

Death by Car

by David King and Gail Robinson

Monday, November 23, 2009 12:00 AM - Last Updated Wednesday, June 06, 2012 01:57 PM

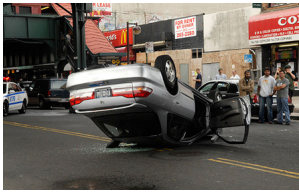


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Even if they don't know Diane Schuler by name probably every sentient New Yorker knows [what she did](#) and the horror she created. On July 26, Schuler, apparently under the influence of vodka and marijuana, drove the wrong way on the Taconic Parkway, only stopping when her minivan collided with another vehicle, killing herself, her daughter, her three nieces and three people in the other car.

But what about Isaac Chehebar? In 2001, Chehebar [raced his Porsche](#) at twice the speed limit down Brooklyn's Ocean Parkway, colliding with two teenage sisters walking along that boulevard's median strip. He killed both of them and seriously injured their mother. Chehebar apparently was a reckless driver -- but, at least in this instance, apparently a sober one.

Last week the New York State legislature, after some debate and disagreement, agreed to [take another move](#) to crack down on drunk drivers, particularly those, like Schuler, who have children in their vehicles. The vote won widespread praise as one of the few worthwhile things the legislature has managed to accomplish this year.

The action continues what has been the practice in New York and much of the nation: getting tough on drunk drivers and the accidents they cause while doing little to combat the many deaths and injuries caused by people who, while unimpaired, still drive badly and even recklessly.

Leandra's Law

The bill [passed by the legislature](#) last week, Leandra's Law, makes it a felony for anyone to drive with a blood alcohol level of .08 or higher while transporting a child under age 15. It also requires interlocks in the vehicles of anyone convicted of driving while intoxicated in New York State. Interlocks periodically measure the blood alcohol content of the driver's breath and incapacitate the vehicle if the alcohol level is too high. Experts have [estimated](#) the devices could prevent between 35 and 65 percent of potential recurrences of drunk driving.

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The new law is considered to be among the toughest on drunk driving in the country. Only one other state, Arizona, makes it a felony to drive under the influence with a minor in the car, and while over 40 states utilize interlocks, most of them require it only in extreme cases of multiple offenses or extremely high alcohol levels. California Gov. Arnold Schwarzenegger recently [signed](#) a bill mandating the use of interlocks for those convicted of driving while intoxicated.

A sense of pride and purpose seemed to sweep over legislators as supporters of the bill learned they would pass the legislation. Gov. David Paterson and legislators declared that the bill might not have been signed into law had it not been for Lenny Rosado, the father of Leandra, an 11-year-old girl who was killed when the car in which she was riding flipped on the Henry Hudson Parkway in Manhattan. The driver, the mother of one of her friends, apparently was under the influence of alcohol and marijuana.

In his effort to pass the bill, Rosado [became omnipresent](#) in the capitol, handing out pictures of his daughter, doing interviews and talking about the plans Leandra had before her untimely death. [Mothers Against Drunk Driving](#) weighed in in support.

Rosado said that, for a moment, he was overwhelmed by Albany. "I went home and said, 'Wow, politics! This is just insane!'" Rosado admitted moments after the Senate passed the bill. "But today, for these people to come together and all be on the same page and pass the bill was really something."

Chain of Tragedies

According to Assembly and Senate sources it took a perfect storm to allow the bill to make it into law. The storm started this summer with the Schuler tragedy.

In August, Paterson and Republican [Charles Fuschillo](#) [introduced](#) nearly identical proposals to stiffen the punishment for those who drive under the influence of alcohol with minors in the car.

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The death of Leandra Rosado followed in October. And Rosado started a petition drive to toughen the laws. Soon the Daily News and other papers were covering Rosado's every move. He even [appeared](#) on Oprah. But that was not enough to get the bill passed.

When the legislature returned this month, the Assembly wanted to weaken the legislation by raising the blood alcohol level required for a felony to .18, more than twice the legal limit. As one staffer put it, "It's pretty much the Assembly policy not to increase penalties." Paterson was said to be looking to broker a deal to make the blood alcohol limit for a felony .13. Rosado and senators, including Fuschillo and Democrat [Martin Dilan](#), [pressed](#) the Assembly not to make any alterations.

