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INTEREST OF THE *AMICI CURIAE*

Force of Lawyers Against Sexual Harassment (“FLASH”)¹ is a task force of Illinois legal professionals united to study and make recommendations to and to combat the prevalence of sexism, sex-based discrimination, sexual harassment and sexual assault in the Illinois legal community through direct advocacy, policy implementation, education and peer support. FLASH’s mission is to:

- Collect, analyze, and maintain data and policies from legal professionals to establish the nature and extent of sexual harassment and discrimination in the legal workplace;
- Provide a multi-variety of resources to those who may be experiencing or have experienced sexual harassment and discrimination in the workplace;
- Raise awareness and accountability on issues of sexual harassment and discrimination;
- Provide recommendations on how to prevent sexism, sexism-based discrimination, sexual harassment, and sexual assault;
- Develop a code of conduct to be implemented among the Illinois bar associations and professional organizations; and
- Provide direct advocacy and support to the enactment of legislation and policy aimed at addressing sexism, sex-based discrimination, sexual harassment, and sexual assault throughout the state of Illinois.

¹ <https://www.flashillinois.com/>

FLASH's mission is to create and foster a safe, respectful and intersectional professional environment for all Illinois legal professionals that adopts a zero-tolerance approach to sexism, sex-based discrimination, sexual harassment and sexual assault.

The Illinois Coalition Against Sexual Assault (“ICASA”)² is a statewide non-profit organization comprised of 30 community-based sexual assault crisis centers working together to end sexual violence. The centers provide 24-hour crisis intervention services, as well as counseling and medical and legal advocacy for victims of sexual assault and their significant others. Each center also presents prevention education programs in its local schools and communities. ICASA's mission includes advocacy for public policy that supports victims and advances justice.

Resilience³ (formerly Rape Victim Advocates) has been on the front lines of working with survivors of sexual violence since 1974. Although much has changed since 1974, the need for Resilience's services has not. In fact, it has increased, expanding the need and scope of the services Resilience provides. Resilience continues to work with survivors of sexual violence, and Resilience's work has also expanded to address the entire spectrum of sexual violence, including harassment, abuse, and prevention, with an additional focus on public education and institutional advocacy.

FLASH, ICASA, and Resilience all have an interest in combatting sexual assault in all forms and forums. To that end, the *Amici Curiae* seek to apprise the Court of the broad-based implications of the appellate court's decision and its unintended consequences for Illinois victims of sexual assault in rideshare vehicles. They ask this Court to recognize

² <https://िकास.орг/>

³ <https://www.ourresilience.org/>

that the law at issue in this case is unjust and undermines sexual assault victims' ability to seek recovery because of an arbitrary distinction between victims who were transported in a rideshare vehicle versus a taxicab.

FLASH, ICASA, and Resilience all authorized the filing of this brief.

INTRODUCTION

Section 25 of the Transportation Network Providers Act, 625 ILCS 57/25(e) (West 2018), titled "Safety," provides with respect to ridesharing companies (known as "Transportation Network Companies," or "TNCs"):

- (a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services.
- (b) The TNC shall provide notice of the zero tolerance policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.
- (c) Upon receipt of a passenger's complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.
- (d) The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets vehicle safety and emissions requirements for a private motor vehicle in this State.
- (e) **TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service.**

(emphasis added)

As comprehensively detailed in the Appellant's Brief, Section 25(e) was not a constitutional exercise of the Illinois legislature's power and violates the special legislation clause in Article IV, Section 13 of the Illinois Constitution, Ill. Const. 1970, art. IV, § 13.

Nevertheless, the appellate court upheld it, acknowledging it as discriminatory but finding it to be rationally related to a legitimate state interest. *Doe v. Lyft*, 2020 IL App (1st) 191328.

The practical – and presumably unintended – effect of Section 25(e) and the appellate court’s upholding of the same is to create a **second class of sexual assault victims in Illinois**: an entire group of Illinois citizens who, through no fault of their own, and based purely on the “happenstance” of their entering a rideshare vehicle rather than a traditional taxicab, suffer the trauma of a sexual assault but are arbitrarily precluded from recovering damages for the same from the rideshare companies under the theories of vicarious liability that would otherwise be available to them had they instead entered a traditional taxicab. This effect is grossly inequitable and (as aptly recognized by Presiding Justice Gordon in his dissent) is anathema to the very principles on which the Illinois Constitution was founded, including “to provide for the health, safety and welfare of the people” and to “assure legal, social and economic justice.” *Id.* at ¶ 70 (quoting Ill. Const. 1970 pmb1.).

This is the very first case to challenge a TNC-protective statute as unconstitutional special legislation, and the first case to consider Section 25(e)’s exempting TNCs from common carrier liability. In this case of first impression, there is only one result that realistically and equitably protects all citizens of Illinois, whether they climb into a taxicab or a ridesharing vehicle such as a Lyft: this Court should reverse the appellate court’s order and find that 625 ILCS 57/25(e) is unconstitutional special legislation pursuant to Article IV, Section 13 of the Illinois Constitution.

ARGUMENT

I. PRESIDING JUSTICE GORDON, IN HIS DISSENT, CORRECTLY RECOGNIZED THE STARK INJUSTICE PERPETRATED BY SECTION 25(e), WHICH CREATES AN UNCONSTITUTIONAL SECOND CLASS SEXUAL ASSAULT VICTIM.

