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# Is a "Hit-and-Wait" Really Any Better Than a "Hit-and-Run"?

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# NOTE

# IS A "HIT-AND-WAIT" REALLY ANY BETTER THAN A "HIT-AND-RUN"?

## I. INTRODUCTION

Imagine a driver making his way home after a long day's work with his mind on a myriad things. Perhaps he is thinking about the football score, the lottery drawing, the weekend, or any number of things. He comes over a hill when suddenly from out of nowhere a pedestrian steps out into the street. He slams on the brakes but, in his mind, knows it is too late. There is a terrible moment immediately before the impact where the driver is hoping that there may just be enough time to stop or perhaps swerve out of the way; then, the awful impact. From the moment of any accident the driver must immediately decide, should I stay or should I go?

To most of us the proper choice seems obvious, both legally and morally—stay. The driver involved in an accident must stay at the scene until the proper authorities arrive.[1] Yet, every year in the United States, nearly 1500 drivers make the dreadful choice to flee the scene of fatal accidents.[2] What makes these drivers flee is not abundantly clear. Some psychologists explain that the drivers flee due to sheer panic, shame, or the overwhelming fear of criminal repercussions.[3] This reasoning is even cited in a North Carolina case.[4] Law enforcement sources explain that in

1. *See* William L. O'Malley, *Legislation*, 6 NOTRE DAME L. REV. 372, 376 (1931) (explaining how the law that requires a driver in an accident to remain and assist the injured victim "amounts to nothing more than raising to a legal status a duty which at common law was considered only moral").

2. *See* Press Release, AAA Found. for Traffic Safety, Hit and Run Drivers Kill Nearly 1500 People Annually with Pedestrians at Greatest Risk (May 2015), https://www.aaafoundation.org/sites/default/files/HitandRun.pdf.

3. *See* Meredith Cohn, *Experts Work to Understand Psychology of Hit-and-Run: Fear, Shame, Intoxication Can Overwhelm Self-Control*, BALT. SUN, Feb. 7, 2015, at 1A (explaining how the "fight or flight" instinct may kick in while the driver is under immense stress and cause the driver to make irrational decisions); *see also* Michael E. Young, *Psychologists Cite Panic as Reason Hit-Run Drivers Flee*, BALT. SUN, July 13, 1992, at 1A.

4. *See* Powell v. Doe, 473 S.E.2d 407, 411 (N.C. Ct. App. 1996) ("Human nature being as it is, it is conceivable that the hit and run driver left the scene out of panic.").

many instances this fear is unfounded, as the driver will only face legal trouble if the cause of the accident was due to criminal behavior such as drunkenness or failure to abide by the rules of the road.[5] Some law enforcement sources believe that many of these fleeing drivers chose to flee because they had some other reason to fear the law, such as outstanding warrants, drunk driving, or illegal status.[6]

Whatever the reason is that drivers choose to flee, the results are devastating, as the entire cost of the accident is now shouldered by the victim as opposed to the driver or the driver's insurance.[7] As one court stated: "[B]y leaving the scene of the accident, the fleeing driver deprives the nonfleeing driver of his or her right to have responsibility for the accident adjudicated in an orderly way according to the rules of law."[8] The cost of being involved in an accident can be extremely high. According to the National Highway Traffic Safety Administration, the estimated economic loss resulting from accidents in 2010 was over $242 billion.[9] There are hospital bills, lost wages, diminished working capacity, legal costs, and much more.[10] This burden is now borne by every law abiding citizen in the form of higher insurance premiums.[11]

Recognizing the inherent wrongness of "hit-and-run" drivers, every state has enacted some form of legislation that criminalizes fleeing from the scene of an accident.[12] The typical statute is similar to, or based

5. *See* Elaine Aradillas, *Why Are Hit-Run Drivers Fleeing? Law Enforcement and Safety Experts Say It's Not Clear, but Many Think Fear Is a Factor*, ORLANDO SENTINEL, Aug. 5, 2006, at A1 ("They think that if they hit someone, they are automatically going to prison, he said. But if it's an accident—if you are not at fault in the crash—you are not going to be charged with a person's death.").

6. *See* Joel Kaplan, *Hit-Run Drivers Are Hiding Something Panic Fuels Flight from Accidents*, CHI. TRIB., May 31, 1996, at 1 (quoting James Fox, dean of the criminal justice college at Northeastern University, who claims that many hit-and-run drivers are probably driving without licenses or are wanted for other crimes).

7. *See* People v. Carbajal, 899 P.2d 67, 72-73 (Cal. 1995).

8. *Id.*

9. *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., DOT HS 812 013, THE ECONOMIC AND SOCIETAL IMPACT OF MOTOR VEHICLE CRASHES, 2010 (REVISED) 1, 2, 235-40 (2015), http://www-nrd.nhtsa.dot.gov/pubs/812013.pdf (estimating the economic costs of automobile accidents in the United States during the year 2010 at nearly $242 billion).

10. *See id.* (examining the monumental economic effects of accidents including hospital bills, quality of life loss, state costs, property damage, legal costs, emergency services costs, and more). The report estimates an economic loss of $242 billion in 2010 alone. *Id.* at 5. For a helpful summary and breakdown of NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 9, see *Cost of Auto Crashes & Statistics*, ROCKY MOUNTAIN INS. INFO. ASS'N, http://www.rmiia.org/auto/traffic_safety/Cost_of_crashes.asp (last visited Nov. 26, 2016).

11. *See Carbajal*, 899 P.2d at 73 ("The cost of a 'hit and run' violation is paid for by *every* law-abiding driver in the form of increased insurance premiums."); *Cost of Auto Crashes & Statistics*, *supra* note 10.

12. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, UNIFORM VEHICLE CODE: RULES OF THE ROAD WITH STATUTORY ANNOTATIONS 24, 40 (1967) (listing a majority of the

upon, the Uniform Vehicle Code ("UVC"), which was first written in 1926 in an effort to standardize motor vehicle laws.[13] The typical statue provides that it is a misdemeanor to leave the scene of an accident that results in property damage and that it is a felony to flee from the scene of an accident resulting in personal injury or death.[14] These statutes also require the driver to accurately turn over information such as name, address, and insurance information.[15] Most statutes also require the driver involved in an accident resulting in personal injury to render reasonable assistance to the injured victim by summoning emergency help or by transporting the victim to a medical facility.[16] Section 600 of the N.Y. Vehicle and Traffic Law ("VTL") differs from most other states' hit-and-run statutes, and that is what this Note proposes to change.[17]

This Note begins by briefly examining the legal development of section 600, including the mens rea requirement and constitutional challenge faced by almost every state's hit-and-run statute.[18] It then expands on the deficiencies of the current statute.[19] Finally, this Note proposes three amendments to section 600. First, New York should join almost every other state and require the driver involved in an accident that results in injury to provide reasonable assistance to the injured party.[20] The second proposed amendment is a "housekeeping" matter that provides clearer legislative intent: to separate the personal injury section from the property damage section.[21] Third, New York should learn from the Illinois statute and amend its own statute to provide a short, partial amnesty period where panicked drivers may self-report and have the crime mitigated from a felony to a misdemeanor charge.[22]

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citations for states' hit-and-run statutes).

13. CAL. VEH. CODE §§ 20001–20003 (West 2008); *see* Carl Watner, *A Short History of Highway and Vehicle Regulations*, VOLUNTARYIST.COM, http://voluntaryist.com/articles/092.html#.VpZWtRUrKhc (last visited Nov. 26, 2016).

14. *See, e.g.*, CAL. VEH. CODE §§ 20001–20003. Section 20002 makes it a misdemeanor to leave the scene of an accident where property was damaged. *Id.* § 20002. Section 20003 makes it a felony where a person was injured or killed. *Id.* § 20003.

15. *Id.* §§ 20001–20003.

16. *Id.*

17. *See infra* Part III.

18. *See infra* Part II.

19. *See infra* Part III.

20. *See infra* Part IV.A.

21. *See infra* Part IV.B.

22. *See infra* Part IV.C.

## II. LEGAL DEVELOPMENT OF SECTION 600 OF THE NEW YORK VEHICLE AND TRAFFIC LAW

This Part provides a short overview of the legal development of section 600 of the VTL. Specifically, it focuses on the major legal challenge to the law's general validity, which seemingly violates the Fifth Amendment's right against self-incrimination.[23] Since section 600 is a criminal statute, some level of a culpable state of mind must exist. This Part also examines the requisite mens rea required for a violation of section 600.[24]

### *A. Mens Rea*

Focusing on the personal injury provision, section 600 reads as follows: "[A]ny person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred . . . ." The statute goes on to describe the driver's obligations.[25] While there is clearly a requirement of "knowledge," the interesting question that the courts grapple with is, on which specific part of the statute does the knowledge requirement affect? Does "knowledge" refer to knowledge of the accident, knowledge of the injury, or knowledge of the actual fleeing?[26]

The court, in *People v. Toussaint*,[27] explained that although section 600(2) requires proof the defendant knew or had cause to know "that a personal injury has been caused by his culpability or by accident," the statute "does not require the People to establish that the defendant acted with any culpable mental state as to the element of leaving the scene of the accident."[28] Therefore, in *People v. Castanheira*,[29] despite the

23. *See infra* Part II.B.

24. *See infra* Part II.A.

25. *See* N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011).

26. *See* Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution Under "Hit-And-Run" Statute, Accused's Knowledge of Accident, Injury, Or Damage*, 26 A.L.R.5th 1, 28, 32-33, 40-41 (1998).

27. 837 N.Y.S.2d 218 (App. Div. 2007).

28. *See id.* at 219-20; *see also* People v. Useo, 549 N.Y.S.2d 490, 492 (App. Div. 1989) (upholding the conviction of a defendant, under section 600 of the VTL, where the defendant claimed a lack of mens rea). In *Useo*, the court also noted:

> [T]he statutory provision omits any word or phrase requiring that the defendant act with a culpable state of mind with respect to the element of leaving the scene of the accident. The statutory language addressing the defendant's mental state is set off from the language pertaining to the element of leaving the scene of the accident by commas. The Legislature's use of punctuation evidences an intent to limit the scienter requirement to

testimony of the defendant's expert witness, a psychologist, that the defendant had no memory of the accident, which injured a pedestrian bystander, the court held the defendant liable under section 600.[30] The psychologist testified that the defendant suffered from post-traumatic stress disorder and was taking medication that caused short-term memory loss and consequently had absolutely no memory of the incident.[31] The court held that because "the culpable mental state of 'knowingly' does not apply to the element of 'leaving the scene of the incident'" and the credible evidence showed that the defendant must have known an accident occurred,[32] the defendant was guilty under section 600.[33]

Interestingly, while a mens rea of "knowledge" is required as to the accident and injury, actual knowledge need not be proved conclusively.[34] Rather, the prosecution must merely show that the defendant should have reasonably been aware of the accident and injury.[35] The courts will take into account surrounding circumstances which intimate knowledge by the defendant, such as damage to the defendant's car or the reaction of the bystanders.[36] For example, although the defendant in *People v. Kohler*[37] claimed that he thought he had hit a pothole and had no knowledge that he had injured a pedestrian, the court, looking at all the

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> mere knowledge by a defendant as the operator of a motor vehicle that a personal injury has been caused by his culpability or by accident.

