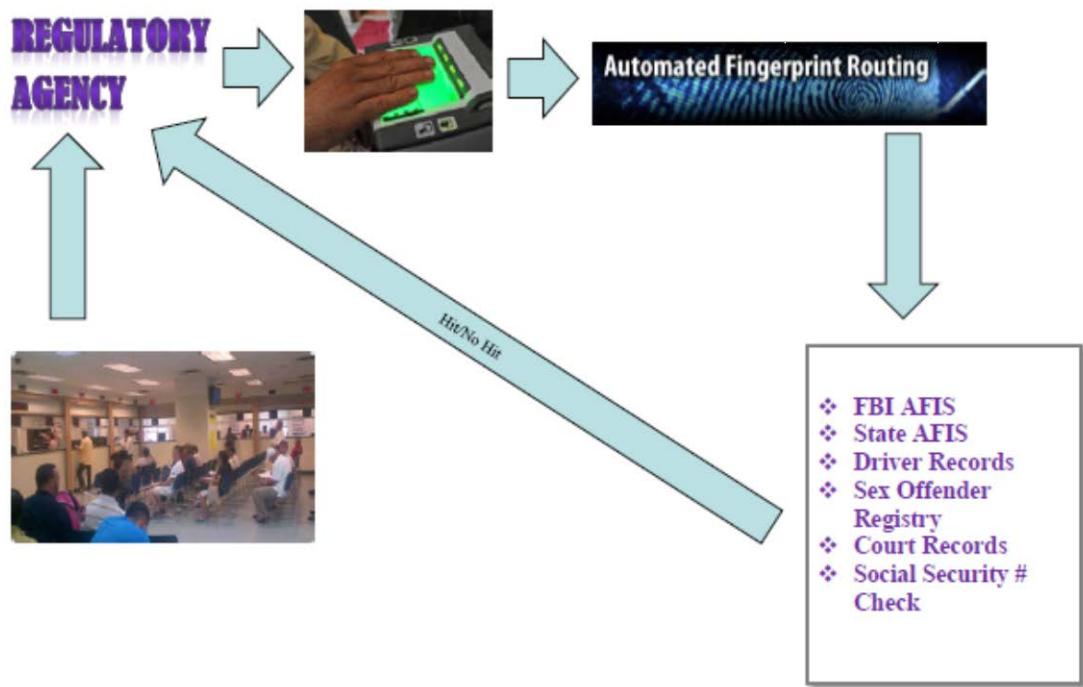
### **Reference Guide for Background Checks**

## COMPARISON OF FHV AND TNC BACKGROUND CHECKS BY JURISDICTION

JURISDICTION	TYPES OF BACKGROUND CHECKS: FHV	TYPES OF BACKGROUND CHECKS: TNC
New York City, NY	<ul style="list-style-type: none"> <li>Fingerprinting</li> </ul>	<ul style="list-style-type: none"> <li>Same standard</li> </ul>
Houston, TX	<ul style="list-style-type: none"> <li>Fingerprinting</li> </ul>	<ul style="list-style-type: none"> <li>Same standard</li> </ul>
State of California	<ul style="list-style-type: none"> <li>In order to obtain an SFMTA A-card, driver applicants must be fingerprinted at an SFMTA-approved Live Scan location.</li> </ul>	<ul style="list-style-type: none"> <li>TNCs are required to conduct background checks on all driver applicants using their social security number (SSN).</li> </ul>
Chicago, IL	<ul style="list-style-type: none"> <li>Fingerprinting and Photo</li> </ul>	<ul style="list-style-type: none"> <li><b>Class A:</b> background check performed through a City of Chicago-approved process</li> <li><b>Class B:</b> must comply with City of Chicago public chauffeur licensing process background check requirements</li> </ul>
State of Colorado	<ul style="list-style-type: none"> <li>Director of Excise and Licenses may photograph and fingerprint applicants at their discretion.</li> </ul>	<ul style="list-style-type: none"> <li>(Regulated) SB-125 requires all applicant drivers to obtain and provide full criminal and driving history to hiring TNC</li> </ul>
Washington, District of Columbia	<ul style="list-style-type: none"> <li>Fingerprinting and Letters confirming sobriety, honesty and good moral character from previous employer and three (3) residents who are business professionals</li> </ul>	<ul style="list-style-type: none"> <li>(Regulated) As a result of the “Vehicle-for-Hire Innovation Amendment Act of 2014,” the TNC shall perform background checks on drivers by a third-party that is accredited by the National Association of Professional Background Screeners, consisting of: local and national criminal background checks, the national sex offenders database background check, and a full driving record check</li> </ul>
Seattle, WA	<ul style="list-style-type: none"> <li>Fingerprinting by Washington State Patrol, provided to FBI. Applicant can also use an approved third-party vendor with results presented to the department by the Director of said entity.</li> </ul>	<ul style="list-style-type: none"> <li>(Regulated) Must be a licensed FHV driver, in addition to obtaining an additional permit from King County.</li> </ul>
Boston, MA	<ul style="list-style-type: none"> <li>Fingerprinting</li> </ul>	<ul style="list-style-type: none"> <li>Self-regulated</li> </ul>
Miami-Dade County, FL	<ul style="list-style-type: none"> <li>Fingerprinting and Photo</li> </ul>	<ul style="list-style-type: none"> <li>Self-regulated</li> </ul>