A split appellate court panel held that Section 25(e) of the TNPA appropriately protects rideshare companies – and only rideshare companies – from vicarious liability for the sexual assaults committed by their drivers. *Doe v. Lyft*, 2020 IL App (1st) 191328. While the panel agreed that Section 25(e) discriminates in favor of rideshare companies such as Lyft, the panel was split on the issue of whether that discrimination was arbitrary or rationally related to a legitimate state interest. *Id.* at ¶¶ 1, 60.

Two justices agreed that the General Assembly could rationally conclude that ridesharing companies’ “business model” meant that holding ridesharing companies to the same standards as their competitors “would be prohibitively burdensome for the industry,” *id.* at ¶41, and that the same “business model” “create[s] added protection for the safety of TNC passengers that justifies holding TNCs and taxicab operators to differing standards of care and, in particular, to differing degrees of vicarious liability for the intentional torts of their drivers against passengers,” *id.* at ¶ 50.

The third justice, Presiding Justice Gordon, dissented, finding: “By exempting ridesharing companies from the heightened duty of care and the standard of vicarious liability that apply to common carriers, the legislature has totally disregarded the health, safety, and welfare of the people who would utilize the services of the ridesharing companies.” *Id.* at ¶¶ 59-72 at ¶70. Justice Gordon opined that rideshare companies’ business model of using non-professional, part-time drivers who are largely using their own vehicles “demonstrates that it is *unreasonable* for the General Assembly to weaken

the protections given to [rideshare passengers],” and that, “if anything,” this model indicated that rideshare companies “should be required to assume even *more* responsibility for [their drivers], not less, to ensure passenger safety in the hands of such drivers.” *Id.* at ¶¶ 69-70 (emphasis in original).

Justice Gordon correctly recognized the real-life implications of Section 25(e) for the citizens of Illinois. There is no rational basis, he found, for carving out of the universe of common carriers a very narrow special protection for rideshare companies to insulate them from responsibility for the sexual assaults of their drivers. *Id.* at ¶ 64. Rather than focusing on the purported (and illusory) differences in the business models of rideshare companies versus traditional taxicabs, he cautioned, the focus should be on “the differences in the relief available to the victims of crimes” such as the horrific assault suffered by Doe here. *Id.*

The majority’s stance on this front is particularly troubling. It found that when a passenger is assaulted in a rideshare vehicle, it “does not result from happenstance but from the passenger’s voluntary decision to use a ridesharing service rather than a taxi service.” *Id.* at ¶ 49. In essence, this statement equates getting into a ridesharing vehicle rather than a cab to the (one would hope, outdated) concepts of wearing a short skirt versus a long one, or of walking through a dark alley rather than on a well-lighted street. No one “asks for it” by getting into a rideshare vehicle rather than a cab, and to engage in victim-blaming by telling the citizens of Illinois that they are second class victims entitled to fewer protections as a result of that choice has no logical, legal, or moral basis.

Similarly, the majority’s conclusion that because rideshare passengers receive “relevant information” of their driver’s first name, a photograph of the driver’s face, and

the make/model of the driver's car, they somehow have "safety features" available to them that "lessen the need to impose on TNCs the same degree of vicarious liability applicable to common carriers such as taxicabs" has no footing in logic or reality. *Id.* at ¶¶ 40, 45. Whether one receives this skeletal information via an app a few moments before one's rideshare driver pulls up, or whether one receives it as a taxicab pulls to the curb in response to a hail, there is no factual or legal basis whatsoever to conclude that it can indicate to a passenger whether their driver is a sexual predator. What type of first name indicates a sexual predator? What kind of face? What model of car? At bottom, this statement urges stereotyping, and it holds only one class of victim unworthy of protection if their stereotyping is wrong.

Justice Gordon was correct to recognize that the practical effect of the TNC-protective legislation enshrined in Section 25(e) is to block an arbitrary segment of sexual assault victims from recovery under vicarious liability for no legitimate, rational, or equitable reason. "The mere fact that a passenger chose one form of transportation over the other should have no effect on the relief she is entitled to seek in court." *Id.* at ¶ 67. The unconstitutional creation of a second class of sexual assault victim should not be countenanced by this Court.

II. “LYFT IS FOSTERING A SEXUAL ASSAULT EPIDEMIC,” AND THERE CAN BE NO LEGITIMATE STATE INTEREST IN PROTECTING IT FROM THE CONSEQUENCES OF ITS ACTIONS.

In April 2018, CNN published the results of its analysis of sexual assault perpetrated by rideshare drivers, based on its “in-depth review of police reports, federal court records and county court databases for 20 major U.S. cities.” Sara Ashley O’Brien, Nelli Black, Curt Devine and Drew Griffin, *CNN investigation: 103 Uber drivers accused of sexual assault or abuse*, <https://money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault/index.html>. (A1-9)⁴ Therein, CNN noted that its survey of State and local public records was necessary because “there is no publicly available data for the number of sexual assaults by Uber drivers or for drivers of other rideshare companies,” and it reported 103 cases of Uber drivers and 18 cases of Lyft drivers accused of sexual assault in the four years preceding the report. *Id.*

More than a year later, in October, 2019, c|net reported that “at least” 34 lawsuits in 19 states had been filed against Lyft in only the three months between August and October of that year alleging sexual assault by Lyft’s drivers, asserting that “[t]he number of women alleging sexual assault by Lyft drivers ha[d] been growing rapidly” in that short time. Dana Kerr, *Lyft is fostering a sexual assault ‘epidemic’, victims say*, <https://www.cnet.com/features/lyft-is-fostering-a-sexual-assault-epidemic-victims-say/>.