*Id.*

29. 842 N.Y.S.2d 287 (Crim. Ct. 2007), *aff'd*, 875 N.Y.S.2d 822 (App. Term 2008).

30. *Id.* at 291.

31. *Id.* at 290.

32. *See id.* at 292 ("The impact of the collision as described by eye witnesses, both on foot and in a stationary vehicle, was the 'sound of thunder' and with such force to propel the pedestrian into the air, landing in the middle of the road or 'double line' of the two direction roadway.").

33. *Id.*

34. *See* People v. Kohler, 926 N.Y.S.2d 160, 161 (App. Div. 2011).

35. *Id.*

36. *See id.* (upholding a sentence upon a conviction under section 600 of the VTL where the defendant claimed lack of knowledge of the accident). The court also noted the following:

> Given the circumstances of the accident, the damage to the defendant's car, and the immediate response by bystanders to block traffic and assist the decedent, while the defendant was still in proximity to the scene, the evidence established that the defendant knew or had cause to know that he had caused personal injury to another person. The evidence did not support the defendant's allegation that he thought he had hit a bird or a pothole.

*Id.*; *see also* People v. Spiegelman, 240 N.Y.S.2d 40, 41 (App. Div. 1963) ("Upon the facts in this record, it does not appear that the defendant knew that an injury had been caused or that he had left the place of the accident without stopping.").

37. 926 N.Y.S.2d at 161.

surrounding circumstances, held that knowledge or constructive knowledge did exist.[38]

### B. Constitutionality

There are two primary cases in which the N.Y. Court of Appeals examined the constitutionality of section 600 of the VTL. The second case, in particular, represents a major shift in the way the court and society view motor vehicles.[39] In *People v. Rosenheimer*,[40] the defendant was charged under the predecessor statute of section 600[41] for fleeing the scene of a fatal accident without identifying himself first.[42] The defendant argued the statute violated his Fifth Amendment rights, as he was forced to provide information that the prosecution would use against him in the criminal proceedings.[43] The court upheld the statute, which required the driver involved in an accident to remain at the scene and self-report, predicated on the reasoning that in "operating a motor vehicle the operator exercises a privilege which might be denied him, and not a right."[44] Consequently, the legislature may prescribe on what conditions this privilege shall be exercised.[45] And, since the legislature may, if they so choose, ban the use of automobiles as they are so dangerous,[46] they can definitely prescribe restrictions of their use, such as requiring drivers to remain at the scene of an accident and assist the authorities in reconstructing the events that led to the incident.[47]

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38. *Id.*

39. *See infra* text accompanying notes 40-53.

40. 102 N.E. 530 (N.Y. 1913).

41. *Id.* at 531. The court provided:

> Any person operating a motor vehicle, who, knowing that injury has been caused to a person or property, due to the culpability of the said operator, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence, including street and street number, and operator's license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting the same to the nearest police station, or judicial officer, shall be guilty of a felony punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment.

*Id.* (quoting High. Law § 290, 1910 N.Y. Laws ch. 374, at 673, 684-88 (repealed 1983)).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 532 ("The fatalities caused by [automobiles] are so numerous as to permit the Legislature, if it deemed it wise, to wholly forbid their use.").

47. *Id.* at 533.

The court explained in *People v. Samuel*,[48] however, that driving an automobile is an absolute right and cannot be limited solely on the grounds that driving is a privilege.[49] Section 600 was ultimately upheld on grounds similar to *Rosenheimer* of automobiles being considered dangerous instrumentalities.[50] The court reasoned that because motor vehicles have caused nearly as many deaths as all other categories of accidents combined, they are very dangerous.[51] Furthermore, in order for the government to fashion responsive safety laws, it is imperative that there be accurate statistics as to the occurrence of accidents and their causes.[52] Consequently, based on this analysis, leaving the scene is a true and substantial independent wrong meriting treatment as a separate criminal offense, unless barred by an overriding constitutional limitation.[53]

Another method of reasoning the courts have employed is similar to that of the U.S. Supreme Court in *California v. Byers*.[54] The court explained that a statute will only run afoul of the Fifth Amendment if the primary purpose and effect of the statute is to force self-incrimination.[55] The N.Y. statute, however, does not target a specific group of criminal activity or behavior.[56] Section 600 merely requires all drivers, whether involved in criminal activity or not, to stop and remain at the scene of an accident in order to relay accurate information to the authorities.[57] Since it does not target specific illegal activity, the provision that requires the driver to technically self-report is not a violation of the Fifth Amendment.[58]

## III. DEFICIENCIES IN THE NEW YORK STATUTE

Section 600 of the VTL is deficient in at least three regards.[59] First, the statute does not place an affirmative duty on the driver involved in a motor vehicle accident to aid the injured victim in any manner.[60] Second, the property damage section (misdemeanor) is separated from the

48. 277 N.E.2d 381 (N.Y. 1971).
49. *Id.* 382-85.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.* at 385.
54. 402 U.S. 424 (1971).
55. *Samuel*, 277 N.E.2d at 385.
56. *Id.*
57. N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011).
58. *Samuel*, 277 N.E.2d at 385.
59. *See infra* Part III.A–C.
60. N.Y. VEH. & TRAF. LAW § 600.

personal injury section (felony) only by a subsection,[61] which can frustrate legislative intent and create confusion when a court cites to the statute.[62] Third, the statute criminalizes the fleeing from the scene of an accident even where the initial contact was not a crime.[63] However, the statute provides no relief for individuals that panic and flee the scene, even if they immediately come to their senses and wish to turn themselves in to the police.[64]

### *A. Section 600 of the Vehicle and Traffic Law Places No Affirmative Duty on a Driver to Aid an Injured Victim*

Under current N.Y. law, there can be a situation where a driver gets into an accident and does not flee, yet does nothing to assist the injured victim, and can be completely free and clear legally.[65] This situation is unconscionable.[66] Take, for example, the case of *Aguilar v. State*,[67] where the driver of a car involved in an accident remained at the scene until the authorities arrived, however, did at no point attempt to assist or even summon assistance for the victim in the other car, who ultimately needed the fire department to rescue him with the jaws of life and cut him from his vehicle.[68] Pursuant to N.Y. law, this driver would face no

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61. *See* Act of May 24, 2005, ch. 49, 2005 N.Y. Laws 153 (codified as amended at N.Y. VEH. & TRAF. LAW § 600) (adding these subsections to separate the property damage from the personal injury and death provisions).

62. *See infra* Part II.B.

63. *See* Campbell v. Westmoreland Farm, Inc., 403 F.2d 939, 941 (2d Cir. 1968) ("[S]ince the New York hit-and-run statute makes no distinction between negligent and non-negligent drivers and requires both to identify themselves and report the accident to the police."); *Samuel*, 277 N.E.2d at 38; People v. Petterson, 477 N.Y.S.2d 691, 692 (App. Div. 1984).

64. *See* Oberoi v. Dennison, No. 2007-0996, 2008 WL 733683, at *1, *5-6 (N.Y. Sup. Ct. Feb. 28, 2008) (denying parole for a woman who received a sentence of six to nine years even though she turned herself in stating that "[t]hey know and understand that I deserve punishment in this matter. A punishment that I have accepted, and when in Court, I accepted full responsibility for my conduct. I turned myself in to the authorities once I recovered from my initial panic").

65. N.Y. VEH. & TRAF. LAW § 600; *see also* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 45 (noting how the N.Y. statute "does not expressly require drivers to assist persons injured in an accident").

66. *See* Melody J. Stewart, *How Making the Failure to Assist Illegal Fails to Assist: An Observation of Expanding Criminal Omission Liability*, 25 AM. J. CRIM. L. 385, 432 (1998). Commentators have advocated for stricter "duty to assist" laws in the United States:

> In the absence of . . . obligations, it is undoubtedly the moral duty of every person to extend to others assistance when in danger, . . . and, if such efforts should be omitted by any one when they could be made without imperiling his own life, he would, by his conduct, draw upon himself the just censure and reproach of good [people]; but this is the only punishment to which he would be subjected by society.

*Id.*

67. 202 S.W.3d 833 (Tex. App. 2006).

68. *Id.* at 838-39.

penalty; meanwhile, the victim was not only suffering from excruciating pain being trapped in a mangled vehicle but also could have potentially incurred more serious injuries.[69]

Many studies have been conducted that prove a positive effect on the survival rate of trauma victims in relation to the quickness in which they receive medical attention, and it is therefore imperative that the victim receive immediate medical care.[70] Forty-five states do, in fact, impose a duty on a driver involved in an accident that results in injury to provide assistance to the victim.[71] Section 10-104 of the UVC imposes a duty on the driver to do the following:

> [R]ender to any person injured in [an] accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical treatment if it is apparent that such treatment is necessary or if such assistance is requested by the injured person.[72]

Twenty-three states simply adopted this language directly from the UVC.[73] Furthermore, the majority of remaining states have adopted provisions substantially similar.[74] In contrast, New York imposes no duties on the driver other than the duty to remain at the scene and provide accurate information to the authorities.[75]

Another consequence of any lack of affirmative duty on the driver to assist the victim is the nonexistence of monetary recovery by the victim through a civil suit.[76] Under New York's current "hit-and-run"

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69. *Id.*

70. *See* Muiris Houston, *Quick Reaction by Emergency Services Can Mean Difference Between Life and Death*, IRISH TIMES (Mar. 18, 2014) http://www.irishtimes.com/news/health/reaction-time-can-be-difference-between-life-and-death-1.1728488 (documenting some of such studies).

71. *See, e.g.*, DEL. CODE ANN. tit. 21, § 4202 (West 2008); KY. REV. STAT. ANN. § 189.580 (West 2007); LA. STAT. ANN. § 14:100 (2012); R.I. GEN. LAWS ANN. § 31-26-1 (West 2012); *see* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40 (stating that Massachusetts, Missouri, New Hampshire, Ohio, and New York are the only states that do not expressly require the driver involved in an accident resulting in injury to assist the victim).

72. *See* UNIFORM VEHICLE CODE § 10-104 (NAT'L COMM. ON UNIF. TRAF. LAWS & ORD. 2000).

73. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40.

74. *See, e.g.*, CAL. VEH. CODE § 20003 (West 2008) ("The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person."); DEL. CODE ANN. tit. 21, § 4202; KY. REV. STAT. ANN. § 189.580; LA. STAT. ANN. § 14:100; R.I. GEN. LAWS ANN. § 31-26-1.

75. N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011).

76. *See* Campbell v. Westmoreland Farm, Inc., 270 F. Supp. 188, 190-91 (E.D.N.Y. 1967).

statute, a violation of section 600 of the VTL will not support a civil suit for damages by the victim or his family.[77] Even if a driver flees the scene of an accident leaving the victim wanting of essential medical care, neither the victim nor the family have a right to sue for the damages that may have ensued after the accident occurred.[78]

As noted above, forty-five states do place an affirmative duty on the driver to provide reasonable assistance to the injured victim—in many of these states a violation of their hit-and-run statutes creates civil liability.[79] As the court in *Powell v. Doe*[80] explains, although fleeing does not conclusively prove that the driver was negligent in causing the accident, it may operate as negligence per se.[81] Courts in other states agree, too, that failure to stop and render aid in violation of a statute that requires such aid constitutes negligence as a matter of law and will therefore support a civil action by the victim or victim's family in certain instances.[82]

Creating an affirmative duty on the driver to reasonably assist the victim will also have the net effect of creating a new right of action by the victim to sue for damages from a fleeing driver.[83] Because, if the driver flees, he will now be violating a statute and this violation would support a civil suit under negligence per se.[84]

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77. *See id.* at 191 ("While a violation of the statute constitutes a misdemeanor, it contains no language creating any cause of action on behalf of the injured party and certainly not on behalf of his relatives.").