## **APPENDIX B**

### **Flow Chart of Biometric Check Process**



## **APPENDIX C**

### **Table of Incidents with TNC Drivers Who Did Not Undergo Biometric Checks with Prior Criminal, Driving, or Licensing Histories**

JURISDICTION	DATE	INCIDENT	Biometric Check Required
Chicago, IL	3/8/2014	A former driver for Uber faced battery charges for allegedly fondling a passenger.	No
Chicago, IL	7/31/2014	Uber driver Adnan Nafasat overpowered and choked his 21-year-old male victim after asking him to sit in the front of his personal car because the back seats were dirty.	No
Chicago, IL	11/16/2014	A woman told police her Uber driver asked that she sit in front because he was unfamiliar with the area. The driver began assaulting the woman and she blacked out.	No
Houston, TX	1/2015 (Charges filed 4/7/2015)	An Uber driver was arrested for sexual assault after allegedly taking an intoxicated passenger back to his home and raping her. The city of Houston is considering punitive action against Uber relating to this incident.	Yes (Accused allegedly flouted Houston regulations and received a permit, but was working as an Uber driver.)
San Francisco, CA	11/24/2014	Daveea Whitmire was charged with two misdemeanor battery counts, one of which stems from a fight with a passenger he picked up through UberX. Whitmire has a felony conviction from 2009 for selling marijuana, a felony charge from 2012 for selling cocaine and is currently on probation for a battery charge. Uber insisted that the driver had passed its standard background checks.	No
San Francisco, CA	12/31/2013	Six year-old Sophia Liu was hit by a vehicle driven by Uber driver Syed Muzaffar, who was logged into the Uber app at the time. Muzaffar had a reckless driving record from almost 10 years prior. Attorneys for Uber argue that the company was not liable for the death because the driver was an independent contractor.	No

## **APPENDIX D**

### **Summary Table of the Report Findings and Fact/Fiction Comparison**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>Provide a comprehensive understanding of the available background checks;</li> <li>Examine the types of checks in use to vet the for-hire drivers in a variety of jurisdictions; and</li> <li>Determine the best practices for ensuring that those who drive the public meet basic requirements in the local jurisdictions.</li> </ul>
<b>Reviewers on the Blue Ribbon Panel</b>	<ul style="list-style-type: none"> <li>Former: transportation regulator, public safety director, police chief, law enforcement official, government official overseeing background checks; and</li> <li>Biometrics expert, academic/criminologist.</li> </ul>
<b>Accuracy of Background Checks</b>	<ul style="list-style-type: none"> <li>Fingerprint background checks have a potential error rate of 1%; and</li> <li>Name-based background checks can have a potential error rate of 43%.</li> <li>FBI fingerprint searches are highly preferable to name checks.</li> </ul> <p><i>(Statistics developed by the Terrorist Screening Center; see also Report of the National Task Force to the U.S Attorney General (July 1999).)</i></p>
<b>Review of Several Jurisdictions' Requirements</b>	<ul style="list-style-type: none"> <li>Study examines criminal background check procedures for jurisdictions that do not differentiate between taxis and TNC driver requirements, jurisdictions with TNC standards, and jurisdictions where TNCs are operating under self-regulation.</li> </ul>
<b>Findings</b>	<ul style="list-style-type: none"> <li>Biometric criminal background checks are more accurate than self-regulated name checks;</li> <li>Government regulatory agencies – not private companies – should apply uniform licensing standards to TNCs, taxicabs, and limousines;</li> <li>Different sets of criminal background checks for TNCs and taxicabs and limousines is likely an unconstitutional and unfair legislative act, is bad policy, endangers the public, and fosters unfair competition; and</li> <li>Drivers vetted by self-regulated TNCs may be deprived of their civil rights when there is no procedure or guarantee of an anti-discrimination review (and may violate existing state laws and processes designed to ensure that persons who have committed unrelated crimes in the distant past, and who have been rehabilitated, obtain a second chance to become productive members of society and be gainfully employed).</li> <li>Drivers should have the opportunity to be heard and present evidence as part of licensing procedures evaluating criminal convictions.</li> <li>Rap-back service is preferred to monitor licensed driver conduct.</li> <li>“One standard for all drivers” in conducting and evaluating criminal backgrounds of taxi, limo and TNCs applicants.</li> </ul>

### **Fact or Fiction**

Name checks are as accurate as fingerprints.	<b>Fiction</b>
Name checks are subject to data entry errors.	<b>Fact</b>
The FBI Database is still the largest comprehensive collected source of criminal record information.	<b>Fact</b> <i>(See Uber Showcase, Feb. 12, 2015.)</i>
FBI fingerprint checks take too long and cost too much.	<b>Fiction</b> (A criminal record search is processed in 27 minutes on average; the FBI charges a \$16 fee.)