(A10-21) Further, c|net’s report also included the fact that, after the May, 2018, CNN investigation, both Uber and Lyft had announced that they would publish “‘safety transparency reports,’ which would include data on alleged assaults,” but that no such

⁴ References to documents included in the Appendix to this brief are designated with an “A.”

reports had materialized in the intervening 18 months, reporting that “Uber said it's still committed to publishing the data but has no set release date. Lyft declined to comment on its report.” *Id.*

That same month, October, 2019, the Chicago Sun-Times reported on its analysis of data obtained via Freedom of Information Act requests to Chicago’s Department of Business Affairs and Consumer Protection, which regulates rideshare companies in Chicago. Mitch Dudek, *Number of ride-hailing drivers removed for sexual misconduct complaints on the rise*, <https://chicago.suntimes.com/2019/10/13/20909806/ride-hailing-uber-lyft-drivers-sexual-misconduct-complaints>. (A22-26) Therein, the Sun-Times reported a “steady rise” in the number of rideshare drivers⁵ in Chicago who had been “deactivated” for sexual misconduct allegations, from 66 in all of 2016 to 116 only through October in 2019. *Id.*

These media outlets soon learned their reporting had barely touched the tip of the iceberg. In 2019, Uber “released a comprehensive safety report that disclosed there had been 6,000 incidences of sexual offenses characterized as sexual assault on its app in the previous two years.” Faiz Siddigui, *Uber and Lyft to share data on driver deactivations, more than a year after pledging to do so*, <https://www.washingtonpost.com/technology/2021/03/11/uber-lyft-driver-database/>.

(A27-29) As reported by The Washington Post on March 11, 2021:

[Uber] at the time pledged to work with advocates to find a mechanism to support data-sharing, including with Lyft, so that offenders would not be able to jump to the other platform. Lyft, too, pledged to release a safety report and find a data sharing mechanism. Though the data-sharing

⁵ The Sun-Times report identified Uber, Lyft, and Via as the three ridesharing companies then operating in Chicago.

agreement was announced [on March 11, 2021], the company still has not released its safety report.

Id.

At present, Lyft still has not made good on its 2019 promise to release a safety report.

With incidences of sexual assaults by rideshare drivers believed to number in at least in the thousands annually, and the rideshare companies' refusal to be transparent about sexual assaults perpetrated by their drivers and the companies' handling of the same, it is all the clearer that creating a second class of sexual assault victim for rideshare passengers and forestalling their recovery under vicarious liability is patently unjust. The heightened standard of care imposed on common carriers is premised on the degree of risk carriers introduce to their passengers and the control over their own safety passengers are forced to relinquish to their carriers while being transported. *See Katamay v. Chicago Transit Authority*, 53 Ill.2d 27, 29-30 (1972); *see also Anderson v. Chicago Transit Authority*, 2019 IL App (1st) 181564, ¶ 48. As aptly recognized by Presiding Justice Gordon, the degree of risk rideshare companies introduce to their passengers by virtue of their non-professional, part-time drivers justifies those companies assuming “even *more* responsibility for [their drivers], not less.” *Doe v. Lyft*, 2020 IL App (1st) 191328, ¶ 69 (emphasis in original).

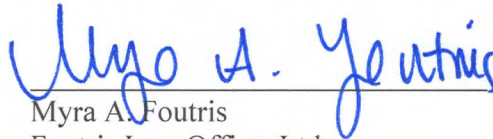
From the entire universe of transportation providers, Section 25(e) arbitrarily insulates only rideshare companies from vicarious liability for the sexual assaults of their drivers. As a result of that provision, a second class of sexual assault victim was created, relegating those assaulted by rideshare drivers to substantially less protection of their health, safety and welfare than that afforded to every other victim of sexual assault by a

transportation provider. This illogical, industry-friendly carve out should not survive this Court's scrutiny.

PRAYER

WHEREFORE, *Amici Curiae* Force of Lawyers Against Sexual Harassment ("FLASH"), The Illinois Coalition Against Sexual Assault ("ICASA"), and Resilience pray that this Honorable Court reverse the appellate court's order and find Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e) unconstitutional special legislation pursuant to Article IV, Section 13 of the Illinois Constitution.

Respectfully submitted,



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Supreme Court Rule 341(c) Certificate of Compliance

Pursuant to Supreme Court Rule 341(c), I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, this Rule 341(c) certificate of compliance, and the certificate of service, is 11 pages.

Respectfully Submitted,

s/ Myra A. Foutris

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money.cnn.com

CNN investigation: 103 Uber drivers accused of sexual assault or abuse

Sara Ashley O'Brien, Nelli Black, Curt Devine and Drew Griffin

12-15 minutes

After an evening of cocktails in San Diego, a woman got into the back of an Uber for a ride home. She was so intoxicated she had to ask the driver to stop so she could vomit. She says she then passed out in the backseat.

When she regained consciousness, the Uber driver was on top of her, raping her, a block from her home, according to the police report and two sources familiar with the investigation.

She was able to escape and dial 911.

Police later arrested the Uber driver, John David Sanchez, 54. When they searched his computer, they found videos of Sanchez raping women and abusing young teenagers, dating back at least five years.

In November, Sanchez was sentenced to 80 years in prison for the rape of the Uber passenger and 33 other counts against him, including sexual assaults of at least nine other women and children. Sanchez drugged many of his victims.