78. *Id.*

79. *See* JOHN W. WADE ET AL., CASES AND MATERIALS ON TORTS 409 n.10 (9th ed. 1994) (stating that in a number of jurisdictions, hit-and-run statutes have been held to mean that a driver involved in an accident who fails to give aid may be liable for negligence per se); *see also* Powell v. Doe, 473 S.E.2d 407, 412 (N.C. Ct. App. 1996) (noting first that a violation of the N.C. statute would support a claim under negligence per se and that "[the court's] review reveals that a persuasive number of jurisdictions employ duty to aid statutes as a means of establishing negligence *per se*").

80. 473 S.E.2d 407.

81. *Id.* at 413.

82. *See* Brooks v. E. J. Willig Truck Transp. Co., 255 P.2d 802, 806-07 (Cal. 1953) (upholding the jury charge that the fleeing of the defendant may be used to show consciousness of guilt and noting how "it has been held in other jurisdictions in negligence cases that failure to stop and render aid is some evidence of a consciousness of responsibility for an accident"); Hallman v. Cushman, 13 S.E.2d 498, 501 (S.C. 1941) (charging the jury "that if the evidence did show a violation [under the hit and run statute] the same would be competent upon the question of whether or not the motor truck was being operated in a willful and wanton manner").

83. *See* Elliott v. City of New York, 747 N.E.2d 760, 762 (N.Y. 2001) ("As a rule, violation of a State statute that imposes a specific duty constitutes negligence per se, or may even create absolute liability.").

84. *Id.*

### B. *The Legislative Intent Behind Section 600 of the Vehicle and Traffic Law Is Either Unclear or Inadequate Under the Current Construction of the Statute*

Section 600 of the VTL came into its current form in 1959 and has remained largely unchanged since then.[85] In 2005, subsections for personal injury and property damage were added.[86] However, New York remains one of the only states that does not have two separate statutes for property and injury.[87] This lack of separation can create some confusion.[88]

Under the current state of the law, a N.Y. court essentially has two goals of the legislature to cite as the reasoning behind section 600.[89] The first reason has been explained by the N.Y. Court of Appeals in *People v. Samuel*,[90] in defense of the very constitutionality of the statute in the face of the constitutional right against self-incrimination.[91] The court explained that since motor vehicle accidents have caused so many deaths in the United States, it is imperative that the government gather accurate statistics regarding motor vehicle accidents.[92] Keeping accurate statistics as to the cause of accidents and circumstances are essential to assisting the government fashion better laws.[93] Therefore, requiring drivers to remain at the scene of an accident and accurately report essential information is a valid use of police power.[94] While the court does voice concern for the possible injured victim, it is a side point and merely dicta.[95]

The second and much-quoted reason for section 600 is to ensure that drivers do not escape from civil or criminal liability that may arise from their involvement in the accident.[96] As the court in *People v.*

85. *See* S. 2043, 1959 Leg., 182nd Sess., 1959 N.Y. Laws ch. 775, at 1855.

86. *See* S. 4584, 2005 Leg., 228th Sess., 2005 N.Y. Laws ch. 49, at 153, 153-54.

87. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 34, 40 (documenting how most of the other states hit-and-run codes are verbatim or substantially similar to the UVC which has a separate statute for property damage and personal injury).

88. *See infra* note 103.

89. *See infra* text accompanying notes 90-99.

90. 277 N.E.2d 381 (N.Y. 1971).

91. U.S. CONST. amend. V; N.Y. CONST. art. I, § 6.

92. *Samuel*, 277 N.E.2d at 381.

93. *Id.*

94. *Id.* at 384-86 (explaining how since this reporting statute does not target criminal behavior as most accidents do not involve any criminal prosecution, even for the minority that do, requiring accurate reporting is not a violation of the right not to self-incriminate).

95. *See id.* at 384-86 ("There are, *of course, other reasons* why an operator should remain at the scene of an accident, not the least of which is to provide succor to injured persons." (emphasis added)).

96. *See, e.g.*, People v. Lindsly, 472 N.Y.S.2d 115, 117 (App. Div. 1984); People v. Marotti, 862 N.Y.S.2d 712, 714 (App. Term 2008); People v. Santangelo, 512 N.Y.S.2d 288, 289 (Sup. Ct.

*Lindsly*[97] succinctly stated, "[t]he primary purpose of section 600 of the Vehicle and Traffic Law is to prevent the evasion of civil liability by a motorist who may be liable for negligently causing damage by his leaving the scene of the accident."[98] By fleeing the scene, the driver deprives the victim of having his injury resolved in an orderly way through the court system.[99]

While preventing evasion of civil or criminal liability seems like a valid reason to criminalize fleeing from an accident that results in property damage, it appears wholly insufficient to support a felony conviction.[100] Furthermore, this reasoning completely ignores the human element of an injured victim who potentially is in great need of prompt medical assistance.[101] Yet, under the current law, courts are left to rely solely upon this reasoning in support of their holdings.[102]

Since there is fundamentally only one legislative intent for section 600, courts often cite to it generally—whether referring to the provision on personal injury or property damage.[103] This may have been fine when there existed only one operative legislative intent of ensuring that drivers take responsibility for their actions; but, under the proposed amendment there would be an affirmative duty on drivers to reasonably assist injured victims and, consequently, a new legislative intent of ensuring that

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1986).

97. 472 N.Y.S.2d 115.

98. *See id.* at 117.

99. *See* People v. Carbajal, 899 P.2d 67, 72 (Cal. 1995).

100. *See, e.g.*, FLA. STAT. ANN. § 794.027 (West 2007) (defining failure to report sexual battery as a misdemeanor of the first degree); HAW. REV. STAT. § 663-1.6 (1993) (defining failure to report a crime in progress as a petty misdemeanor); OHIO REV. CODE ANN. § 2921.22(I) (West 2006) (stating that a failure to report certain felonies is punishable as a misdemeanor); WASH. REV. CODE ANN. § 9.69.100 (West 2003) (defining failure to report violent crime or sexual crime or assault against a child as a gross misdemeanor); *cf.* Ken Levy, *Killing, Letting Die, and the Case for Mildly Punishing Bad Samaritanism*, 44 GA. L. REV. 607, 619-20 n.26 (2010) (explaining how all the states that do punish "bad samaritanism" do so with misdemeanor charges only).

101. *See* Bailey v. Superior Court, 84 Cal. Rptr. 436, 441 (Ct. App. 1970) ("The purpose and propriety of this portion of the statute are apparent. It was enacted for the protection of persons injured in an accident, and was designed to prohibit drivers, under pain of punishment, from leaving such persons in distress and danger for want of proper medical or surgical treatment.").

102. *See, e.g.*, People v. Santangelo, 512 N.Y.S.2d 288, 289 (Sup. Ct. 1986) ("The purpose of VTL § 600 is to prohibit motorists involved in accidents from seeking to evade the civil or criminal consequences of their actions by fleeing before their identity can be established." (citations omitted)). In *Santangelo*, the pedestrian victim ultimately died, yet the court only cited to the legislative intent of evasion of liability. *See id.*

103. *See, e.g.*, People v. Smith, 732 N.Y.S.2d 675, 676 (App. Div. 2001) (charging only "vehicular manslaughter in the second degree and leaving the scene of an incident without reporting"); People v. King, 325 N.Y.S.2d 669, 670 (Cty. Ct. 1971) ("After a jury trial at which he was represented by counsel, defendant was found guilty of Criminally Negligent Homicide (Section 125.10, Penal Law), and Leaving Scene of Accident Without Reporting (Section 600, Vehicle and Traffic Law)."); *see* People v. Wenceslao, 329 N.Y.S.2d 391, 392-94 (Crim. Ct. 1972).

injured victims receive prompt medical care.[104] Therefore, it becomes important that the courts cite more accurately to the specific violation and not just to section 600.[105] This would be made much simpler if New York would follow the example of the UVC and the majority of other states, which split property damage and personal injury into separate and distinct statutes—not merely subsections of the same statute.[106]

### C. *The Current Statute Provides No Relief or Second Chance for a Driver Whose Only Crime Was to Panic and Flee*

This Subpart explains how under the current N.Y. law, once a driver violates section 600 of the VTL by leaving the scene of an accident, there is no second chance.[107] Even if the driver were to almost immediately seek to return to the scene of the accident and aid the victim, he would find himself charged under section 600 and potentially facing substantial prison time.[108] This is unlike Illinois's statute, which provides a half hour of partial amnesty for the driver to return or self-report.[109]

A prime example of this is the case of Mr. Dante Altieri, a nineteen-year-old man from Liverpool, New York.[110] Dante was a great student and had a perfect driving record, but he made one big mistake. On September 28, 2014, Dante struck and killed Joseph Roderka. Dante panicked and fled.[111] Immediately after arriving home, Dante confided in

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104. *See* People v. Mace, 129 Cal. Rptr. 3d 500, 509-10 (Ct. App. 2011) ("These are but humanitarian acts required to be performed by all drivers of vehicles involved in accidents causing injuries, whether or not they are responsible for the accident."); *see also* Powell v. Doe, 473 S.E.2d 407, 412 (N.C. Ct. App. 1996) ("[T]he general purpose of § 20-166 is to 'facilitate investigation of automobile accidents and to assure immediate aid to anyone injured by such collision.'" (quoting State v. Fearing, 269 S.E.2d 245, 248 (1980), *aff'd in part, rev'd in part*, 284 S.E.2d 487 (1981))).

105. *See supra* Part III.B.

106. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40 (noting that twenty-three states have adopted verbatim the language of the UVC, which has separate statutes for personal injury and property damage); *see also* CAL. VEH. CODE §§ 20001–20004 (West 2008); DEL. CODE ANN. tit. 21 §§ 4201–4202 (West 2008).

107. *See* N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011); *see also* Kathleen Culliton, *Woman Turns Self in for Hit-And-Run after Seeing Story on TV*, N.Y. POST (Oct. 30, 2015), http://nypost.com/2015/10/30/woman-turns-self-in-for-hit-and-run-after-seeing-story-on-tv (discussing how a woman turned herself in and was charged under section 600 of the N.Y. VTL).

108. *See infra* text accompanying notes 110-13.

109. *See* 625 ILL. COMP. STAT. 5/11–401 (2014).

110. *See* Douglas Dowty, *Panicked Driver Left Fatal Hit-and-Run in Clay to Tell Parents; Judge Calls Evidence of Guilt Strong*, SYRACUSE (May 8, 2014, 10:58 AM), http://www.syracuse.com/news/index.ssf/2014/05/panicked_driver_left_fatal_hit-and-run_in_clay_to_tell_parents_judge_calls_evide.html.