## **APPENDIX E**

### **Table with NYC Taxi & Limousine Requirements**

<b>Issue</b>	<b>Taxis, Limousines and Uber/Lyft (There are no “TNCs” in New York City)</b>
<b>Licensing</b>	<ul style="list-style-type: none"> <li>• Each vehicle, driver and base must have a TLC license.</li> </ul>
<b>Insurance</b>	<ul style="list-style-type: none"> <li>• Liability coverage: <ul style="list-style-type: none"> <li>◦ \$100,000 per person</li> <li>◦ \$300,000 per occurrence</li> <li>◦ \$200,000 in no-fault or personal injury protection coverage to cover medical expenses and lost earnings;</li> </ul> </li> <li>• Coverage required 24/7; and</li> <li>• Vehicle owners must notify TLC of any changes in coverage.</li> </ul>
<b>Driver Background Checks</b>	<ul style="list-style-type: none"> <li>• Applicants must be fingerprinted;</li> <li>• Fingerprints are checked against the New York State Division of Criminal Justice Services (DCJS) records; and</li> <li>• Drivers may be subjected to a licensing fitness hearing following conviction for a criminal offense to determine whether continuing to be licensed is appropriate after application of NY State laws and standards.</li> </ul>
<b>Drug Tests</b>	<ul style="list-style-type: none"> <li>• All for-hire vehicle drivers must pass a drug test as applicants and with each license renewal.</li> </ul>
<b>Accessibility Requirements</b>	<ul style="list-style-type: none"> <li>• Vehicle base stations are required by the TLC to provide equivalent accessible service; and</li> <li>• Equivalent service may be provided through use of their own accessible vehicles or contracting with another base that has accessible vehicles.</li> </ul>
<b>Data Collection</b>	<ul style="list-style-type: none"> <li>• Taxi trip records are provided to the TLC via the taxi technology system; and</li> <li>• For-hire vehicle bases are required to provide trip records to the TLC.</li> </ul>

## **APPENDIX F**

### **Sample NYC TLC Notice of Fitness Interview**

### **Determination Letter**



Meera Joshi Commissioner  
Licensing and Standards  
Fitness Review Unit  
32-02 Queens Blvd, 2nd floor  
Long Island City, NY 11101  
+1 718 391 5501 Telephone

## NOTICE OF FITNESS INTERVIEW

RE: Application Nos. [REDACTED]

Dear [REDACTED]

The TLC sent you a letter on [REDACTED]. The letter required you to come to the TLC to discuss your application. You requested that we reschedule your interview. As we discussed on the telephone today, your Fitness Interview has been rescheduled to [REDACTED]. Your interview will take place at the New York City Taxi and Limousine Commission, 32-02 Queens Boulevard, Long Island City, New York, 2nd Floor. Please check in at Driver Window #1 with this letter. This will be the final time that your interview may be rescheduled. If you do not come to this interview, your applications will be denied.

### *What is a fitness interview?*

A fitness interview is an informal interview used by the TLC to determine if an applicant for a TLC operator's license is currently fit to hold a TLC license. A TLC attorney/investigator will conduct the interview and he/she will decide whether or not you are fit to hold a TLC operator's license. Fitness means you can be trusted to transport the public safely, follow the law, and are of good moral character. It is your responsibility to show that you are fit for a TLC license.

### *Why am I scheduled for a fitness interview?*

When you applied for a TLC license, the TLC did a background check of your criminal, driving, and TLC records. A review of these records showed that you had one or more issues that the TLC needs to discuss with you. Your records are listed on the next page of this letter. The TLC will discuss your records at your interview. Be prepared to discuss your records, why you may be rehabilitated from your records, and why you are now fit to hold a TLC operator's license. The purpose of the interview is for you to explain why the TLC should not be concerned about your ability to transport the public safely and follow the law.

### *What should I bring to the interview?*

You are encouraged to bring any documents; certificates of treatment, counseling, or other similar programs; and/or letters that you feel are relevant to your rehabilitation or current fitness for a TLC license. Any paperwork you bring to the interview should focus on why you are currently fit to hold a TLC license and/or why you are rehabilitated from the incident(s) in your record(s). If you were involved in any accidents, please bring copies of your accident reports. You may also bring someone with you to assist you or help interpret for you in the interview. TLC also has access to a phone interpretation service that can be used during the interview.

Very truly yours,

## **APPENDIX G**

**Press Release of the Massachusetts Chapter of NOW  
regarding Uber's Background Check Process**

## **Mass NOW INC Statement: Ride hailing services have responsibility to address safety concerns**

The Massachusetts Chapter of the National Organization for Women (Mass NOW) believes that ride hailing services, like Uber, Lyft and Sidecar, have a responsibility to address safety concerns of women and other vulnerable populations following numerous reports of sexual and physical violence in the Boston-area.

"While we understand no background check process is perfect, we believe that utilizing the most rigorous screening methods available like fingerprinting or other identification measures for drivers is one important step to ensure passenger safety. We hope to see ride hailing services be proactive in adopting this measure and developing other mechanisms to protect their riders," said Katie Prisco-Buxbaum, Vice President of Communications for Mass NOW.

### **Contact Us**

PHONE: (617) 254-9130

EMAIL: [massnow@massnow.org](mailto:massnow@massnow.org)

OFFICE: 15 Court Square Suite 900  
Boston, MA 02108

## **APPENDIX H**

**San Francisco and Los Angeles DAs' Press Release**  
**Concerning a Settlement with Lyft and a Lawsuit against**  
**Uber regarding Background Checks**



**Media Contact:**

Shiara Dávila-Morales, Chief  
Media Relations Division  
213-974-3525  
[SDavila-morales@da.lacounty.gov](mailto:SDavila-morales@da.lacounty.gov)  
Twitter: @LADAOFFICE

Dec. 9, 2014

## **San Francisco and Los Angeles County DAs Announce Settlement With Lyft, Filing Against Uber**

San Francisco District Attorney George Gascón and Los Angeles County District Attorney Jackie Lacey announced today a settlement of a civil consumer protection action brought against Lyft, Inc., while filing a lawsuit against Uber Technologies, Inc., for making false and misleading statements to consumers.