A1

intoxicated in the back of an Uber in 2016, told CNN that she woke up with the driver assaulting her. The driver, 47, was found the next day with her phone and later arrested. He claimed the sex was consensual and the district attorney dropped the criminal case against him. She is suing Uber over the incident and for representing its services as "safe."

"You don't think it will happen to you," she told CNN. "I still feel ashamed ... that's why I'm here. I want a voice. [I'm] tired of being quiet."

Uber: 'We want to be part of the solution'

Uber, which launched in 2010 in San Francisco as "everyone's private driver," is the most valuable privately-held tech startup in the world. It is valued at \$70 billion and operates in 630 cities worldwide. Uber provides 15 million rides a day.

The issue of sexual assault conflicts with Uber's brand messaging to provide a "safe ride home." Its print and digital ads show women taking Ubers for nights out, and a partnership with Mothers Against Drunk Driving includes a "designated rider" campaign urging users to take an Uber to avoid driving under the influence. In 2015, Uber set up a popup kiosk in Toronto to offer free rides to those who blew into breathalyzers.

This is significant given many of the women raped or attacked by the 103 accused drivers uncovered as a part of CNN's investigation had been drinking, or were inebriated, at the time of the incidents.

The majority of the police reports reviewed by CNN involved incidents that took place in or near major cities across the country.

Uber did not provide numbers on how many of its drivers have been accused of sexual assaults.

Five drivers across various states told CNN they were not provided any kind of sexual harassment or assault training. Drivers agree to the company's community guidelines when they sign up to work for the service. Uber said it updated its standards in December 2016 to specify no sexual contact is permitted when using its platform.

Last week, the company posted a sexual assault prevention video on its website to inform drivers and riders "how to create a safer community." It also said it plans to host 50 community forums nationwide for advocates, leaders, drivers and riders across to talk about the issue. The changes came after CNN first contacted Uber about this story.

Uber was made aware of CNN's reporting for this story months ago but the company failed to make any executives available to speak on the record. It canceled an on-camera interview with an Uber executive earlier this month.

On a call with CNN last week for an unrelated story, Uber CEO Dara Khosrowshahi said cracking down on sexual assault is a "new priority for us."

"It is a priority that I expect to remain a priority for the foreseeable future," said Khosrowshahi, who joined the company in late August after cofounder Travis Kalanick stepped down.

In a recent statement sent to CNN, an Uber spokesperson said safety is the company's top priority this year and cited recent protocol updates such as rerunning driver background checks on an annual basis moving forward. The company also said it plans to roll out a dedicated "safety center" within the Uber app where

plans to monitor new criminal offenses (via public records or pending DUI charges) as they happen.

CNN found two instances in which drivers pleaded guilty to sexual assaults while working for both Uber and Lyft.

In one case, a Seattle driver began driving for Lyft after Uber discharged him, according to court documents. He later sexually assaulted a Lyft rider. In the other case, a driver pleaded guilty in San Diego to indecent exposure and the false imprisonment of an Uber passenger, as well as battery for a separate incident involving a Lyft passenger.

Police are tracking reported crimes by drivers

Of the 103 Uber drivers accused of sexual assault or abuse, for 18 of them, criminal cases did not move forward either because charges were dropped, cases were dismissed, or drivers were found not guilty.

The district attorneys and police officers who spoke to CNN said cases don't move forward for several reasons, such as lacking a probable cause or witness cooperation.

In addition to finding the 103 drivers accused of crimes or named in a civil lawsuit, CNN contacted more than 20 police departments to obtain data on complaints that involved Uber or Lyft drivers and sexual assault. Four police departments -- Austin, Boston, Denver and Los Angeles -- tracked crimes involving rideshare drivers and shared their data on sexual assault complaints.

CNN did not include most of these complaints in its tally of cases,

because they could not all be verified with incident reports.

However, the numbers suggest that there may be many more overall incidents of sexual assault than the 103 cases found in the CNN investigation.

The Boston Police Department received 24 complaints or reports of Uber drivers allegedly sexually assaulting passengers since 2016. The department received three assault-related complaints involving Lyft drivers during the same period.

Since 2016, the Los Angeles Police Department has received at least 13 similar complaints about Uber drivers, eight regarding Lyft drivers and more than a dozen about ride-share drivers whose companies were unclear in data shared with CNN. Only one of those cases led to an arrest.

In Austin, police have documented at least 16 sexual assault complaints about Uber drivers -- and at least ten about Lyft drivers -- since 2015.

Meanwhile, the Denver police department has recorded at least nine sexual assault or abuse complaints about Uber drivers and at least 12 about Lyft drivers since 2015, but only two of those complaints resulted in criminal charges. Most of the other Denver cases became inactive due to lack of witness cooperation or were refused by the district attorney for lack of evidence.

Lawyer: Uber has been 'keeping this story quiet'

Jeanne Christensen, an attorney with law firm Wigdor LLP, has been pursuing Uber rape and assault cases since 2015 when her

firm filed a lawsuit after a high-profile rape case in New Delhi. The Uber driver, who had a previous record that included rape and molestation, was sentenced to life in prison. The incident sparked protests and caused authorities to temporarily ban Uber from the city for six weeks.

That case, and questions about how Uber handled it, thrust the issue into the spotlight.

Most recently, Christensen's firm represents a proposed class action against Uber on behalf of nine plaintiffs, including the Miami woman CNN interviewed, who said they were assaulted by Uber drivers.