As Albany stewed, waiting for a budget deal, Rosado got more attention for his cause. Finally Assembly Speaker Sheldon Silver agreed to the legislation. "I give the father full credit for shaming Shelly," said Sen. [Frank Padavan](#). [Assemblyman Harvey Weisenberg](#), the bill's sponsor in the Assembly, said it wasn't shame that brought Silver around but lively debate. "They say it's three men in the room, but in the Assembly there are 108 people, and we all get our opportunity to speak. It's sort of like group therapy. I told them there is no reason to change the law from what is real!" Weisenberg said.

Some Assembly members worry the penalty might be too harsh and that the bill did not receive enough scrutiny. Assemblymember [Vito Lopez](#) [told](#) the New York Times, "I believe there are a lot of voices who would like to be heard. They will never be heard, and the reason they will never be heard is because there's too much emotionalism."

On the Senate floor, a number of senators who supported the legislation acknowledged that the bill will not necessarily stop drunk people from driving with children in the car. Revealing that her parents were alcoholics, Sen. [Diane Savino](#) said that the bill will not fix everything because alcoholics "are incapable of rational thought." She said she hoped the bill would raise awareness and make people more cautious of who children get into the car with.

Critics also have [raised concerns](#) about the efficacy of the interlocks. They say the devices aren't sensitive enough to always properly recognize the amount of alcohol in a person's system and can sometimes mistake other substances for alcohol. Drivers can use an alternative vehicle to avoid the interlock, and there are also privacy issues.

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A study by the [Insurance Institute for Highway Safety](#) found interlocks can help prevent repeat offenses, but most fatal alcohol-related crashes do not involve someone who had been convicted of drunk driving within the past three years. That has spurred some advocates to call for the use of interlocks in all vehicles.

Whatever the bill's shortcomings might be, Kate Hogan, director of the [District Attorney's Association of the State of New York](#), said she didn't "dare to dream" that a bill that would both up the penalty for drinking and driving with a child in the car and require the use of interlocks in the vehicles of those convicted of driving while intoxicated could actually be passed during the current special session.

Advocates say there is much more to do.

"Making it a felony will go a long way to deterring people from driving while they are drunk," said Sen. [Hiram Monserrate](#), a former police officer. But he noted that New York City has had problems prosecuting suspected cases of drunk driving and pointed to recent cases in which police officers refused breathalyzer tests after killing people with their cars. "It's harder to get the evidence you need for a prosecution than you might think," said Monserrate.

Breath and Blood

In September at 1 o'clock on a Sunday morning, officer Andrew Kelly of the 68th precinct [struck and killed](#)

Vionique Valnord as she tried to hail a cab in Brooklyn. A sergeant at the scene reportedly saw alcoholic beverages in Kelly's vehicle, smelled alcohol and reported that Kelly's speech was slurred. Kelly initially refused a breath test. It took seven hours for police to secure a warrant to force Kelly to submit to a test, and when he did he tested clean.

Only a month later, Detective Kevin Spellman [struck and killed](#) 67-year-old Drana Nikac in the Bronx. Responding officers reported that Spellman appeared intoxicated, but Spellman refused a breath test at the scene. He eventually submitted to one at a hospital, five hours later. Even, then, officials have said Spellman had a blood alcohol level of .21, more than two and a half times the legal limits.

Police Commissioner Ray Kelly has [created a panel](#) to consider how to handle instances

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when someone refused a test. Currently police generally take a person who won't take a test at the scene to the precinct. If the driver refuses the test there, police must obtain a warrant to allow blood to be drawn at a hospital. That can take hours.

Some advocates would like the legislature to remove the warrant requirement for Breathalyzer use in cases where someone has died or been seriously injured. Hogan, Fuschillo and Weisenberg say they see one particular piece of legislation as being paramount: Jack Shea's law, which would remove the state requirement that a doctor supervise a blood draw. [Shea](#), a 91-year-old former Olympian, was killed in upstate New York by a driver who was charged with driving while intoxicated, vehicular manslaughter and criminally negligent homicide. The charges were eventually dropped over a technicality. The driver wound up in a rural clinic where a technician drew a blood sample to check alcohol levels without the supervision of a doctor.