111. *See* Douglas Dowty, *Young Driver in Fatal Clay Hit-And-Run Avoids Jail Time Despite Plea from Victim's Family*, SYRACUSE (Aug. 28, 2014, 1:20 PM), http://www.syracuse.com/news/index.ssf/2014/08/young_driver_in_fatal_clay_hit-andrun_avoids_jail_time_despite_plea_

his parents, and they all headed back to the scene of the incident.[112] Though they arrived less than a half hour after the accident occurred, it was too late. Dante violated section 600, was arrested, and faced a class E felony charge.[113]

Had this accident occurred in Illinois, the fact that Dante returned to the scene in under a half hour would have mitigated the charge he would likely be facing.[114] The Illinois statute, understanding the frailty of the human mind, provides that a person who fled may return within a half hour and have his or her crime severely diminished.[115] A driver who flees the scene of a fatal accident is charged with a class 1 felony, whereas a driver who returns within a half hour is only charged with a class 4 felony.[116] As the court in *People v. Young*[117] explains:

> The statute's purpose is to inform those who have been injured or damaged by a hit-and-run driver of the driver's identity. This is accomplished by encouraging such drivers to take advantage of a second chance to come forward and reveal their identity. Those who do come forward will not be prosecuted for a felony.[118]

In New York, a driver that flees from the scene of an accident actually has an incentive to not return.[119] If the driver returns in a timely manner, all he can hope for is prosecutorial discretion and perhaps a favorable sentence from the judge.[120] The driver is still very likely to get dragged through the lengthy, stressful, and expensive court process.[121]

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from_victim.html.

112. *Id.*

113. Dowty, *supra* note 110.

114. *See* 625 ILL. COMP. STAT. 5/11-401 ("Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident.").

115. *See* Cesena v. Du Page Cty., 582 N.E.2d 177, 180-81 (Ill. 1991) ("Pursuant to the reporting statute, the legislature has provided the driver who violates the hit-and-run statute with a . . . grace period during which he may make an accident report and thereby avoid felony prosecution pursuant to the reporting statute.").

116. *See* 625 ILL. COMP. STAT. 5/11-401(c)–(d).

117. 441 N.E.2d 641 (Ill. 1982).

118. *Id.* at 643.

119. *See infra* text accompanying notes 120-22.

120. *See* Dowty, *supra* note 111.

121. *See* Bruce A. Green, *The Right to Plea Bargain with Competent Counsel After* Cooper *and* Frye*: Is the Supreme Court Making the Ordinary Criminal Process "Too Long, Too Expensive, and Unpredictable . . . in Pursuit of Perfect Justice"?*, 51 DUQ. L. REV. 735, 735 (2013) (arguing for changes to the criminal justice system). The changes commentators have urged can be summed as follows:

> *"[T]oo long, too expensive, and unpredictable."* That is how Justice Scalia described "the ordinary criminal process" in a dissenting opinion joined by Chief Justice Roberts and Justice Thomas. Justice Scalia blamed the length, cost, and unpredictability of criminal proceedings not on the intrinsic nature of adjudication but on the

Statistically, however, most hit-and-run drivers are never caught, and this provides a great incentive for the driver to not self-report and roll the dice on getting apprehended, tried, and convicted.[122] This disincentive has multiple societal costs.[123]

First, there are the investigation costs.[124] Investigations are costly and time consuming, as police are forced to chase down partial leads and inaccurate information.[125] Second, there is the economic effect that results from the accident and possible injury.[126] There are hospital bills, lost wages, and emotional distress to the victim and family.[127] This only gets exacerbated when there is no defendant and seemingly no one responsible.[128] Furthermore, where there is no culpable driver, there is no one's insurance to pay for the damages, and thus, this cost is borne by the rest of society in the form of higher insurance premiums.[129] It would seem wise to incentivize, rather than disincentivize, a driver to return and self-report.[130]

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> constitutional jurisprudence underlying the criminal process, which he depicted as unnecessarily intricate and unduly burdensome.

*Id.* at 735 (alteration in original) (footnotes omitted) (quoting Lafler v. Cooper, 132 S. Ct. 1376, 1391 (2012) (Scalia, J., dissenting)).

122. *See* Meredith Cohn, *Hit-and-Run Drivers Not Uncommon, but Not Well Understood*, BALT. SUN (Feb. 6, 2015), http://www.baltimoresun.com/health/bs-hs-hit-and-run-20150205-story.html ("It may be tough to research because many hit-and-run drivers are never caught."); Mario Koran, *If You Hit Someone with a Car and Drive Away, You're Probably Not Getting Punished*, VOICE SAN DIEGO (Aug. 8, 2014, 5:46 PM), http://www.voiceofsandiego.org/hit-and-runs/if-you-hit-someone-with-a-car-and-drive-away-youre-probably-not-getting-punished ("San Diego drivers who kill or injure someone with their car and just keep driving evade punishment almost nine out of 10 times."); Yang Wang, *More Than 50% Of Drivers Get Away with Hit-And-Runs*, CHRON (Apr. 13, 2010, 5:30 AM), http://www.chron.com/news/houston-texas/article/More-than-50-of-drivers-get-away-with-1707226.php.

123. *See infra* text accompanying notes 124-29.

124. *See infra* note 125.

125. *See, e.g.*, Prince of Petworth, *How Hard Is It to Track Down a Hit and Run Driver?*, POPVILLE: DC'S NEIGHBORHOOD BLOG (June 28, 2010, 11:30 AM), http://www.popville.com/2010/06/how-hard-is-it-to-track-down-a-hit-and-run-driver (complaining how even though a witness got part of the suspect's license plate number, the police were still unable to track down the suspect); *see also* Koran, *supra* note 122.

126. *See supra* notes 9-10.

127. *See supra* notes 9-10; *see also* Carolina Leid, *Family of Young Woman Killed Pleads for Hit-And-Run Driver to Turn Self In*, EYEWITNESS NEWS ABC7 (Sept. 9, 2015), http://abc7ny.com/news/family-of-young-woman-killed-pleads-for-hit-and-run-driver-to-turn-self-in/976610 ("My family is hurting right now, can you please return yourself?").

128. *See id.*

129. *See* People v. Carbajal, 899 P.2d 67, 73 (Cal. 1995) ("The cost of a 'hit and run' violation is paid for by *every* law-abiding driver in the form of increased insurance premiums.").

130. *See supra* Part III.C.

## IV. NEW YORK SHOULD IMPOSE AN AFFIRMATIVE DUTY ON A DRIVER INVOLVED IN AN ACCIDENT TO ASSIST THE VICTIM IN ANY REASONABLE WAY

This Part proposes that New York amend the current hit-and-run statute, section 600 of the VTL,[131] to include an affirmative duty on the driver involved in an accident, which results in personal injury to a pedestrian or other driver, to reasonably assist the victim in any way possible.[132] This Part then defines the parameters of the duty to assist, as well as analyzes the proper punishment for violating this duty, primarily using the UVC and the California Vehicle Code as models.[133] This Part then further explores the benefit of a new cause of civil action under the negligence per se theory if a driver were to flee in violation of the affirmative duty to assist.[134]

### *A. The Proposed Duty to Assist*

This proposed amendment would require any driver involved in a motor vehicle accident that results in serious bodily injury to not only remain at the scene and accurately turn over information to the police but to actually assist the injured victim.[135] This provision is already in effect in some form in forty-five states.[136] The majority of those states simply adopted the language of section 10-104 of the UVC.[137] Many other states adopted their own statute criminalizing hit-and-runs, which

131. N.Y. VEH. & TRAF. LAW § 600 (McKinney 2005).

132. *See infra* Part IV.A.

133. *See infra* Part IV.A.2.

134. *See infra* Part IV.A.3.

135. *See infra* Part IV.A.

136. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40 (stating that Massachusetts, Missouri, New Hampshire, Ohio, and New York are the only states that do not expressly require the driver involved in an accident resulting in injury to assist the victim); *see also infra* notes 137-38.

137. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 38, 40. The Code notes that twenty-three states have adopted verbatim the language of the UVC, section 10-104(a), which states as follows:

> The driver of any vehicle involved in an accident resulting in injury or death . . . shall give his name, address and the registration number of the vehicle he is driving . . . and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical treatment if it is that such treatment is necessary or if such assistance is requested by the injured person.

*Id.* at 38.

include an affirmative duty on the driver to assist.[138] The amendment to section 600 of the VTL would read as follows:

> Personal injury. (a) Any person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred, stop, *and render reasonable assistance to any person injured in the accident*, exhibit his or her license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his or her name, residence, including street and street number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy and license number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the place of said injury, then, he or she shall report said incident as soon as physically able to the nearest police station or judicial officer.[139]

### 1. Violating This New Duty Will Act as a Standalone Reason to Support a Conviction Under Section 600 of the New York Vehicle and Traffic Law

This Subpart explains what penalty would be imposed on a driver who fails to reasonably assist the victim.[140] Under the current N.Y. statute, the punishment for violating section 600 of the VTL depends on whether the victim is injured, seriously injured, or dies.[141] If the victim is injured, then the charge is a class A misdemeanor;[142] if the victim is

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138. *See, e.g.*, CAL. VEH. CODE § 20003 (West 2008) ("[T]he driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician."); DEL. CODE ANN. tit. 21 § 4202 (West 2008) ("[The driver] shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician."); N.C. GEN. STAT. ANN. § 20-166 (West 2008) ("[The driver] shall render to any person injured in such crash reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person.").

139. The term "reasonable" has survived attacks in multiple states for unconstitutional vagueness. State v. Thirteenth Judicial Dist. Court, 208 P.3d 408, 413 (Mont. 2009) (explaining how reasonable assistance as used in the Montana hit-and-run statute, MONT. CODE ANN. § 61-7-103 (2015), is not unconstitutionally vague); *see* People v. Thompson, 242 N.W. 857, 860 (Mich. 1932) ("[I]n connection with the context and subject-matter of this statute, the expressions above quoted in the instant case have such a fixed and well-understood meaning as not to render section 30 of the act invalid.").

140. *See infra* Part IV.A.1.

141. *See* N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011).

142. *Id.* § 600 2(c).

seriously injured, the charge is a class E felony;[143] and if the victim is deceased, then the charge is a class D felony.[144] To be convicted of the class D felony charge in New York, the state must show as follows:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), operated a motor vehicle;
2. That at that time and place, the defendant knew or had cause to know that personal injury had been caused to another person, due to an incident involving the motor vehicle operated by the defendant;
3. That the defendant did not, before leaving the place where the personal injury occurred, stop, and, in the event that no police officer was in the vicinity of the place of the injury, report the incident as soon as physically able to the nearest police station or judicial officer; and
4. That the personal injury involved resulted in death.[145]

Contrast this to what a jury needs to find in order to convict under the California statute: prongs one, two, and three are substantially similar to New York's prongs one and two. However, under prong four, all the jury must find is that the defendant failed to fulfill any duty required of him or her under sections 20001 and 20003, one of which is the failure "[t]o provide reasonable assistance to any person injured in the accident."[146] Similarly, under the Illinois statute, the failure to render aid by itself will support a conviction under that state's felony hit-and-run statute.[147]

The consequence of the proposed amendment would be to criminalize a failure of the driver to provide reasonable assistance to the injured victim whether the initial accident was the driver's fault or

143. *Id.*

144. *Id.*

145. *See Leaving Scene of an Incident Without Reporting*, NYCOURTS.GOV, http://www.courts.state.ny.us/judges/cji/3-VTL/VTL_600/VTL-600-2a-death.pdf (last visited Nov. 26, 2016) (containing the standard jury charge for a violation of any of the subsections of section 600 of the VTL after 2005).