Uber is trying to compel the women to carry out their case through arbitration per its legal terms of service. When users sign up for Uber, they agree to its terms, which includes resolving any claim "on an individual basis in arbitration."

Christensen and the women are pushing back. In a letter to Uber's board, 14 women detailed their experiences and urged the company to remove its arbitration clause, saying it silences them and forces the issue underground.

"We trusted a company operating in the space of transportation for hire to mean what it says, and we never thought that Uber would perpetuate physical violence against women," they wrote.

An Uber spokesperson previously issued a statement to CNN about forcing the case into arbitration, calling it the "appropriate venue for this case because it allows the plaintiffs to publicly speak out as much as they want and have control over their individual privacy at the same time."

Over the years, Christensen said she noticed a trend in those who've come to her firm for help: Victims tend to be female and petite, live alone, and were inebriated at the time of the alleged assault, she told CNN.

"If a driver is going to enter her home, he has [likely] asked her enough questions and knows she lives alone," she said.

Christensen -- who said she's currently representing 16 women who alleged they've been raped or attacked by Uber drivers -- will not say how many cases against Uber her firm has handled, citing confidentiality.

Multiple attorneys across the country were similarly silent about their cases against Uber. Like many large companies, Uber requires all parties to sign a confidentiality agreement when a case is settled.

"We aren't simply filing cases so Uber [can] pay women money and their lawyers to be quiet about it," she told CNN. "That was a conscious decision that we made. Uber has done a miraculous job at keeping this story quiet."

-- Additional reporting by CNN's Majlie de Puy Kamp, Collette Richards and Whitney Clegg.

If you have a confidential news tip for CNN Investigations, please email us at CNNTIPS@CNN.com

CNNMoney (New York) First published April 30, 2018: 5:43 PM ET

[cnet.com](https://www.cnet.com)

Lyft is fostering a sexual assault 'epidemic,' victims say

Dara Kerr Oct. 24, 2019

15-19 minutes

Late on a Monday night in May, Cheyenne Gutierrez realized she needed to stock up on groceries for the week. She walked the few blocks to her local supermarket in Hollywood, California, picked up some food and then ordered a Lyft home. The driver, a middle-aged man with a thick mustache, seemed nice enough. He even offered to help carry her groceries to the house.

As they unloaded the car, Gutierrez asked the driver to drop the bags at her gate while she carried them the rest of the way to her front door. When she wasn't looking and her hands were full, he followed her.

Gutierrez, 23, relies on ride-hailing services to do her errands and get to work. That's because she's disabled and can't drive. When she was 12, she suffered a brain aneurysm, and more than a dozen surgeries followed. As a result, she lost feeling in her left leg and walks with a severe limp. She believes that's why the Lyft driver tried to sexually assault her.

"I can't run," she said in an interview. "He probably thought I couldn't fight back."

He grabbed her face and tried to kiss her, she said. She shoved him with her elbow and a struggle ensued. Gutierrez managed to knee him in the stomach, push him away and scream "get out." Finally, he ran off.

What happened to Gutierrez is far from isolated. The number of women alleging sexual assault by Lyft drivers has been growing rapidly over the last several months. At least 34 women have either filed or joined lawsuits against the ride-hailing company since August. The victims' lawyers say Lyft hasn't done enough to protect riders from sexual assault, kidnapping and rape. And these suits allege that perpetrators are drawn to Lyft to prey on vulnerable women.

After Uber, Lyft is the second largest ride-hailing service in the country. The 7-year-old company says it has more than 2 million drivers and 30 million riders throughout the US and Canada. With operations in all 50 states, it coordinates millions of rides every day.

Neither Lyft nor Uber have released data on how many assaults are linked to their drivers, and they've declined to say how many sexual assault lawsuits have been filed against them. But according to lawyers representing victims, the numbers are steep.

"If the public realized how many women are assaulted daily [by ride-hail drivers] they would be flabbergasted," said Michael Bomberger, a lawyer at Estey Bomberger, which is representing Gutierrez. "These companies have fostered an environment to let these things happen."

Bomberger said he gets at least three calls a day from women who say they were assaulted by ride-hail drivers. He's suining Lyft on

behalf of 14 women. Another lawyer who has filed 19 suits against Lyft, Rachel Abrams of Levin Simes Abrams, said her firm is now representing more than 70 women who say they've been sexually assaulted by Lyft drivers. The majority of these alleged assaults took place within the last two years and include everything from kidnapping and battery to sodomy and gang rape.

Both Abrams and Bomberger said they get as many, if not more, calls about women allegedly attacked by Uber drivers. But, they said, Uber has a better record of working with the victims.

Lyft, on the other hand, has acted like a bully in most of these cases, they said.

"The attitude of Lyft and the attorneys that they've hired to work on their behalf has been very aggressive and, in my opinion, bush league tactics," Bomberger said. "They came at us like they're an 800-pound gorilla and they're gonna smash us."

The lawsuits, which cover incidents in 19 US states, bring up a series of issues victims say they've experienced with Lyft. While the company promotes itself as offering "safe rides," the lawsuits claim Lyft does substandard background checks on drivers and often doesn't deactivate them from the platform after sexual assault allegations. The lawsuits also allege that Lyft tends to stonewall victims -- ignoring, dismissing or downplaying their claims.

The night Gutierrez was attacked, she called Lyft immediately. A company representative told her the driver's behavior was "highly unacceptable" and that they'd "fire him instantly," she recalls.