In the Lyft settlement, the company agreed to a permanent injunction prohibiting the company from making misleading statements about its background checks. The injunction also requires that Lyft submit its Lyft App to the California Department of Agriculture's Division of Measurement Standards for evaluation of its accuracy. Finally, the injunction requires Lyft to obtain express authorization from California airports to operate on their premises.

Lyft also will pay civil penalties of \$500,000.

"The settlement with Lyft demonstrates that technical innovation and corporate responsibility are not incompatible," said District Attorneys George Gascón and Jackie Lacey. "We commend Lyft for its willingness to work with law enforcement to ensure compliance with the laws that protect California consumers."

Meanwhile, a civil complaint filed against Uber claims the company engaged in a variety of unlawful business practices in violation of California Business and Professions Code sections 17200 and 17500.

Uber is accused of making untrue or misleading representations regarding the quality of background checks it performs on drivers, unlawfully having its drivers work at airports across the state without obtaining authorization from airport officials and fraudulently charging a \$4 "airport fee toll" to customers traveling to and from San Francisco International Airport even though Uber drivers weren't paying anything to the airport.

The suit seeks a permanent injunction requiring Uber to stop violating California law. It also seeks civil penalties for each of these unlawful business acts and practices, as well as full restitution for all California consumers who paid the airport toll.

"Unfortunately, Uber, unlike Lyft, has refused to comply with reasonable regulations as required by California law," District Attorney Lacey said. "As a result, Uber continues to put consumers at risk by misleading the public about the background checks of its drivers and its unwillingness to ensure that correct fares are charged."

The cases were investigated by the San Francisco District Attorney's Office and the Los Angeles County District Attorney's Consumer Protection Division.

# # #

**About the Los Angeles County District Attorney's Office**

Los Angeles County District Attorney Jackie Lacey leads the largest local prosecutorial office in the nation. Her staff of nearly 1,000 attorneys, 300 investigators and 800 support staff members is dedicated to seeking justice for victims of crime and enhancing public safety. Last year, the [Los Angeles County District Attorney's Office](#) prosecuted more than 73,000 felony defendants and 113,000 misdemeanor defendants.

## **APPENDIX I**

**Congressional Request to Uber, Lyft and SideCar to  
Implement Biometric Checks**

2413 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0703  
(202) 225-3661

59 ELM STREET  
SECOND FLOOR  
NEW HAVEN, CT 06510  
(203) 562-3718

DURHAM/MIDDLEFIELD/MIDDLETOWN  
(860) 344-1159

WEBSITE: [HTTP://DELAURO.HOUSE.GOV](http://DELAURO.HOUSE.GOV)



UNITED STATES  
HOUSE OF REPRESENTATIVES

ROSA L. DeLAURO

3RD DISTRICT, CONNECTICUT

March 9, 2015

CO-CHAIR, DEMOCRATIC STEERING AND  
POLICY COMMITTEE

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES

RANKING MEMBER

LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION, AND RELATED AGENCIES  
AGRICULTURE, RURAL DEVELOPMENT,  
FOOD AND DRUG ADMINISTRATION,  
AND RELATED AGENCIES

Mr. Travis Kalanick  
Co-Founder and Chief Executive Officer  
Uber Technologies, Incorporated.  
1455 Market Street, 4<sup>th</sup> Floor  
San Francisco, California 94103

Logan Green  
Co-Founder and Chief Executive Officer  
Lyft, Incorporated  
548 Market St #68514  
San Francisco, California 94104

Sunil Paul  
Co-Founder and Chief Executive Officer  
Sidecar Technologies, Incorporated  
360 Pine Street, Suite 600  
San Francisco, California 94105

Dear Mr. Kalanick, Mr. Green, and Mr. Paul:

As Members of Congress whose constituents may employ the services of Uber, Lyft, or Sidecar, we write to you to express our concern regarding sexual assaults and potential gaps in the screening process for your drivers. While we understand your companies conduct private background checks when vetting potential drivers, you should take additional steps to increase the safety of your customers. Specifically, we urge you to adopt comprehensive fingerprint-based background checks for new and existing drivers.

With rapidly expanding operations in the United States, your companies have become part of the daily lives of many Americans. Following multiple instances of sexual assault by drivers hired to work in your industry, it is clear that there is an urgent need to improve screening standards currently in place. In Boston, there were numerous reports of passengers being sexually assaulted, including one instance where a driver allegedly kidnapped and strangled a customer. Drivers have been accused of violent attacks or groping passengers in several other cases in the past year including in San Francisco, Los Angeles, the District of Columbia, and Chicago. By using comprehensive fingerprint-based background checks, your companies can each do their part to reduce the likelihood of similar crimes from occurring in the future.

We appreciate that your companies currently take steps to screen drivers; however we believe that the current screening standards do not utilize all of the available tools to ensure passenger

safety. Your companies should implement fingerprint-based background checks right now. This would match screening standards for taxicab services that are already required by many of the largest state regulators across the United States.

While no screening method is perfect, we believe that the most rigorous and comprehensive screening methods available should be used. We also believe that consumers have the right to know that drivers you employ have been properly vetted before they are allowed to pick up customers.

Thank you for your attention to this matter. We look forward to working with you to improve the screening of your drivers and improve the safety of your passengers.