146. MATTHEW BENDER, JUDICIAL COUNCIL OF CALIFORNIA CRIMINAL JURY INSTRUCTIONS 155 (2015), http://www.courts.ca.gov/partners/documents/calcrim_juryins.pdf (stating standard jury charge for a violation of California's hit-and-run statute, CAL. VEH. CODE §§ 20001–20003 (West 2008)).

147. *See* SPECIAL SUPREME COURT COMM. ON PATTERN JURY INSTRUCTIONS-CRIMINAL, ILL. SUPREME COURT, INTRODUCTION TO IPI CRIMINAL § 23.06 (2016), http://www.illinoiscourts.gov/circuitcourt/CriminalJuryInstructions/CRIM%2023.00.pdf (explaining jury charge for a violation of 625 ILL. COMP. STAT. 5/11-401(a) (2014)).

not.[148] This means that under the amended statute, even if the driver remains at the scene, the driver must also provide reasonable assistance to the victim, and if he fails to do so he can be charged under section 600 of the N.Y. VTL for failing to render aid.[149] That is to say, a failure to provide reasonable assistance to an injured victim will be enough to support an independent conviction under the statute—similar to the current law in both Illinois and California.[150]

2. Defining the Scope of the Duty to Assist

This Subpart defines the scope of this new duty on the driver to reasonably assist the injured victim. The UVC,[151] the states that adopted the UVC,[152] and the California statute[153] all include the specific duty on the driver to transport the victim to a hospital or doctor when necessary.[154] This Note argues that the amended N.Y. statute need not include this specific duty as it is unnecessary due to the advent of cell phones and the ease of summoning professional emergency services.[155] Furthermore, it is unwise to obligate non-professionals to actively aid injured persons as they may injure them further.[156] This Note proposes that the N.Y. duty should be a general one of reasonable assistance, and the only specific duty on the driver, if any, should be the duty to summon help on his or her cell phone.[157]

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148. *See* People v. Petterson, 477 N.Y.S.2d 691, 692 (App. Div. 1984) ("[I]n other words, the mere occurrence of an injury to another person is sufficient to trigger the statutory provisions, irrespective of whether the motorist is at fault.").

149. *See supra* Part IV.A.1.

150. *See supra* text accompanying notes 146-47.

151. NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40. The report further states:

> The driver of any vehicle involved in an accident resulting in injury or death . . . shall give his name, address and the registration number of the vehicle he is driving . . . and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical treatment if it is that such treatment is necessary or if such assistance is requested by the injured person.

*Id.*

152. *See supra* note 137.

153. *See supra* note 138.

154. *See supra* text accompanying notes 137-38.

155. *See infra* Part IV.A.2.

156. *See* People v. Limon, 60 Cal. Rptr. 448, 450 (Ct. App. 1967) ("[O]f course, the 'reasonable assistance' referred to in the statute might be the summoning of aid. In some cases, it would be much better for the driver to call for assistance than to attempt immediate ministrations to the injured person."); Marin Roger Scordato, *Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law*, 82 TUL. L. REV. 1447, 1476-78 (2008).

157. *See infra* note 183.

Under the UVC, the duty to assist is general as well as specific.[158] The specific example of the duty to assist is the duty to transport the victim to a hospital or doctor, when such assistance is visibly necessary.[159] Under the California statute, there exists a very similar duty of "transport[ing], or mak[ing] arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person."[160] The Illinois statute, being adopted from the UVC, obviously contains the same duty to transport or make arrangements for transport.[161]

However, U.S. law and citizens have long been resistant to placing affirmative duties on bystanders to assist injured individuals or victims of crimes.[162] This is unlike many European countries, where there are laws that require bystanders to assist when the assistance can be done easily and safely.[163] In the United States, only a small minority of states have such "mandatory assisting" laws, and even those states only penalize this failure to assist with minor fines.[164]

However, there is a significant difference between the American laws reluctance to criminalize a bystander's failure to assist and the failure of a driver involved in an accident.[165] A bystander did nothing to create the peril, whereas the driver of the car, even if not directly at fault for the accident, plays a major role in the injury of the victim as it was through the driver's actions that the victim is hurt now and in need of

158. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 40.

159. *Id.*

160. *See* CAL. VEH. CODE § 20003 (West 2008).

161. *See* 625 ILL. COMP. STAT. 5/11-403 (2014).

162. *See* Scordato, *supra* note 156, at 1476 (defending American law's long absence of requiring bystanders to assist victims in even non dangerous situations); Daniel B. Yeager, Note, *A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers*, 71 WASH. U. L.Q. 1, 1-9 (1993) (arguing for stronger laws in more states that require easy rescue and stating that if the states do not want to impose such duties then they should come up with better reasons than currently exist).

163. *See* Yeager, *supra* note 162, at 6 n.28. *See generally* Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77 (2005) (explaining and tracing the cultural differences between the United States, which generally does not require rescue, and the European countries that do require rescue).

164. *See* Yeager, *supra* note 162, at 5-8, 22-24 (examining the states that have such laws and the minor penalties they carry); *see also* John T. Pardun, *Good Samaritan Laws: A Global Perspective*, 20 LOY. L.A. INTL & COMP. L.J. 591, 596-603 (1998) (examining the few American states that do have "good Samaritan" laws).

165. *See infra* text accompanying notes 166-67.

medical attention.[166] Most states intuitively understood this distinction and adopted the UVC's duty to assist.[167]

That being said, it may seem impractical to some, maybe even dangerous, if the state were to impose a duty on drivers involved in accidents to transport their victims to hospitals as non-professional assistance can cause more harm to the already injured victim.[168] Such a requirement might also have the effect of creating civil litigation regarding the negligent transport by the drivers of their victims.[169] There is, however, a great technological advancement that perhaps makes the entire duty to transport moot—cell phones.[170] With the prevalence of cell phones, the ease of summoning help remotely almost obviates the need for the driver to ever have to physically transport the victim to the hospital.[171]

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166. *See* O'Malley, *supra* note 1, at 372-73, 376 (1931) (examining the creation of a civil liability under the Indiana hit-and-run statute of 1929, but first explaining how this new legislative duty to assist, in spite of U.S. law's general distrust to such duties, "amounts to nothing more than raising to a legal status a duty which at common law was considered only moral"); *see also* Jennifer L. Groninger, *No Duty to Rescue: Can Americans Really Leave a Victim Lying in the Street? What Is Left of the American Rule, and Will It Survive Unabated?*, 26 PEPP. L. REV. 353, 367 (1999) (noting that hit-and-run statutes are a recognized exception to the general rule of no duty to assist in the United States).

167. *See supra* notes 136-38. Many courts also emphasize how these laws are necessary as a humanitarian measure of ensuring that the injured victims receive immediate care. *See, e.g.*, Bailey v. Superior Court, 84 Cal. Rptr. 436, 441 (Ct. App. 1970) ("[T]hese are but humanitarian acts required to be performed by all drivers of vehicles involved in accidents causing injuries, whether or not they are responsible for the accident."); People v. Thompson, 242 N.W. 857, 861 (Mich. 1932) ("[T]hese provisions are, not only humanitarian, but obviously contribute to the mutual welfare and safety of all users of the highways.").

168. *See* People v. Limon, 60 Cal. Rptr. 448, 450 (Ct. App. 1967) ("[O]f course, the 'reasonable assistance' referred to in the statute might be the summoning of aid. In some cases, it would be much better for the driver to call for assistance than to attempt immediate ministrations to the injured person."); *see also* Scordato, *supra* note 156, at 1476-78 (arguing against expanding "good Samaritan" laws in the United States and noting how even the most well intentioned non-professional rescuers can often cause more harm than good, as well as quoting many cases where the courts have noted the damage occurring from non-professional help).

169. *See* Groninger, *supra* note 166, at 363-64; Barry W. Szymanski, *The Good Samaritan Statute: Civil Liability Exemptions for Emergency Care*, WIS. LAW., July 2007, at 10, 12 (examining Wisconsin's "good Samaritan" statute and explaining that the very purpose of such statutes is to protect from civil liability those who provide emergency aid even if provided negligently); Susan Donaldson James, *Woman Sued for Rescue Effort in Car Crash*, ABC NEWS (Dec. 19, 2010), http://abcnews.go.com/TheLaw/story?id=6498405&page=1 (explaining how a women pulled her friend from a car wreck by repeatedly yanking on her legs causing her to remain permanently paralyzed).

170. *See* Jesse A. Cripps, Jr., *Dialing While Driving: The Battle over Cell Phone Use on Americas Roadways*, 37 GONZ. L. REV. 89, 91 (2002) (citing a Harvard study that "[a]s of July 2000, over 100 million citizens nationwide used cell phones").

171. *See id.* at 100-01 nn.90-92 (discussing studies conducted by both cell phone manufacturers and the National Highway Traffic Safety Administration that show that many drivers use their cell phones to summon emergency services for accidents they witness and that "[e]very

The duty to transport the injured accident victim created by the UVC was first enacted in 1926, which was well before the advent of cell phones and the ability to summon help remotely.[172] Furthermore, in 1926, there was no help to summon as there was no official ambulance service until the establishment of the American Red Cross in 1936.[173] Ambulance services, as we know them, only came to be in the 1960s, and this, too, was well before cell phones.[174] However, with the advent of cell phones and their pervasiveness, it can be assumed that almost every driver is equipped with a cell phone or at the very least other drivers or pedestrians are equipped with cell phones.[175] Therefore, the new duty created by this statutory amendment need not open the "Pandora's box" of negligent transport, or philosophical discussions about the rightness or wrongness of creating a significant duty on the driver to assist and transport the victim.[176] Rather, these issues can be bypassed by simply creating a duty to summon help.[177]

An example of a modern day "duty to assist" statute is North Carolina's hit-and-run or good Samaritan statute.[178] This statute was amended in 1982, well after the advent of sophisticated mobile medical transportation, and does not require that the driver actually transport the victim.[179] Rather, the duty created is that the driver "shall render to any person injured in such crash reasonable assistance, including the calling

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day more than 118,000 emergency calls are made from a wireless phone").

172. *See* NAT'L COMM. ON UNIF. TRAFFIC LAWS & ORDINANCES, *supra* note 12, at 39-40 (explaining that section 10-104—the duty to render assistance and transport the victim if necessary—first appeared in the original UVC in 1926 and while it did undergo some amendments it is still substantially similar to the 1926 duty and twenty-three states adopted this provision verbatim).

173. *See* VINCENT D. ROBBINS, A HISTORY OF EMERGENCY MEDICAL SERVICES & MEDICAL TRANSPORTATION SYSTEMS IN AMERICA 39-40 (2005) ("A significant milestone in the EMS system development in the United States was reached in 1936. In that year the American Red Cross (ARC) established nearly 900 dedicated posts, spread along the country's highways, with the purpose of aiding those involved in motor vehicle accidents."). Even the counties that had private ambulance services usually sponsored by hospitals or local municipalities, had extremely slow service. *See History of New Orleans EMS*, NOLA, http://www.nola.gov/ems/about-us/history (last visited Nov. 26, 2016) (providing that "in 1907 the Ambulance Service answered 1,929 calls with an average response time of twenty-eight minutes," and that emergency medical services were not taken over by the government until 1947).