But, she said, she's been unable to get a response from Lyft ever since. When she filed a police report, she couldn't get any

information from Lyft about the driver. Gutierrez said every time she called the company, she was placed on long holds and representatives weren't helpful. And, she said, Lyft wouldn't confirm whether the driver still worked for the company. When CNET asked about her case, a Lyft spokeswoman said the driver was permanently banned after Gutierrez reported the incident.

"Not a day goes by when we aren't thinking about the safety of our platform," the Lyft spokeswoman said. "We continuously invest in new products, policies and features to further strengthen Lyft as we strive to keep drivers and riders safe."

Gutierrez, Bomberger and Abrams argue, however, that Lyft hasn't done enough.

"We need systemic change," Abrams said. "We can have this not be an epidemic. We can have this not be happening every day to another woman."

'There's no zero tolerance'

In the fall of 2017, Alison Turkos ordered a Lyft ride to her home in Brooklyn after a night out with friends. Instead of heading to her destination three miles away, the driver pointed a gun at her head and drove her across state lines to New Jersey, according to court documents.

The driver then reportedly stopped at a deserted park where other men were waiting. At least two men raped Turkos, 31, in the back of the car that night, according to court documents. She said she experienced severe pain and bleeding from the attack. She reported what happened to the New York Police Department and a rape kit was done. It found evidence of semen from at least two

men.

The police opened an investigation into the incident, which was then transferred to the Federal Bureau of Investigation. The FBI is reportedly investigating this alleged attack as a human trafficking case, according to court documents. The FBI declined to comment.

Turkos, who's being represented by Abrams, said she also reported the alleged kidnapping and rape to Lyft within 24 hours of the incident. She wrote a blog post detailing her experience, saying the company replied with a boilerplate response: "We apologize for the inconvenience that you've been through."

According to Turkos, Lyft said it would reimburse her for the detour the driver took and that she wouldn't be paired with him again. She still had to pay \$12.81 for the original ride. Turkos said she believes Lyft didn't immediately take the driver off its platform. That's because she saw he still had an active profile on the app, with a different name and picture, several months after the incident. Lyft's spokeswoman said the driver has been permanently banned, but wouldn't say when that happened.

"Lyft was put on notice that [the] Lyft driver was a dangerous, armed, sexual predator," reads Turkos' lawsuit. "Yet it nonetheless allowed [the] Lyft driver to continue driving for Lyft, even allowing him to change his name on the app, endangering countless other passengers who take Lyft with the expectation of a safe ride home."

This isn't the first time Lyft has been blamed for allowing a driver to stay on its platform after a sexual assault complaint. Abrams said she's even had clients matched with the same driver after

reporting an incident.

"There's no zero tolerance as you would hope," Abrams said. "It points to a lack of the necessary procedures in place from start to finish."

When asked about Lyft's policy on deactivating drivers after sexual assault allegations, the company spokeswoman said Lyft doesn't tolerate harassment or violence on its platform and such behavior can lead to deactivations.

One of the reasons problematic drivers may end up on Lyft, the lawyers said, is because the company refuses to use FBI fingerprint background checks. Instead, Lyft relies on name-based background checks by a third-party service called Checkr that don't include face-to-face interviews. Uber uses the same service. Most taxi companies use FBI fingerprint checks, which security experts say have more comprehensive database searches and make it difficult for drivers to use false identification.

Lyft said Checkr's background checks are more thorough than the FBI's because sometimes fingerprinting misses people who've been arrested but not yet scanned. Both Uber and Lyft have also said in the past that fingerprinting is more expensive and takes longer, which can slow down the driver signup process. The cost for Checkr is between \$5 and \$20 and can be done within a matter of days, whereas FBI fingerprint checks can run around \$50 and take up to a month.

Many Uber and Lyft drivers with sexual assault allegations have clean background checks, according to the companies. But there have been hundreds of drivers with criminal records who passed Checkr's reviews. Colorado regulators found in 2017 that 57 Uber

drivers in the state had criminal or motor vehicle offenses. And last month, regulators in Portland, Oregon, found 168 Uber and Lyft drivers with offenses. Two of those Lyft drivers were convicted felons, with one convicted for sexual assault.

A Checkr spokeswoman acknowledged that "no background check is perfect," but said the commercial databases and local courthouses it searches are complete and up to date. She also said the company follows all laws to ensure its screenings "are as thorough, accurate, and compliant as possible."

Six days after Bomberger filed his lawsuit against Lyft last month, John Zimmer, the ride-hailing company's president, published a blog post titled "Reinforcing our commitment to safety."

In it, he detailed several new safety features Lyft rolled out this year, including continuous background checks and an emergency 911 button in the app. Additionally, starting at the end of this month, all drivers will have to complete a "community safety education" course. The Lyft spokeswoman said it's designed to teach drivers how to read other people's boundaries.

Uber has added those same safety features and more to its app over the past year. Uber's extra precautions include: RideCheck, which sends a push notification to drivers and riders if there's an unexpected long stop along the way; on-trip reporting, which lets riders report an incident before the trip has ended; and a text-to-911 feature that includes location information and the car's make, model and license plate.

lyft-presskit-14

One way Lyft helps riders locate their correct driver is by matching the color on riders' apps with the color on drivers' dashboard displays.