Sincerely,

  
ROSA L. DeLAURO  
Member of Congress

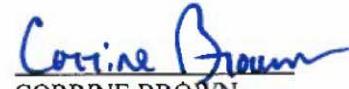
  
LOUISE M. SLAUGHTER  
Member of Congress

  
NIKI TSONGAS  
Members of Congress

  
LUCILLE ROYBALL-ALLARD  
Member of Congress

  
KEITH ELLISON  
Member of Congress

  
YVETTE CLARKE  
Member of Congress

  
CORRINE BROWN  
Member of Congress

  
JOHN GARAMENDI  
Member of Congress

## **Appendix J**

### **Biographies of the Authors and Panelists**

## **Matthew W. Daus, Esq.**



**Distinguished Lecturer, the University Transportation Research Center, City College, the  
City University of New York  
President, International Association of Transportation Regulators**

Matthew Daus was appointed by former Mayor Rudolph W. Giuliani and unanimously confirmed by the New York City Council on August 22, 2001 as the tenth Commissioner/Chairman of the New York City Taxi and Limousine Commission (TLC). On July 23, 2003, Commissioner Daus was reappointed to a seven (7) year term by Mayor Michael R. Bloomberg and the New York City Council, which expired on January 31, 2010. Mr. Daus is the longest serving Chairman in TLC history, serving for 8 ½ years as Chief Executive Officer as well as counsel for a combined total of 14 years at the agency. Prior to his tenure as Commissioner/Chair of the TLC, Mr. Daus served as General Counsel to the Commission and Deputy Commissioner for Legal Affairs since 1998, and before that, as Special Counsel to the TLC Chairperson.

During his tenure at TLC, Commissioner Daus designed and implemented unprecedented reforms in the country's largest for-hire ground transportation industry – which includes the taxicab, black car, livery, limousine, paratransit and commuter van businesses. These multi-billion dollar industries transport approximately one million passengers daily, and the TLC licenses and regulates approximately 100,000 drivers, over 50,000 licensed vehicles and over 900 businesses. Commissioner Daus conceived and spearheaded numerous safety, technology, customer service and environmental initiatives, proactively responded to several crisis-related challenges, and effectively managed and streamlined a government agency with over 480 employees, a budget of over \$29 million and annual revenues in excess of \$40 million.

Under Commissioner Daus' leadership, TLC's accomplishments included:

- Taxi Technology – oversaw the installation of credit/debit card payment options, Global Positioning Systems, and passenger and driver information screens in all taxicabs, enabling data collection, lost property recovery and fare opportunities;
- Hybrid Taxicabs – saw the introduction of significant numbers of clean air taxicabs, which now comprise more than 23 percent of the fleet;
- Medallion Sales – several medallion sales yielding hundreds of millions of dollars in revenue to New York City's General Fund;

- Accessible Taxi Dispatch System Pilot Program – wheelchair accessible taxi service for disabled passengers available by calling 311;
- Taxi Group Rides – passengers ride share at stands where passengers pay less and drivers earn more;
- Livery Stands Pilot Program – passengers obtain more efficient car services via dispatcher-staffed stands on private property;
- For-Hire Vehicle Passenger Reforms – established passenger bill of rights, increased vehicle and safety standards;
- Taxi of Tomorrow – development and issuance of a Request for Proposals for a custom-built iconic future taxicab;
- Transit Strike Contingency Plan – implemented successful ride-sharing plan during 2005 transit strike and private bus strikes;
- Distracted Driving Program – implemented first-of-its-kind program to promote safety and combat the problem of cell phone use by drivers; and
- 9/11 Business Recovery Plan – agency policies expedited economic recovery of regulated industries.

Since leaving the TLC, Mr. Daus has joined the City University of New York's (CUNY's) Transportation Research Center of The City College of New York as a Distinguished Lecturer. The Transportation Research Center is one of ten original University Transportation Centers established in 1987 by the U.S. Congress. These Centers and their faculty members provide a critical link in resolving national and regional transportation problems while training the professionals who address our transportation systems and their customers on a daily basis. It represents the U.S. Department of Transportation's Region II, which includes New York, New Jersey, Puerto Rico and the U.S. Virgin Islands. Functioning as a consortium of twelve major universities throughout the region, the Center is located at the CUNY Institute for Transportation Systems at The City College of New York, the lead institution of the consortium. The Center supports research, education and the transfer of technology in the field of transportation.

Mr. Daus also continues to serve as President of the International Association of Transportation Regulators (IATR), a group of government professionals and regulatory agencies from around the world who share best practices and promote positive change in the for-hire ground transportation industry.

Mr. Daus joined City government in 1994 as a Prosecutor for the New York City Commission on Human Rights, where he represented the agency in the prosecution and mediation of discrimination complaints in the areas of employment, housing and public accommodation. Thereafter, he was appointed General Counsel of the New York City Community Development Agency (CDA), now known as the Department of Youth and Community Development (DYCD), where he supervised all procurement activities relating to government anti-poverty funding and social service contracts awarded to community organizations. After serving at CDA, Mr. Daus was appointed Special Counsel to the New York City Trade Waste Commission, where he was responsible for assisting in the formation of this newly created agency designed to eliminate corruption within the private sanitation industry. Prior to joining City government, Mr. Daus began his legal career in private practice as a litigator specializing in tort law.