Fuschillo said he had assurances from Paterson that he wants to move on that bill. Paterson's office did not return calls for comment.

Rosado isn't giving up the fight, either. He announced at the signing of the bill named for his daughter that he intends to try to take his campaign to make driving under the influence with a minor in the vehicle national. "This is not going to be our last stop," Rosado promised. Later, he added, "I guarantee you that my daughter's death will not be in vain. She is here now to protect all our children, and anyone else who is a victim of DWI."

When Bad Driving Turns Deadly

Not all children who die on the streets are killed by drunk drivers. The parents of Hayley Ng, age 4, and Diego Martinez, 3, know that all too well. Their children [died on a Chinatown sidewalk](#) in January when an unoccupied delivery van plowed into a group of children on a school outing. The driver, Chao Fu, left the van idling without realizing it was in reverse. He did not face any criminal charges.

Some 292 people -- including people in cars, on bicycles and on foot -- died in traffic fatalities in 2008, an increase from 2007, which saw a record low 274 such deaths.

Bad or reckless driving causes many of these deaths and many more injuries. Speeding and inattentiveness are the leading causes, according to Wiley Norvell of Transportation

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Alternatives, an advocacy group.

"Notwithstanding the outrageous and tragic death of Leandra, and the egregious and tragic 'Taconic Mom' incident, the number of people killed and maimed as a result of adults driving drunk with minors is dwarfed by the numbers killed and maimed by more mundane but often lethal behaviors such as turning into pedestrians in crosswalks (the documented number one 'mode' of [pedestrian fatality](#) in NYC), aggressive passing of bicyclists (the documented number one 'mode' of [cyclist fatality](#) in NYC), and of course the run-of-the-mill speeding, red-light running, distracted driving, aggressive driving, etc.," [Charles Komanoff](#), a long-time transportation activist, wrote in an email.

The number of these cases that result in criminal, let alone felony, charges remain minuscule. Examples abound. Chehebar reached a plea agreement and [served](#) only four months in jail.

Alexander Aponte was driving a campaign bus for a candidate for City Council -- even though his license had been suspended. He ran a red light and killed 9-year-old Ibrahim Ahmed. Aponte got off with a [misdemeanor charge](#) : driving with a suspended license.

Attorney [Robert Fader](#) said he handled one case where a driver and a bicyclist had a dispute on the road, prompting the driver to deliberately back up and run down the cyclist. The driver's only penalty was a ticket for leaving the scene of a crime.

"If somebody is drunk, they'll be prosecuted, but if someone is driving without a license they'll get a ticket," Fader said. "You can't arrest people who are negligent."

Legal Barriers

In New York, people whose bad, but sober, driving kills someone can face a charge of criminally negligent homicide. But courts, law enforcement and relatives of victims rarely concur on when a traffic death becomes a criminal act.

Reckless behavior is not generally viewed as criminally negligent, according to attorney

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[Barton Slavin](#)

. "I don't know where the line is drawn," he said. Earlier this fall, a jury in Manhattan [convicted Auvryn Scarlett](#), a garbage truck driver, of second-degree murder. Scarlett struck and killed two British tourists last winter after he apparently neglected to take his epilepsy medicine. At the time, Komanoff [said](#) he could not recall any other instance when a driver who was not intoxicated was convicted of murder.

Why here? A police spokesman said, "Apparently, he stopped taking his medication. it was a conscious decision, so he's being charged."

But Paul Steely White, executive director of Transportation Alternatives, failed to see the distinction. "Don't people make a conscious decision to speed or a conscious decision to turn without yielding?" he said in [Streetsblog](#). "Are we saying that people are somehow unconscious when they're breaking the law? â€¦ Scarlett's actions were no more deliberate than the majority of negligent motorists who routinely get off scot-free."

A variety of factors -- public attitudes, prosecutorial and police practices and judicial rulings -- have combined to create leniency. Deaths caused by reckless drivers -- not drunk ones -- "have not receive the grassroots consciousness raising" that alcohol related accidents have gotten, said [Maureen McCormick](#), chief of Vehicular Crimes in Nassau County. While the public has become increasingly aware of the risks posed by dangerous drivers, the criminal justice system lags behind, she said: "It's like turning around a battleship."