Lyft

Several of Uber's new safety announcements came one day after The Washington Post published a Sept. 26 report describing how the company's "special investigations unit" allegedly mishandles incidents of rape, kidnapping and assault by its drivers. The story said that, like Lyft, Uber often keeps drivers on its platform after such allegations. Uber told CNET that its team handles a wide spectrum of incidents and that there's no "one size fits all" approach. It said that it reviews each case individually and that serious incidents, like sexual assault, can warrant driver deactivations.

Uber's and Lyft's new in-app safety features are seen by many as a step in the right direction. But, victims say, they don't keep predators off these platforms and they don't help when riders are asleep, intoxicated or can't get to their phones.

US Sen. Richard Blumenthal, a Democrat from Connecticut, wrote

letters to Uber CEO Dara Khosrowshahi and Lyft CEO Logan Green on Sept. 25 addressing the "deeply disturbing reports of sexual assault and harassment." He called on the country's largest ride-hailing companies to commit to fingerprint background checks for drivers and to be transparent in how they investigate sexual assault allegations. Both Uber and Lyft said they'll respond to the senator by the end of the month.

"I also hope that it does not take another rash of lawsuits and media investigations for you to take affirmative steps to ensure rider safety," Blumenthal wrote in his letter to Lyft.

Going dark

In July, a silver Mitsubishi Lancer with a Lyft sticker on its windshield pulled into an empty parking spot in front of an apartment complex in Coral Springs, Florida. It was 5:35 a.m. on a Saturday. After sitting for several seconds, the driver got out, opened the back door and slid into the back seat. An intoxicated 22-year-old woman was half asleep there. He climbed on top of her.

The woman had been on a double date earlier that night, which ended in bar hopping. She'd had six or seven drinks, so her date ordered her a Lyft home. He walked her to the car and reportedly told the ride-hail driver to make sure she got home safely.

The opposite happened.

A surveillance camera affixed to the apartment complex's wall mostly captured what happened in the backseat of the Mitsubishi, according to the Coral Springs Police Department. The woman's name hasn't been released to the public. But the police located the

driver in September and arrested him on a charge of attempted sexual battery, according to an arrest warrant.

"This detective believes that the defendant's pattern of behavior establishes that he is predatory in nature towards younger females and utilizing his position as a ride-share driver to obtain victims," reads the arrest warrant.

The woman was able to escape the vehicle, according to police, but not before the Lyft driver pulled down his shorts, exposed himself and grabbed at her genitals.

The detective on the case was able to piece the story together using the camera footage, statements from the woman and her date, and information from Lyft after he served the ride-hailing company with a subpoena. The Lyft spokeswoman said the driver has since been banned from the platform.

Lyft said it worked with the police on this incident. But Bomberger and Abrams said that's not always the case. With the majority of their clients, they said, the company has delayed and restricted correspondence with police until a subpoena or court order is issued.

Additionally, both Lyft and Uber don't automatically report all sexual assault claims they receive to the police. They also don't share those claims with each other (although Uber said it'd be supportive of such a policy). Bomberger said sharing this information with each other and with the police could deter predators from using the platforms to find victims.

"There's a reason why there's mandatory reporting for sexual assaults," Bomberger said. "Because it works."

Since Uber and Lyft haven't released data on how many assaults happen with their drivers, it's hard to know the full scope of the problem.

In May 2018, a CNN investigation found more than 120 Uber and Lyft drivers allegedly sexually assaulted passengers. Afterward, both companies announced that they'd publish "safety transparency reports," which would include data on alleged assaults. But 17 months later, neither company has provided these numbers. Uber said it's still committed to publishing the data but has no set release date. Lyft declined to comment on its report.

Bomberger and Abrams said this information is crucial for understanding how to avoid further incidents. A goal of their lawsuits is to get Uber and Lyft to do more to prevent assaults. Their suggestions include mandatory fingerprint background checks, face-to-face interviews with drivers and dashboard cameras to record every ride. They also said it's critical to have a zero-tolerance policy for sexual misconduct.

As for Gutierrez, she said she still lives in fear.

She quit using Lyft since that incident but still uses Uber because it's pretty much her only option for getting around. Neither company lets passengers request a female driver, so whenever Gutierrez is matched with a male driver she usually cancels the ride until she gets a female. One reason for this is because she doesn't know if the man who allegedly attacked her also drives for Uber.

"To this day, no one except for Lyft knows who he is," Gutierrez said. "I want him off the streets, because he could do this to other women."

Originally published Oct. 24.

Update, Oct. 28:

Adds comment from Checkr spokeswoman.

Correction, Oct. 28 at 5:35 p.m.: To remove reference of Checkr as the provider of continuous backgrounds checks for Lyft.

chicago.suntimes.com

More ride-hailing drivers removed for sexual misconduct complaints this year

Mitch Dudek

5-6 minutes

As the number of ride-hailing drivers working in Chicago has shot up in recent years, the number of drivers who've been deactivated — meaning fired — for sexual misconduct allegations has also steadily risen.

There were 66 drivers deactivated after such allegations in 2016 and 67 in 2017.

That number climbed to 88 in 2018 and then, in the first nine months of 2019, rose to 116.

The Chicago Sun-Times got a look at the number of drivers

deactivated for public safety reasons following a Freedom of Information request to the city’s Department of Business Affairs and Consumer Protection, which regulates ride-hailing companies.

The increase occurred as the number of ride-hailing drivers working in Chicago soared.