174. *See* ROBBINS, *supra* note 173, at 45-48.

175. *See* Lee Rainie, *Cell Phone Ownership Hits 91% of Adults*, PEW RES. CTR. (June 6, 2013), http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults.

176. *See supra* text accompanying notes 168-71.

177. *See infra* note 183.

178. N.C. GEN. STAT. § 20-166 (2008).

179. *See* N.C. GEN. STAT. § 20-166 (1981) ("[T]he driver of any vehicle involved in an accident . . . shall render to any person injured in such accident . . . reasonable assistance, including the carrying of such person to a physician or surgeon . . . .").

for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person."[180]

The amendment to section 600 of the N.Y. VTL as proposed only includes a general requirement to reasonably assist the victim.[181] A reasonable requirement under this general duty is for the driver to use his cell phone to summon the proper authorities or stop a bypassing car or pedestrian and use their cell phone to summon help.[182] There is rarely a reason anymore to require the driver to actually physically transport the victim, and so the statute should just be amended to include this general duty to reasonably assist, with a specific example being the obligation to summon emergency services when necessary.[183]

### 3. Under This Amendment, If a Driver Flees, the Victim Can Sue for Damages Under the Theory of Negligence Per Se

This Subpart argues, aside from the humanitarian aspect of ensuring that the victim receive necessary and timely medical attention, this duty to assist will create a new civil option for the victim.[184] A violation of section 600 currently will not support a private civil suit for damages by the victim or victim's family.[185] However, under the proposed amendment, if the driver of the vehicle leaves the scene without providing reasonable assistance to the victim in violation of the amended section 600, there would be a new opportunity for the victim of a hit-and-run accident to recover damages under the theory of negligence per se.[186]

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180. *Id.*

181. *See supra* Part IV.A.

182. *See* People v. Limon, 60 Cal. Rptr. 448, 450 (Ct. App. 1967) ("[O]f course, the 'reasonable assistance' referred to in the statute might be the summoning of aid. In some cases, it would be much better for the driver to call for assistance than to attempt immediate ministrations to the injured person.").

183. The amendment would read as follows:

> *Any person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred, stop, and render reasonable assistance to any person injured in the accident, including the calling for medical assistance if it is apparent that such assistance is necessary.*

184. *See infra* notes 195-99 and accompanying text.

185. *See* Campbell v. Westmoreland Farm, Inc., 270 F. Supp. 188, 191 (E.D.N.Y. 1967) ("While a violation of the statute constitutes a misdemeanor, it contains no language creating any cause of action on behalf of the injured party and certainly not on behalf of his relatives.").

186. *See* WADE ET AL., *supra* note 79, at 409 n.10 (stating that in a number of jurisdictions, hit-and-run statutes have been held to mean that a driver involved in an accident who fails to give aid may be liable for negligence per se).

In many states where the driver does have the duty to reasonably assist the injured victim the failure to do so will support a civil claim aside from the criminal charge.[187] For example, a North Carolina court in *Powell v. Doe*[188] held that a violation of North Carolina's hit-and-run statute[189] would support a civil suit under the theory of negligence per se.[190] Similarly, a California court in *People v. Corners*[191] held that a violation of their state's hit-and-run statute[192] would support a civil claim under negligence per se if it could be proved that the victim's injuries were exacerbated by the lack of immediate care.[193] Furthermore, some courts have allowed fleeing to evidence consciousness of guilt of the driver's behavior prior to the accident.[194]

In New York, however, at least prior to the proposed amendment, the courts have refused to allow a private action.[195] In *Campbell v. Westmoreland Farm*,[196] the district court applying N.Y. law clearly stated that nothing in New York's hit-and-run statute creates a private right to sue, thus dismissing the suit brought by a hit-and-run victim's family.[197] The court noted how "[i]t would be strange if an injured plaintiff could recover when a culpable motorist left the scene with knowledge of the injury but could not recover if the same motorist departed from the scene without such knowledge—although the injury would be the same in both cases."[198] If, however, New York were to join the vast majority of other states and amend section 600 to require the driver involved in an accident to provide reasonable assistance to the

187. *Id.*

188. 473 S.E.2d 407 (N.C. Ct. App. 1996).

189. N.C. GEN. STAT. § 20-166 (2008).

190. *See* Powell v. Doe, 473 S.E.2d 407, 412 (N.C. Ct. App. 1996) (explaining that although a violation of the statute can support a claim under negligence per se in the instant case there was no proof that the injuries were exacerbated by the fleeing of the defendant, who was never apprehended).

191. 221 Cal. Rptr. 387 (Ct. App. 1985).

192. CAL. VEH. CODE §§ 20001–20003 (West 2008).

193. *See* 221 Cal. Rptr. at 393 ("[C]ommission of the crime gives rise to civil liability for damages only if the act of leaving the scene proximately causes *further* injury or death." (emphasis added)).

194. *See* Brooks v. E. J. Willig Truck Transp. Co., 255 P.2d 802, 806-07 (Cal. 1953) (upholding a jury charge that the fleeing of the defendant may be used to show consciousness of guilt and noting how "it has been held in other jurisdictions in negligence cases that failure to stop and render aid is some evidence of a consciousness of responsibility for an accident"); Hallman v. Cushman, 13 S.E.2d 498, 500 (S.C. 1941) (charging a jury "that if the evidence did show a violation [of the hit-and-run statute,] the same would be competent upon the question of whether or not the motor truck was being operated in a willful and wanton manner").

195. *See infra* text accompanying notes 196-98.

196. 270 F. Supp. 188 (E.D.N.Y. 1967).

197. *Id.* at 191-92.

198. *Id.* at 191.

victim, a violation of this statute would then also support a new civil suit for injuries that occur after the driver flees.[199]

### B. *New York Should Amend Section 600 of the Vehicle and Traffic Law to Separate Property Damage and Personal Injury into Separate Sections so That There Exists Clear Legislative Intent for Each*

The second amendment this Note proposes is essentially a housekeeping matter which is necessitated by the previous proposed amendment.[200] Currently, under section 600 of the VTL, fleeing the scene of property damage (a misdemeanor) is separated from fleeing the scene of an accident resulting in serious injury or death (a felony) by subsections only.[201] As such, many courts simply cite to section 600 in general without even specifying which subsection the defendant was charged or convicted under.[202] This may have been fine when there only existed one legislative intent for section 600, ensuring that the driver take responsibility both criminally and civilly for his actions.[203] However, under the proposed amendment, New York will add a duty for the driver involved in an accident to provide reasonable assistance to the injured victim, and this will create a new legislative intent of ensuring that injured victims obtain prompt necessary medical attention.[204] Consequently, it becomes necessary for New York to split up "property damage" and "personal injury" into separate sections so that courts can more easily cite to the specific section and maintain clear legislative intent.[205]

This proposed amendment simply splits the property damage part of the statute from the personal injury section. This new statute consists of sections 600-i and 600-ii. This would be similar to almost every other state's statutes where "property damage" is separated from "personal injury" in separate sections.[206]

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199. *See supra* text accompanying notes 186-94.

200. *See supra* Part IV.A.1.

201. *See* N.Y. VEH. & TRAF. LAW § 600 (McKinney 2011).

202. *See, e.g.*, People v. Santangelo, 512 N.Y.S.2d 288, 289 (Sup. Ct. 1986); People v. Wenceslao, 329 N.Y.S.2d 391, 392 (Crim. Ct. 1972); People v. King, 325 N.Y.S.2d 669, 670 (Cty. Ct. 1971).

203. *See* People v. Lindsly, 472 N.Y.S.2d 115, 117 (App. Div. 1984) ("[T]he primary purpose of section 600 of the Vehicle and Traffic Law is to prevent the evasion of civil liability by a motorist who may be liable for negligently causing damage by his leaving the scene of the accident."); *see also* People v. Marotti, 862 N.Y.S.2d 712, 714 (App. Term 2008).

204. *See supra* Part IV.A.1.

205. *See supra* Part III.B.

206. *See, e.g.*, CAL. VEH. CODE §§ 20001–20004 (West 2008); FLA. STAT. ANN. §§ 316.027, .061 (West 2014); 625 ILL. COMP. STAT. 5/11-401 to -402 (2014); N.D. CENT. CODE §§ 39-08-04 to -05 (2013).

In California's hit-and-run statute, for example, section 20001 of the California Vehicle Code criminalizes fleeing from an accident resulting in serious injury or death, and section 20002 of the California Vehicle Code criminalizes fleeing from an accident resulting in property damage.[207] Two distinct legislative intents also exist for the two distinct hit-and-run sections.[208] The first legislative intent is to support the misdemeanor section of fleeing from "property damage" and, similar to New York's, it is to ensure that the driver takes civil and criminal responsibility.[209] The second legislative intent, in support of the felony section of fleeing from "personal injury," is to ensure that the injured victim is not left "in distress and danger for want of proper medical or surgical treatment."[210] Since the sections and their legislative intents are clearly distinct, California courts easily cite to the specific section and legislative intent remains very clear.[211] If New York were to split section 600 into section 600-i (property damage) and section 600-ii (personal injury), there would be substantially less confusion in court decisions and, consequently, legislative intent would not be confused.[212]

### C. *New York Should Provide Some Measure of Relief for Drivers Who Fled Merely from Panic*

Current N.Y. law provides that a driver who flees, even if completely faultless in the original accident, can and likely will be charged under section 600 of the VTL; and, if convicted, the driver will face substantial prison time.[213] The law provides no relief or second

207. CAL. VEH. CODE §§ 20001–20002.

208. *See infra* text accompanying notes 209-10.

209. *See* People v. Carbajal, 899 P.2d 67, 72-73 (Cal. 1995) ("By leaving the scene of the accident, the fleeing driver deprives the nonfleeing driver of his or her right to have responsibility for the accident adjudicated in an orderly way according to the rules of law."); People v. Crouch, 166 Cal. Rptr. 818, 822 (App. Dep't Super. Ct. 1980) ("The regulatory purpose of Vehicle Code, section 20002, subdivision (a) is to provide the owners of property damaged in traffic accidents with the information they need to pursue their civil remedies.").

210. *See* Bailey v. Superior Court, 84 Cal. Rptr. 436, 441 (Ct. App. 1970) ("The purpose and propriety of this portion of the statute are apparent. It was enacted for the protection of persons injured in an accident, and was designed to prohibit drivers, under pain of punishment, from leaving such persons in distress and danger for want of proper medical or surgical treatment."); People v. Jordan, 29 Cal. Rptr. 619, 620 (Ct. App. 1963) ("[T]he legislative purpose in enacting 20001 was to prevent the driver of the offending car from leaving the scene of the accident without furnishing the information as to his identity and without rendering necessary aid to the injured person.").

211. *See supra* notes 209-10.

212. *See supra* Part III.B.