Prosecutors, according to Slavin, may be reluctant to bring cases in traffic deaths because the likelihood of getting a felony conviction is slim. Unless an officer saw the accident proving it involved, for example, going 60 in a 30 mile per hour zone may be difficult.

Then there is the so-called "rule of two." Although not actually a law, this rule --more a kind of practice or belief, really -- holds that drivers who are not drunk cannot be prosecuted for criminally negligent homicide unless they did two things wrong: speeding and running a red light, for example, rather than committing just one of those offenses.

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Two recent Court Ruling in New York have raised the bar even higher, according to McCormick. In one, the Court of Appeals, the state's highest court, overturned the conviction of Brett Cabrera, a 17-year-old with a junior license who had killed three passengers in his car. The court found he had been speeding and violating the terms of his junior license. Despite that, it threw out his conviction.

"Our decisions have uniformly looked for some kind of morally blameworthy component to excessive speed in determining criminal negligence," the court [said](#) . That, it continued, did not appear in Cabrera's case.

Proponents of tougher penalties hoped the court had given Cabrera a break because of his age, McCormicksaid. Then came a second ruling involving limousine driver James McGrantham. After realizing he had entered the Belt Parkway via an exit ramp and so was headed the wrong way, McGrantham decided to make a three-point turn in the middle of the highway. As he performed this maneuver, his car stretched across traffic creating a kind of wall. A motorcyclist, unable to stop, crashed into that barrier and died.

The Court of Appeals threw out that homicide conviction, McCormick said, because the limo driver had not acted with malevolence. Or as a the court [phrased it](#) , "Driver was sober, not speeding, and the decision to extricate himself from a dangerous situation while unwise was not morally blameworthy so as to support criminally negligent homicide."

McCormick believes such interpretations have gone beyond what the legislature intended. To correct that, she said, the legislature may have to step in and clarify its laws.

Some advocates have endorsed another piece of legislation, this one proposed by Assemblymember Robert Sweeney, that would make vehicular assault and manslaughter felonies if the driver involved had a suspended or revoked license. Sweeney proposed his bill after the death of Ibrahim Ahmed.

Whether prosecutors would use harsher laws remains unclear. And would juries be willing to convict a generally law-abiding person for the mistake of running a red light -- even if that mistake had horrible consequences. As McCormick puts it, these kinds of crimes "are committed by average Joes."

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Preventive Measures

Undoubtedly, though, average Joes commit such offenses very frequently. Anyone who drives -- or walks -- in New York City knows how often drivers shoot red lights or fail to yield to pedestrians. Some 30 percent of drivers exceed the 30 mile per hour speed limit in Manhattan, according to a Transportation Alternatives [study](#) released earlier this year. While most were going 40 miles per hour or less, the study found people driving "in excess of 60 mph in school zones and other areas with heavy pedestrian traffic."

"It's New York and everyone wants to get there in a hurry," said Slavin. "If people would just slow down and act less crazed and come to a stop at a stop sign," fewer people would be injured on accidents.

Transportation Alternatives has looked at some of New York's most dangerous intersections and urged the police to focus on them. Norvell likens this to the way the city has reduced crime.

Manhattan Borough President Scott Stringer has [called](#) for installing speeding and red light enforcement cameras.

The incoming Manhattan district attorney, Cyrus Vance, has [said](#) he would establish a Vehicular Crime Unit that would, among other things, pay special attention to dangerous intersections or stretches of road. It also would focus on traffic assaults, reckless driving and other roadway offenses. He has also said his office would work with the police to reduce speeding Manhattan.

"There is no second chance on the road -- when a car crashes and someone is killed -- no apology, no claim that it was strictly an accident, will ever bring that loved one back," Vance said in response to a questionnaire during the campaign. As a result, he continued, "strong preventative measures must be taken by police and prosecutors with the ultimate goal of reducing incidents of dangerous driving."

All of this assumes that people are ready to take bad driving seriously. Norvell and McCormick think that can happen.

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"A generation ago, somebody who was caught drinking and driving was sent home with a wink," Norvell said. Leandra's law provides evidence of just how much that has changed. Now, said Norvell, "the way we tolerate and encourage dangerous and reckless driving on our streets is in need of a similar cultural shift."