Ride-hailing drivers taken off the road for public safety reasons

Year	Criminal complaint or arrest	Criminal investigation	Sexual misconduct	Traffic accident	Drug possession or use	Assault or battery
2016	11	0	66	137	73	13
2017	18	2	67	32	45	19
2018	8	4	88	67	148	25
2019	12	1	116	34	41	27
Year	Criminal complaint or arrest	Criminal investigation	Sexual misconduct	Traffic accident	Drug possession or use	Assault or battery

In March 2015 there were 15,012 active drivers (defined as

someone who makes four or more trips a month).

By December 2017, that number mushroomed to 64,122. By June of this year, that number ticked up to 68,135.

Chicago is the only city that requires ride-hailing companies to notify city regulators within 48 hours of deactivating a driver due to public safety concerns — a mandate that began in 2016, according to Isaac Reichman, a spokesman for the Department of Business Affairs and Consumer Protection.

The notification comes in the form of an email containing only the driver's name and the category the public safety complaint that merited deactivation falls under.

Specifics about what behavior landed a driver in trouble are not shared.

Protocol then requires city regulators to immediately relay the notification to other ride-hailing companies in Chicago that might employ the same driver.

City involvement, however, ends there.

It's incumbent upon individual ride-hailing companies to look into matters further.

Reichman declined to speculate why deactivations tied to

complaints of sexual misconduct have risen sharply.

Uber, Lyft and Via are the three ride-hailing companies that operate in Chicago.

Uber spokeswoman Kayla Whaling, in an emailed statement, said changes the company made in response to the city's notification policy have contributed to the increase in sexual misconduct deactivations.

"Since Chicago has required [ride-hailing companies] to notify them after a driver has been deactivated for safety reports, we have expanded our threshold to go beyond the criteria and include driver deactivations for a wide range of reports — from a report of an inappropriate conversation to asking a rider on a date and to more serious incidents," she said.

Lyft spokeswoman Campbell Mathews pointed to the increase in overall drivers to explain the increase in drivers deactivated for public safety reasons.

In an emailed statement, she said: "Safety is fundamental to Lyft. We are committed to rooting out any potential bad actors on our platform while engaging collaboratively with the BACP to ensure the safety of riders and drivers in Chicago."

A message left with Via was not returned.

[washingtonpost.com](https://www.washingtonpost.com)

Uber and Lyft to share data on driver deactivations, more than a year after pledging to do so

Faiz Siddiqui

4-5 minutes

SAN FRANCISCO — Uber and Lyft will begin sharing data on driver deactivations related to assaults with one another, the companies said Thursday, more than a year after first pledging to do so.

The new database follows years of pleas from victims' advocates to better protect passengers from violence and sexual assault by doing so. The companies previously didn't share information on drivers who were cut off because of sexual offenses and deadly physical assaults, making it possible for some offenders to jump from one app to another.

The program includes ride-hail drivers and delivery couriers, and will be administered by the corporate solutions firm HireRight. Uber said in a news release the process "prioritizes safety, privacy and fairness for both drivers and survivors."

In statements both Tony West, Uber's chief legal officer, and Jennifer Brandenburger, head of policy development at Lyft, said that the new database should improve safety for riders.

Uber spokesperson Jodi Kawada Page said there is no requirement for either platform to act based on the information shared in the program, meaning a ban from one app won't result in an automatic deactivation from another. But the companies see value in sharing the information with one another so they can make an informed decision.

In addition to fatal assaults, the companies said they would share information concerning the five most critical safety issues outlined in the National Sexual Violence Resource Center's Sexual Misconduct and Sexual Violence Taxonomy.

Uber in 2019 released a comprehensive safety report that disclosed there had been 6,000 incidences of sexual offenses categorized as sexual assault on its app in the previous two years. The company at the time pledged to work with victims' advocates to find a mechanism to support data-sharing, including with Lyft, so that offenders would not be able to jump to the other platform.

Lyft, too, pledged to release a safety report and find a data sharing mechanism. Though the data-sharing agreement was announced Thursday, the company still has not released its safety report.

"We've said from the beginning that this would be a complex process to put together since it requires a third-party administrator and alignment from different companies on standards and approach," said Lyft spokeswoman Ashley Adams, explaining the yearlong development of the data-sharing agreement. "It was also important to us to take the time to develop a comprehensive process that prioritizes safety, privacy and fairness while incorporating learnings from sexual violence prevention experts and advocates."

Adams also said Lyft would not release its safety report until a dispute between Uber and California regulators is fully resolved. The California Public Utilities Commission in December threatened to suspend Uber's license to operate over its refusal to hand over data concerning sexual assault on the platform.

“We believe the CPUC’s actions put survivors’ privacy at risk, and this issue needs to be resolved before we release our report,” Adams said.

Uber and Lyft have faced scrutiny from regulators and victims’ advocates over the prevalence of sexual misconduct on their apps, as well as the companies’ responses to the offenses. A 2019 Washington Post investigation of Uber’s Special Investigations Unit found that investigators were coached to put the company’s interests first, ahead of passenger safety. A separate Post story found that victims of sexual harassment on Lyft felt their concerns went unheard as the company neglected to seriously probe their complaints.

Uber at the time disputed the allegations by investigators, arguing the SIU was not meant to be a shield from legal liability but a specialized support apparatus for riders and drivers in serious situations. Lyft acknowledged it had fallen short in some instances and said it was always exploring how to improve the experience for users and its response to misconduct in particular.

The companies have also faced lawsuits from people who said they were raped or sexually assaulted on the apps.