Mayor Bloomberg and the City Council appointed Mr. Daus as Commissioner of the Civil Service Commission, an independent quasi-judicial agency that hears and decides appeals under

the New York State Civil Service Law. Mr. Daus has extensive experience in labor and employment law, including a Masters of Law (LL.M.) from N.Y.U. School of Law specializing in the field. He received his Juris Doctor (JD) degree from Touro School of Law and his Bachelor of Arts degree from CUNY, where he has also served as an Adjunct Professor of Business Law. Mr. Daus has published numerous legal articles in journals and periodicals on topics which include labor and employment law, mediation/alternative dispute resolution and transportation law.

## Pasqualino “Pat” Russo, Esq.



**Adjunct Professor, Department of Public Management, MPA Program,  
John Jay College of Criminal Justice, CUNY**

Pasqualino “Pat” Russo attended Xaverian High School and Brooklyn College of the City University of New York, both on academic scholarships. In 1990, he graduated from Brooklyn College with a B.A. in History *cum laude*. Pat then attended Brooklyn Law School and graduated as a member of the class of 1993. He served as Vice President of the Student Bar Association and was a staff member of the Brooklyn Law School Journal of Law and Public Policy.

After graduating from law school, Pat began working at Cullen and Dykman, where he represented a variety of financial institutions, corporations and individuals.

In 1997, he began a career in public service when he was asked to serve as Counsel to the Office of the New York State Welfare Inspector General by Inspector General Paul Balukas, where he led and supervised investigations and criminal prosecutions of fraud, abuse and corruption involving public contractors, employees and program recipients at the local and state level.

Pat continued in public service when he was appointed an Administrative Law Judge for the NYC Taxi and Limousine Commission (“TLC”). Pat was elevated to the Appeals Unit, and was subsequently appointed as the Chief Administrative Law Judge.

In 2007, Pat joined the NYC Department of Investigation (“DOI”) as Inspector General for the City. At DOI, he supervised and led public corruption investigations involving public servants, contractors, and elected officials. Most notably, Pat spearheaded the federal corruption prosecution of a former NYC Councilmember for using discretionary funding for personal and political gain, as well as numerous, successful state and federal prosecutions of public officials and contractors who had defrauded New York City.

In March 2014, Governor Andrew M. Cuomo appointed Pat, with the consent of the NYS Senate, to the MTA Inspector General Management Advisory Board.

Since 2001, Pat has been an adjunct professor at John Jay College of Criminal Justice, where he instructs courses in the Master in Public Administration Inspector General Program, including Ethics in Public Employment, Human Resources Management, and Public Administration.

Pat is a Past President of the Bay Ridge Lawyers Association. He serves as the Treasurer of the Association of Inspectors General. He is a member of the Government Ethics Committee of the New York City Bar Association, and is a member of the Federal Bar Council and the Brooklyn Bar Association.

He serves his *alma mater* as a member of Xaverian's Hoban Memorial Run Committee.

## Senator Michael A. L. Balboni



**President & Managing Director, Redland Strategies, Inc.**

### **February 2009 - Present**

Former New York State Senator and Deputy Secretary of Public Safety under two New York State Governors, Michael Balboni is the President and Managing Director of RedLand Strategies, a consulting firm, based in New York City, that provides the expertise, experience and contacts necessary to help companies and government agencies position themselves to get through a crisis, improve business performance and maximize growth. RedLand's suite of services includes crisis management, disaster recovery, strategic communication, emergency planning, intelligence interpretation, business development, political guidance and risk management.

The former Senator specializes in providing extensive experience in a broad range of homeland security and government relation's issues. Through strong relationships with key decision makers inside the Department of Homeland Security and with lawmakers and their senior staff, Senator Balboni is able to get the right person for the right meeting with clients, both domestic and international. He sits at the intersection of government relations, crisis management, media strategy and homeland security.

Michael Balboni provides advice for companies including but not limited to Oracle, Raytheon, CSX Transportation, Bethpage Federal Credit Union, 3VR Security, FJC Security, MSA Security as well as the County of Nassau, the Town of North Hempstead and the City of Long Beach. In addition, he advises several municipalities on matters ranging from emergency management to mass fatality planning and crime lab operations.

### **New York State Deputy Secretary for Public Safety**

### **January 2007 – January 2009**

Appointed Deputy Secretary for Public Safety in January 2007. In this role, the Senator was the Senior Homeland Security and Law Enforcement official for the State of New York. The Public Safety Directorate is comprised of thirteen state agencies including the

Office of Homeland Security, Division of State Police, Division of Military and Naval Affairs and the State Emergency Management Office and has over sixty thousand employees and a budget of close to four billion dollars. During the past twenty months, several innovative programs have been created which were the first of their kind in the nation. These include “New York Alert”, a multimedia, cyber-based emergency notification system which currently has 1.5 million subscribers, “CI-SAR”, which overlays suspicious activity tip information upon critical infrastructure to provide threat context and trend analysis capability, and “Empire Shield

Reconfiguration” that redeploys National Guard units so as to form a rapid response and a “surge” patrol capability for the region’s airports, train terminals, tunnels, bridges and nuclear power plants. He has received training and briefings on protecting critical infrastructure. He has used this information while serving as the security chair for the Lower Manhattan Development Corporation, in which assisted and advised on the security for the rebuilding of the World Trade Center.

As Secretary, Michael Balboni worked extensively with nuclear, radiological, and critical infrastructure protection. He was the Governor’s representative to the “Secure the City” program to create a ringed defense of nuclear and radiological detection systems around New York City. He also was continuously briefed on the Lower Manhattan Security Initiative, (LMSI), which deployed hundreds of CTV cameras, plate readers and coordinated traffic barriers to provide in-depth situational awareness for that critical part of the city.