213. *See* N.Y. VEH. & TRAF. LAW § 600 ("Any violation of the provisions of paragraph a of this subdivision . . . or (ii) results in death shall constitute a class D felony punishable by a fine of not less than two thousand nor more than five thousand dollars in addition to any other penalties provided by law."). The other penalties include up to seven years in prison. *See* N.Y. PENAL LAW

chance to a driver whose entire crime was that, in a moment of weakness during an intensely stressful situation, he made a mistake and fled.[214] Even if the driver were to almost immediately come to his senses and wish to turn himself in to the police he may face severe criminal repercussions.[215] The example of Dante Altieri is very disturbing, and his case is not at all unique.[216] There are many drivers whose only crime was that they panicked and fled, yet the law does not provide any official relief other than prosecutorial discretion.[217]

This Note proposes that New York add an amendment similar to what is currently in force in Illinois, where a driver involved in an accident who flees may return and self-report within a half hour.[218] If the driver returns within this timeframe, he will not be charged under the most stringent felony in the statute, rather returning will operate as a mitigation.[219] This Subpart also explains some of the anticipated social

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§ 70.00 (McKinney 2009) ("The maximum term of an indeterminate sentence shall be at least three years and the term shall be fixed as follows: . . . (d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years; and (e) For a class E felony, the term shall be fixed by the court, and shall not exceed four years.").

214. N.Y. VEH. & TRAF. LAW § 600. In California, however, the statute provides for judicial discretion in imposing the sentence for a conviction pursuant to its hit-and-run statute. *See* CAL. VEH. CODE § 20001 (West 2008) (providing judicial discretion to lower the penalty upon conviction). The statute explains the following:

> If the accident described in subdivision (a) results in death or permanent, serious injury, a person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both that imprisonment and fine. However, the court, in the interests of justice and for reasons stated in the record, may reduce or eliminate the minimum imprisonment required by this paragraph.

*Id.*

215. *See* Dowty, *supra* note 111 (charging a man under section 600 of the VTL even though he was on his way back to the accident less than a half hour after the incident occurred).

216. *See, e.g.*, Aric Richards, *Hit-and-Run Driver Returns to Scene of Fatal Collision*, FOX5 (Mar. 15, 2016, 7:26 AM), http://fox5sandiego.com/2016/03/15/chula-vista-police-investigate-fatal-pedestrian-accident (reporting on a driver of a fatal hit-and-run accident who returned to the scene of the incident almost immediately after fleeing).

217. *See* Anthony Neddo, *Prosecutorial Discretion in Charging the Death Penalty: Opening the Doors to Arbitrary Decision Making in New York Capital Cases*, 60 ALB. L. REV. 1949, 1953 (1997) (explaining how district attorneys in New York have historically enjoyed broad discretion in prosecuting the state's penal law).

218. A short amnesty period is provided under 625 ILL. COMP. STAT. 5/11-401 (2014):

> Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident.

*Id.*

219. *See id.* ("[A]ny person failing to comply with paragraph (b) is guilty of a Class 2 felony if the motor vehicle accident does not result in the death of any person. Any person failing to comply

benefits from such a provision, before analyzing the possible problem of incentivizing drunk drivers to flee and avoid larger penalties.[220]

1. New York Should Add a Provision That Allows a Driver Who Self-Reports Within a Short Period of Time to Be Charged Under the Misdemeanor Section

The proposed amendment would be based on the current Illinois statute and read as follows:

> *Any person who has failed to stop or to comply with the requirements of this section [2(a)] shall, as soon as possible but in no case later than one hour after such motor vehicle accident, report all the required information under this section at a police station or sheriff's office near the place where such accident occurred. If the driver fulfills his or her duties under this section, the driver will not be punished under section 2(c), instead, the offense shall constitute a Class A misdemeanor punishable by a fine of not less than five hundred nor more than one thousand dollars in addition to any other penalties provided by law.*[221]

While there is little to no empirical data that shows how many drivers actually take advantage of the grace period under the Illinois statute,[222] there are a number of arguments that validate this provision.[223] The first and most important reason for this partial amnesty provision is the humanity element.[224] Striking a pedestrian or being involved in a serious automobile accident is a very stressful experience, and people tend to react differently when placed in very stressful situations.[225] The courts in many states repeatedly stress how the hit-and-run offense is a misnomer as the offense is the running and not the hitting.[226] The law

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with paragraph (b) when the accident results in the death of any person is guilty of a Class 1 felony.").

220. *See infra* Part IV.C.2.

221. *See* 625 ILL. COMP. STAT. 5/11-401.

222. *See* Kaplan, *supra* note 6 (explaining that enforcement agencies do not keep statistics on the arrest rates of hit-and-run drivers); E-mail from Ken W. Martin, Interim Chief Bureau of Safety Programs & Admin. Servs. Div. of Traffic Safety, to author (Sept. 29, 2015, 11:44 AM) (on file with author) (stating that the state statistic department does not keep such statistics).

223. *See infra* text accompanying notes 225-33.

224. *See infra* text accompanying notes 225-27.

225. *See* Dennis J. Butler & H. Steven Moffic, *Post-traumatic Stress Reactions Following Motor Vehicle Accidents*, 60 AM. FAM. PHYSICIAN 524, 524-26 (1999) (detailing the occurrences of post-traumatic stress disorder after accidents); Young, *supra* note 3.

226. *See* People v. Carbajal, 899 P.2d 67, 75 (Cal. 1995) ("[T]he popular term—'hit-and-run'—is obviously a misnomer."); People v. Corners, 221 Cal. Rptr. 387, 393 (Ct. App. 1985) ("[P]opularly denominated 'hit-and-run,' the act made criminal thereunder is not the 'hitting' but the 'running.'").

should not severely penalize a driver who merely panics and makes the bad decision to flee but recognizes his error and self-reports within an hour.[227]

There is also a strong economic argument for holding the driver liable, which can only be realized when there is culpable driver—a criminal defendant—as opposed to when there is none.[228] Getting injured in an accident can prove very costly.[229] There are hospital bills, automobile damages, lost wages, diminished capacity, and emergency services costs.[230] When there is no defendant, there is no one culpable, and hence no one's insurance to cover these losses other than the victim's, assuming the victim has insurance.[231] The uncovered losses are shouldered by all other drivers in the form of higher insurance premiums.[232] Creating an incentive for drivers who panic and flee from the site of the accident to return, assuming drivers take advantage of this opportunity, would also result in less accidents where the victim is left without a culpable driver.[233]

### 2. The Possible Effect of Incentivizing Drunk Drivers to Purposefully Flee

This Subpart examines the possible issue of creating an incentive for drunk drivers to flee the scene of accidents resulting in death or injury to avoid being prosecuted under the more serious statute of vehicular manslaughter, a class C felony.[234] Further, this Subpart explains that (1) even without the partial amnesty provision, this incentive exists and the amnesty provision will not affect the drunk

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227. *See* People v. Moreno, 40 N.E.3d 241, 242, 244-45 (Ill. App. Ct. 2015) (stating that the purpose of the Illinois half-hour amnesty provision is to encourage drivers who fled to return and self-report and that "[t]he statute should be construed to afford maximum encouragement to those contacted by the police to be forthright rather than to stonewall or attempt to elude the police").

228. *See infra* text accompanying notes 229-33.

229. *See infra* notes 230-31.

230. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 9, at 1, 2, 235-40 (examining the monumental economic effects of accidents including; hospital bills, quality of life loss, state costs, property damage, legal costs, emergency services costs, and more; the report estimates an economic loss of $242 billion in 2010 alone); *see supra* note 10.

231. *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 9, at 238-39 (explaining that even when there *is* a culpable driver the victim incurs up to ten percent of the medical costs, over fifty percent of the productivity loss, and about thirty percent of the property loss for a total of twenty-two percent of the accident cost).

232. *See* People v. Carbajal, 899 P.2d 67, 73 (Cal. 1995); *Cost of Auto Crashes & Statistics*, *supra* note 10.

233. *See supra* note 222 (explaining how there are really no statistics as to how many people actually take advantage of the Illinois amnesty statute, however, the assumption is that if there is an amnesty period people will take advantage of it).

234. N.Y. PENAL LAW §§ 125.12–.13 (McKinney 2009).

driver's choice to stay or flee;[235] and (2) even if this provision were to create a greater incentive for drunk drivers to flee, there are no accurate statistics as to how many hit-and-run drivers are drunk or merely panic, and so this humanitarian and cost-saving provision is still sensible.[236]

Suppose a driver who knows that he is intoxicated above the legal limit is involved in a vehicular accident. He gets out of his vehicle and realizes there is an injured, dying, or dead victim and is now faced with the choice of staying or fleeing. Under current N.Y. law, prior to any statutory amendments, the answer is clear—though morally reprehensible. It makes sense for the drunk driver to flee and take a chance on getting caught and being charged under section 600 of the VTL—at most, a class D felony.[237] If the driver stays, he faces certain class D felony charges and possibly class C felony charges,[238] whereas if he flees it will be almost impossible for the prosecution to prove intoxication at the time of the accident.[239]

The N.Y. legislature understands this concern, and this was and remains the primary reason behind the recent push to stiffen the penalties on all hit-and-run drivers from a class D to class C felony, to be on par with first degree vehicular manslaughter.[240] This solution is short-sighted since even if the drunk driver is facing a class C felony, the fact that most hit-and-run drivers do not get caught still remains a primary incentive to flee.[241] This solution also has the effect of

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235. *See infra* text accompanying notes 237-45.

236. Cohn, *supra* note 3 ("No research can show how often drivers who fled accidents were under the influence of alcohol or distracted by technology.").

237. *See* N.Y. VEH. & TRAF. LAW § 600(2)(c) (McKinney 2005) (discussing subsection 2(c), under which a fatal accident results in a charge that is a class D felony).

238. N.Y. PENAL LAW § 125.12–.13. Section 125.12 is second degree vehicular manslaughter, a class D felony, so there is no incentive to flee. *Id.* § 125.12. Section 125.13 is first degree vehicular manslaughter, a class C felony, but is only charged under aggravated circumstances. *Id.* § 125.13.

239. *See* State v. Hatfield, 351 S.W.3d 774, 780-82 (Mo. Ct. App. 2011) (overturning the conviction since the police officer never witnessed the driver operating the vehicle while intoxicated—he merely saw him drunk near the car).

240. *See* S. 2136, 2015 Leg., 238th Sess. (N.Y. 2015) (proposing the imposition of higher sentences on hit-and-run drivers by classifying it as a class C felony where the accident results in death and a class D felony where it results in serious injury); *see also* N.Y. Bill Jacket, 2005 S. 4584, ch. 49 (explaining the deficiency in the current law). The Introducer's Memorandum in Support of Senate Bill 4584, contained in the Bill Jacket, explains as follows:

> Under current law, for example, an intoxicated driver causing an accident, resulting in death of another person, who stays at the scene faces a more serious charge. Second degree vehicular manslaughter, a class D felony, than if the person left the scene and sobered up . [sic] a class E felony. The bill obviates the problems with current law which, in essence, rewards an intoxicated driver for fleeing the scene.

*Id.*

241. *See* Koran, *supra* note 122 (explaining how the vast majority of hit-and-run drivers never

punishing all those drivers who only fled from panic, and since there are no statistics as to which demographic makes up the majority of hit-and-run drivers, this solution is really missing the point.[242]

The incentive to flee, assuming intoxicated drivers are even so cunningly calculating, is not affected by a partial amnesty provision that mitigates the charge to a misdemeanor.[243] The choice to flee remains a simple mathematical calculation of probabilities and jail time.[244] This partial amnesty is a side point and does not affect the validity of providing a measure of relief for drivers who panic and flee.[245]

Furthermore, even if, arguendo, this amnesty provision were to add some incentive for drunk drivers to flee, it will provide them no relief when they return and self-report. The mitigation and amnesty period proposed would only be one hour. Since the body only metabolizes alcohol at a rate of about .01% per hour,[246] if this hypothetical drunk driver returns, chances are there would still be enough alcohol in his blood to support a driving under the influence ("DUI") conviction and, consequently, a vehicular homicide or manslaughter charge.[247] Even for the subset of intoxicated drivers who are just above the legal limit at the time of the incident and return under the limit, is it not better that they return and take responsibility for their actions at least on a civil level? Assuming that this driver is not punished as severely as the law would have wanted, strong economic arguments still remain.[248]

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get caught and that this creates an incentive to flee); Wang, *supra* note 122.