Senator Balboni was also designated as the nuclear notification officer for the Governor’s office. In this role, the Secretary regularly received information regarding the operational status and alert notifications from the four nuclear power facilities in New York State, as well as met with officials from the Nuclear Regulatory Commission in Washington. Lastly, in the fall of 2008, the Secretary traveled to the Department of Homeland Securities School for nuclear and radiological training in Nevada where he received briefings and tours of the cutting edge detection and assessment technology.

### **New York State Senate**

#### **December 1997 – December 2006**

Senator Balboni represented the seventh Senate District, located in Nassau County, and was named Chairman of the Committee on Veterans, Homeland Security and Military Affairs. It was in this role that Senator Balboni led the enactment of nearly every anti-terrorism law in New York State, including the first chemical plant security law in the nation, the criminalization of acts of biological and chemical terrorism, water plant security, pet sheltering laws for disasters, and created the Office of Homeland Security.

### **Additional Appointments**

In 2003, The Senator became the Co-chairman of the National Conference of State Legislatures’ Task Force for Protecting Democracy and Homeland Security.

In 2004, He was appointed by then-federal Homeland Security Secretary Tom Ridge to a national task force that examined the flow of homeland security dollars from the federal government to local communities.

In 2005, Balboni was named a Senior Fellow of the Homeland Security Policy Institute at George Washington University and was appointed co-chairman of the Executive Task Force on Homeland Security of the National Conference of State Legislatures (NCSL).

In 2006, Senator Balboni was appointed to the State and Local Officials Senior Advisory Committee (SLSAC) of the United States Homeland Security Advisory Council. In that role, which requires a national security clearance, he helped to leverage the ingenuity and expertise of state, local and tribal leaders to provide federal Advisory Council members with the best possible advice on a range of homeland security issues. In addition, in this same year, he was also appointed a member of the Board of Advisors of the Homeland Security Management Institute of Long Island University.

In 2007, the Senator served in the security chair for the Lower Manhattan Development Corporation, in which he acted as a liaison to the Port Authority and the New York City Police Department and assisting in the security plans for the rebuilding of the World Trade Center.

In 2008, Senator Balboni was appointed to the “Quadrennial” Homeland Security Review Advisory Committee of the Homeland Security Advisory Council. Later that year, President Obama selected Senator Balboni to serve as an outside Advisor to the Homeland Security Transition team.

In 2008, Senator Balboni was appointed Outside Advisor to the Transition Team for Homeland Security by President-Elect Obama.

In 2010, Senator Balboni was appointed to the Homeland Security and Public safety Transition team for Governor-Elect Cuomo.

In 2011, Senator Balboni was appointed by Governor Cuomo to the SAGE Commission, (Savings and Government Efficiency), and charged with helping to realign the state’s emergency response.

### **Media Appearances**

Senator Balboni is a consultant on terrorism issues for FOX National, NBC National and Local, ABC News and News 12 Long Island. He is an also a frequent contributor to the Op-Ed page of Newsday.

## William J. DiVello



### **Director, Government Accounting—Federal Management Systems, Inc.**

Mr. DiVello has had a distinguished government career including lecturing on audit and investigative practices throughout the country and to foreign delegations visiting the United States. He is currently employed as Director, Government Accounting for Federal Management Systems, Inc. (FMS) located in Washington D.C. As Director, he is responsible for management and oversight of contract work and also serves as a Subject Matter Expert for FMS.

Mr. DiVello also served as Executive Director of the Office of Integrity and Oversight for the District of Columbia Office of the Chief Financial Officer. In this capacity he was responsible for audits (financial and performance), investigations (misconduct, criminal, background), and integrity and ethics training. During his tenure Mr. DiVello chaired the Oversight Committee for the District's Single Audit and also chaired the District's Anti-Deficiency Board. Prior to joining the OCFO, Mr. DiVello served as the Assistant Inspector General for Audit for the District's OIG. Mr. DiVello's responsibilities included providing leadership and direction for a professional staff of auditors engaged in performance and financial auditing and reporting on District programs and functions. His responsibilities also included oversight of the city-wide financial audit.

Prior to joining the District, Mr. DiVello served as the Director of Oversight for the OIG, Department of the Treasury. In this capacity, he reviewed various functions including investigative activities at ATF, Customs, IRS, and Secret Service. He also served at the Department of Defense as Division Audit Director for the Naval Audit Service where he was responsible for audits of Navy and Marine Corps programs.

Mr. DiVello received his Bachelor's degree from Wilmington College, Delaware, where he was a member of the Delta Epsilon Rho Honor Society, and he received his Graduate degree from Central Michigan University. He has completed training at the Federal Executive Institute, is a Certified Fraud Examiner and a Certified Inspector General. In addition, he has received several prestigious awards, including the Meritorious Civilian Service Award for performing audits that identified significant monetary benefits and the AGA National Achievement Award for Distinguished Local Government Leadership. Mr. DiVello served four years in the United States Air Force and served on the Executive Board of Directors for the Association of Inspectors General.

## Lawrence Kobilinsky



**Chairman, Department of Sciences  
John Jay College of Criminal Justice  
The City University of New York**

Dr. Lawrence Kobilinsky has been at John Jay College since September 1975 when he joined the interdisciplinary forensic science department as its forensic biologist. He received his B.S. and M.A. degrees from The City College of The City University of New York in 1969 and 1971 respectively and his Ph.D. degree from The City University of New York. His doctoral work was performed at Mt. Sinai School of Medicine in the department of Biochemistry. After receiving his doctorate he became a postdoctoral fellow at the Sloan-Kettering Institute in New York City. While there he became a research associate and eventually a visiting investigator.

At John Jay College he was promoted to the positions of assistant, associate and full Professor and served in an administrative capacity as Acting Dean of Graduate Studies and subsequently as Undergraduate Dean and Associate Provost. He has also served as Science Advisor to the College President and is currently Chair of the Department of Sciences. He is a member of the doctoral faculties in biochemistry and criminal justice at the Graduate Center of The City University of New York. He has served as a consultant to CBS and other network news programs on issues related to forensic science. He also served as an advisor to the U.S. State Department regarding forensic science laboratories in The Ukraine.

He is a member of 18 professional organizations and serves on the Board of Directors of the Eastern Analytical Symposium.

As an internationally renowned forensic scientist he has served as advisor to criminalistics laboratories in several countries including Mexico, China, Brazil, the Dominican Republic and others. He is a Fellow of the American Academy of Forensic Sciences and a Diplomate of the American College of Forensic Examiners and is a Board Certified Forensic Examiner. He has received numerous grants for both research projects and institutional development projects. He has received numerous honors including the Federal Law Enforcement Officers "Civilian Award." He has published extensively on the subject of forensic DNA analysis and has made many presentations at regional, national and international meetings. He has also published the following books: DNA: Forensic and Legal Applications published by John Wiley and Sons and Forensic DNA Analysis published by Chelsea House. He is series editor for Inside Forensic Science by the same publisher. His most recent books are: Forensic Chemistry Handbook by John Wiley and Sons, and Forensic Science Advances and their Application in the Judiciary System, CRC Press; Taylor and Francis Group, both 2012.

## Frances Zelazny



### **Biometrics and Identity Expert**

Frances Zelazny is a seasoned strategic marketing professional with nearly 20 years experience working with various startups and global enterprises primarily in the financial services, mobile payment and biometrics space.

For the last 3 years, Frances has served as a Principal Consultant under her personal LLC, Marketing Strategies at Work, a strategic business consulting firm. The firm focuses on promoting its clients' business objectives by bringing together strategic advice, market knowledge and access to business leaders, political influencers and multilateral stakeholders. Her current and former client list includes Morpho, MyCheck, Life Technologies, Eyelock, Center for Global Development, Interamerican Development Bank and others.

Frances' most recent full-time position was Corporate Vice President of Marketing & Strategic Operations, for L-1 Identity Solutions, a premier biometrics and identity solutions company that was sold to Morpho in 2011. In this capacity, she was focused on developing strategic marketing plans by conducting extensive market research and establishing strong relationships with government agencies, including multilateral funding institutions, on the federal, state and local, and international levels. One of her signature accomplishments was signing an MOU with the World Bank on behalf of the company and working with multilateral institutions to influence the establishment of identification programs around the world. During her 12+ year tenure with L-1, Frances held a variety of other roles, namely as head of government affairs, marketing communications, product marketing, investor relations and public relations.

Before joining L-1 Identity Solutions, Frances was Special Projects Manager for a New York-based restaurant franchise, where she was responsible for managing the company's expansion into Asia, as well as overseeing a variety of marketing communications and investor relations activities. Prior to that, Frances was Marketing Manager at a financial services start-up company, Actrade Capital, where she was a key contributor to the company's fast growth through the development of pre-sales, channel marketing and direct marketing programs.

Frances received her Bachelor of Arts Degree from Hofstra University and her Master of Arts Degree in Political Science from New York University. In the past, she has taught undergraduate courses at Hofstra University and had done project work on sustainable development with the United Nations Association-New York.

Frances serves on the Board of the Joseph Initiative Ltd., an Africa-based company focused on agricultural trade and financial inclusion, and on the Advisory Board of Urgent Consult, a health IT startup. She is also on the board of several non-profits based in New York.

## Philip Zisman



**John Jay College of Criminal Justice  
Department of Public Management  
Executive Director, Association of Inspectors General**

Phil Zisman was appointed a Distinguished Lecturer in the Department of Public Management at John Jay College of Criminal Justice in 2012. He teaches graduate level courses in public labor law, government ethics, and government inspection and oversight in the Masters of Public Administration program.

Phil is also the Executive Director of the Association of Inspectors General. The Association is a national organization comprised of federal, state and local inspectors general, their staffs and other professionals in the private sector whose work focuses on ensuring government accountability and integrity. As Executive Director, Phil is responsible for the day-to-day management of the Association, and oversees the administration of the annual conferences and training Institutes.

From 1998 to 2010, Phil served as the Inspector General for the City of Yonkers, NY, and prior to becoming IG, he served as the Yonkers corporation counsel. After leaving Yonkers government in 2011, he supervised investigations into conspiracies involving claims for compensation for damages incurred as a result of the BP/Deepwater Horizon offshore oil well explosion and oil spill in the Gulf of Mexico.

He received his law degree from American University, Washington College of Law in 1986. He earned his Inspector General Certification from the Association of Inspectors General in 2002. In 2012, Phil recently wrote a chapter entitled: *Inspectors General in Small and Mid-Sized New York Municipalities: A Practical Approach*, for a New York State Bar Association book on municipal ethics to be published later this year.