242. *See* Cohn, *supra* note 3 (stating that there are no statistics as to how many hit-and-run drivers are in fact intoxicated).

243. *See* Kaplan, *supra* note 6 (describing how Professor James Fox, dean of the criminal justice college at Northeastern University, explains that most drivers do not understand the different penalties and severities, rather they flee to avoid getting caught at all).

244. *See supra* text accompanying notes 237-39.

245. *See supra* Part III.C.

246. *See Alcohol Alert*, NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, http://pubs.niaaa.nih.gov/publications/aa35.htm (last visited Nov. 26, 2016) (using a graph to show metabolization of alcohol in the body). Obviously, there are factors that affect increased metabolization but this is a safe estimate based on the graph. *See id.*; *see also Health Promotion and Prevention Services*, GEO. WASH. U., http://prevention.gwu.edu/alcohol-absorption (last visited Nov. 26, 2016) ("Generally speaking, alcohol is absorbed into the blood relatively quickly and metabolized more slowly. In an average 150 pound person, for example, each drink adds 0.02% to BAC and hour that passes removes 0.01% from it.").

247. N.Y. PENAL LAW § 125.12 (McKinney 2009); *see* People v. Baker, 826 N.Y.S.2d 550, 551 (Cty. Ct. 2006) (stating that there exists a rebuttable presumption that when the defendant is drunk, that the intoxication is what caused the accident, and they can be charged under this statute).

248. *See supra* text accompanying notes 228-33.

### 3. New York Can Require Mandatory Blood Testing to Qualify for the Mitigation Under the Amnesty Provision

This Subpart argues that if the N.Y. legislature remains unconvinced by the arguments set forth, above, it could include a provision in the amendment requiring a mandatory blood alcohol concentration ("BAC") test for a driver to qualify for the mitigation.[249] If the driver has any level of alcohol at all in his blood, even below the legal limit, he or she would not qualify for the mitigation and be charged under the felony statute. The statute would read as follows:

> *For a driver to qualify for the mitigation of charges from a Felony to a Class A Misdemeanor under this section [2(a)], the driver must not only self-report to the police within one hour from the time of the incident, the driver must also submit to a blood chemical test. The driver will only qualify for the mitigation if there is no alcohol in said driver's blood at all.*

Under section 1194 of the N.Y. VTL,[250] a court may order a chemical test on the driver of an automobile involved in an accident resulting in serious injury or death when there is a reasonable belief that the driver may have been intoxicated.[251] In a situation where the driver involved in an accident self-reports to the police within one hour and seeks the mitigation granted by the statute, if there is reason to believe the driver is intoxicated (watery eyes, open container, slurred speech, alcohol smell), then the police may obtain a blood warrant for a forced chemical test.[252] But, even if there is no reasonable suspicion of drunkenness, under the proposed amendment to the statute, the driver would have to voluntarily submit to a chemical test in order to qualify for the mitigation.[253]

Either way, the driver is subjected to a blood alcohol test prior to any mitigation of the charges.[254] Consequently, intoxicated drivers will gain absolutely nothing from this amendment.[255] The only individuals

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249. *See, e.g.*, 625 ILL. COMP. STAT. 5/11-401 (2014).

250. N.Y. VEH. & TRAF. LAW § 1194(3)(a)–(c) (McKinney 2011).

251. *Id.*

252. *See* People v. Rollins, 499 N.Y.S.2d 817, 818-19 (App Div. 1986) ("[G]iven the manner in which the accident occurred, the strong odor of alcohol on defendant's breath and his watery eyes, the trooper had probable cause to arrest defendant despite the fact that he did not observe defendant walk and talk.").

253. *See supra* text accompanying note 249.

254. *See supra* text accompanying note 249.

255. *See* Barry Kamins, *2005 Legislation Affecting the Practice of Criminal Law*, N.Y. ST. B.J., Jan. 2006, at 20-21 (explaining how under recent amendments, drunkenness alone is enough to support a conviction for vehicular manslaughter in New York). If a driver is drunk not only will he not qualify for the mitigation, but he can be charged under N.Y. PENAL LAW § 125.12 (McKinney

that will obtain relief through this proposed amendment are people like Dante Altieri, whose only mistake was panicking but who had the moral aptitude to immediately return to the scene and report his involvement to the police.[256]

## V. CONCLUSION

While overall traffic accident fatalities are down from historic highs in the 1940s, hit-and-run accidents are generally on the rise.[257] In some states, this problem has been described as an epidemic.[258] Over 1500 deaths a year are due to hit-and-run drivers and countless more people are injured.[259] Furthermore, less than fifty percent of these drivers are ever caught, and this causes untold economic hardship as well as further emotional pain to the victims and their families.[260] The problem of hit-and-run drivers is a true problem and does not seem to be going away anytime soon.

Hit-and-run statutes were enacted to battle this problem; by criminalizing fleeing, the legislature sought to limit such behavior.[261] But the N.Y. statute, section 600 of the VTL, has a glaring defect.[262] Section 600 does not require the driver involved in an accident to assist the injured victim in any way.[263] The law merely requires the driver to remain at the scene and accurately report their insurance information to the authorities.[264] Forty-five states require the driver to provide "reasonable assistance" to the injured victim, and many even require the driver to transport the victim to medical facilities.[265] New York is one of only five states that does not require any assistance.[266]

This Note proposes that New York amend section 600 to include a duty on the driver to provide reasonable assistance to an injured

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2009), even if all the prosecution can show is drunkenness. Kamins, *supra*.

256. *See supra* notes 110-13 and accompanying text.

257. *See* U.S. Department of Transportation, *President Dwight D. Eisenhower and the Federal Role in Highway Safety*, FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/infrastructure/safety04.cfm (last visited Nov. 26, 2016).

258. *See* Larry Copeland, *Fatal Hit-and-Run Crashes on Rise in U.S.*, USA TODAY (Nov. 10, 2013, 5:20 PM), http://www.usatoday.com/story/news/nation/2013/11/10/hit-and-run-crashes-los-angeles/3452699 (explaining that the rise in hit-and-run accidents is becoming an epidemic in some states and also discussing the otherwise falling national crash statistics).

259. *See* Press Release, AAA Found. for Traffic Safety, *supra* note 2.

260. *See supra* Part III.C.

261. *See supra* text accompanying notes 12-16.

262. *See supra* Part III.A.

263. *See supra* Part III.A.

264. *See supra* Part III.A.

265. *See supra* note 136.

266. *See supra* note 136.

victim.[267] While most of the states' statutes require the driver to actually transport the victim, this Note recommends the amendment only require the driver to summon help remotely.[268] This would bypass any problems of potential liability stemming from non-professional help.[269]

Further, while not an actual deficiency of section 600, this Note also proposes that New York add a provision that provides for a short one hour partial amnesty for drivers to return and self-report.[270] This provision is modeled after the current Illinois statute, which provides that if the driver returns within a half hour, the charge is partially mitigated from a felony to a misdemeanor.[271] The proposed amendment would allow a driver to return within one hour and not be charged under the harshest part of section 600, which results in a felony charge. Rather, the driver would be charged with a class A misdemeanor.[272]

Both of these amendments are important, as either one would add necessary changes to the current law.[273] However, while Illinois is the only state that has a partial amnesty provision, forty-five states and the UVC have a "duty to aid" provision.[274] Therefore, while arguments can be made against the amnesty provision, there is no reason for New York not to join the vast majority of states and require the driver to assist the injured victim.[275]

*Samuel E. Plutchok**

267. *See supra* Part IV.A.
268. *See supra* Part IV.A.2.
269. *See supra* Part IV.A.2.
270. *See supra* Part IV.C.1.
271. *See supra* text accompanying note 109.
272. *See supra* Part IV.C.1.
273. *See supra* Part IV.A–C.
274. *See supra* note 136.
275. *See supra* Part IV.A.

* J.D. Candidate, 2017, Maurice A. Deane School of Law at Hofstra University. I would like to thank Professor Kevin McElroy, my wonderful Faculty Note Advisor, who gave me just the right amount of guidance and freedom necessary for me to write this Note, of which I am proud; Professor Zvi S. Rosen, my legal writing professor, for teaching me the tools of great legal writing; and my friend, Jonathan Tamir, for his insightful thoughts and comments. Additionally, I would like to thank my father, Rabbi Moshe Plutchok, for his endless love and advice. Lastly, I would like to thank everyone on the *Hofstra Law Review*, especially Peter Guinnane, Leron Solomon, Michael Senders, Joseph De Santis, Michelle Malone, Susan Loeb, Matthew Koopersmith, Melanie Campbell, and Richard DeMaio, for their assistance throughout this process.

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**THE LIFE AND LEGACY OF MONROE H. FREEDMAN**

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# PROFESSOR MONROE H. FREEDMAN

*1928–2015*

# LETTER FROM THE VOLUME 45 BOARD OF EDITORS

This special edition, "The Life and Legacy of Monroe H. Freedman," is a collection of works originally published in Volume 44 of the *Hofstra Law Review* that pay tribute to the late Professor Freedman and his field of study.

Professor Freedman served as the former dean of the Maurice A. Deane School of Law at Hofstra University from 1973 to 1977 and remained on the faculty until he passed away in 2015. During his tenure, he was named the Howard Lichtenstein Distinguished Professor of Legal Ethics. The title was held by Professor Freedman until 2003, when he resigned from the Lichtenstein Chair so that a colleague would have the opportunity to be appointed. This act perfectly captures the unyielding integrity for which Professor Freedman was so well known and, more broadly, the thoughtfulness that guided all his decisions. Following his death and in recognition of his extraordinary contributions to legal ethics, Hofstra Law established the Monroe H. Freedman Institute for the Study of Legal Ethics.

Over the course of his career, Professor Freedman received countless accolades for innovative scholarship in the field of legal ethics. He was a revolutionary, who shed light on a field previously overlooked. Often considered the father of modern legal ethics, Professor Freedman challenged lawyers to reflect on their ethical responsibilities as members of the legal profession. His teachings emphasized that lawyers have an obligation to represent all clients with zeal and undivided loyalty.

The *Hofstra Law Review* dedicated Volume 44 to the memory of Professor Freedman. Throughout Volume 44 are numerous works that celebrate Professor Freedman and continue the dialogue he began so many years ago. This special edition of the *Hofstra Law Review* contains all such works in a single publication. It is divided into four Parts, each of which represents a separate Issue of Volume 44. The entire collection begins with a Table of Contents that lists each work, organized by Part. Each individual Part then begins with an excerpted Table of Contents from the Issue of Volume 44 in which those pieces initially appeared.

Professor Freedman will long be remembered by faculty and students at Hofstra Law, where he spent forty-two years of his life. His inspirational voice will be heard for decades, pushing us all to never stop asking the hard questions.