

**Testimony on Behalf of the New York County District Attorney's Office  
Before the New York City Council Transportation Committee**

Daniel R. Alonso  
Chief Assistant District Attorney  
New York County  
January 22, 2013

Thank you for the opportunity to present the views of the Manhattan District Attorney's Office on combating no-fault insurance fraud in New York. By way of background, I currently serve as the Chief Assistant District Attorney in Manhattan, and have been a prosecutor for 17 years. For nine of those years, I was an Assistant United States Attorney in the Eastern District of New York, where I served for three years as Chief of the Criminal Division. In that capacity, I supervised the prosecution of a wide range of crimes including health care fraud, and I was the lead prosecutor in what was, at the time we announced the indictment in 2001, the largest staged accident case in New York's history. My current office, under the leadership of District Attorney Cyrus R. Vance, Jr., and his predecessor, Robert M. Morgenthau, has also investigated and prosecuted a number of large no-fault insurance fraud rings.

We in law enforcement are keenly aware that wherever there is a large pot of money, there are criminals looking to steal it. And one of the larger pots of money is that mandated by New York law and funded by ratepayers around the state who own cars: no-fault insurance. Unfortunately, no-fault has lent itself to massive fraud and abuse, which has contributed to our inordinately high auto insurance rates.

District Attorney Vance's Office very much operates under the principle that a crime prevented is worth more than a crime prosecuted. We are not waiting to

react to crime – we have made it a point to come up with strategies to prevent serious crimes before they happen. This is true in the violent crime arena, and it is equally true with white collar crime and organized crime. With no-fault insurance fraud, this translates into a need for a strong, effective law criminalizing the unscrupulous “runners” who pay and are paid to bring patients into no-fault clinics. The purpose is simple: to prevent fraudulent claims.

New York and federal policy makers have known for decades that sometimes it is necessary to criminalize certain behaviors in order to deter or prevent other, more costly behaviors. Thus, in New York we criminalize possession of guns as one way to prevent shootings, or switchblades to prevent stabbings. And the federal Medicare-Medicaid Anti-Kickback Act<sup>1</sup> makes it a crime to pay for patient referrals, because when you’re getting paid for every patient you send over, you quickly run out of legitimate patients, and that becomes the source of Medicare and Medicaid fraud.

So, too, in the no-fault insurance area, we need to prevent fraud by attacking the root of the problem, the runner. As you are aware, the typical scheme involves collaboration among not just unscrupulous medical clinics and lawyers, but also the runners who recruit and bring in patients and clients. If I could stress one and only one point to you today it would be this: without runners, the patient supply for fraudulent clinics would dry up, and New York’s ratepayers would save tens if not hundreds of millions of dollars.

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<sup>1</sup> 42 U.S.C. § 1320a-7b(b).

In stressing that point, I would like to make clear the distinction between an anti-runner law and an anti-fraud law. We propose a law that criminalizes paying for patients and clients, as a means to *prevent* fraud. Fraud itself is, of course, already a crime – the law even specifically criminalizes specialized types of fraud such as Insurance Fraud and Health Care Fraud – such that more anti-fraud laws are unnecessary. The key difference between what we propose today and anti-fraud laws is that the latter require proof of fraudulent intent or knowledge, while the runner law we propose today criminalizes knowingly and intentionally making or receiving prohibited payments, without further inquiry into whether any particular claim is exaggerated, inflated, false, misleading or unnecessary.

Why is it so important to have an illegal payments law? Because the no-fault scam is like a 21<sup>st</sup> century “military-industrial complex” for the underworld, in that every participant works to make sure that every other participant makes money but that no one is left holding the bag, and everyone has the means to deny fraudulent intent. The runner brings patients to the clinic and he gets paid. The patients visit the clinic and they get paid. The lawyer, who has been helpfully provided by the medical clinic – often physically setting up shop inside the clinic – signs up the patient and he gets paid his one-third contingent fee for what is typically a nuisance-value pain and suffering claim. And of course, the clinic owners and other providers get paid for providing as many kinds of treatments as they can – neurology, psychological counseling, MRIs, X-rays, acupuncture, physical therapy, and durable medical equipment, to name a few. Everyone wins, except the insurance companies and their ratepayers, those of us who own cars. We lose.

In our experience, runners operate in four primary ways, all of which involve their steering passengers whose names are on the accident report – and who are willing to return for multiple visits – to the corrupt no-fault clinic in exchange for between \$1,000 and \$2,000 per head. Those passengers are typically given services that are based not on need, but rather on how much they generate in insurance billings for the clinic.

In the first typical scenario, runners use their street connections to find people who were in real car accidents — whether actually injured or not — and send them to the clinics for services. Second, they may stage the accidents by fitting as many people as possible into at least two cars, and plotting a low impact collision. Third, in a dangerous variation on the staged accident, some runners may actually have their recruits cause an accident with an innocent victim, usually targeting expensive cars on the theory that these cars are better insured. And finally, although this is rare, I have personally prosecuted a runner for bribing a corrupt Brooklyn police officer to draft bogus accident reports.

The common theme is the runner – typically a shady middleman who does not care one whit about injuries, patients, or taxpayers, only money in his pocket. As I mentioned earlier, during my tenure at the U.S. Attorney's Office, we prosecuted a large-scale staged accident ring known as the Hawkins organization, named for Quentin "Flint" Hawkins, who at the time we called the "king of the runners" in Brooklyn. Until Judge Jack Weinstein sent him to federal prison, he had spent more than 20 years staging hundreds of car accidents, each generating on average between \$100,000 and \$200,000 in fraudulent billings by no-fault clinics.

Despite the many successes of my office and our sister offices in New York, we also encounter common setbacks. The entire enterprise is premised on the understanding that its participants will stick to a simple plan if questioned by police. The patients know to say they were really injured, the doctors say they merely treated a patient who complained of injuries, the lawyers say they filed a claim for a client who had an accident report and medical records, and the runners run away. It is thus exceedingly difficult under existing law, without years of investigation, to prove that the various participants acted with knowledge of fraudulent claims. And the runners and providers know this.

In order for state prosecutors to prevent no-fault insurance fraud schemes effectively, we need to be able to take runners off the streets, put them out of business, and put them in prison. For that reason, the Manhattan DA's Office supported the passage last session of S7451-2011, which would make it illegal either to act as a runner or to hire a runner, and that for certain thresholds – either monetary or based on the number of patients referred – would make hiring or acting as a runner a felony subject to the provisions of New York's Organized Crime Control Act.

The premise is simple: Once you dry up the supply of patients, you'll take away the incentive to defraud insurance companies. Legitimate patients won't suffer. Legitimate clinics won't suffer. And legitimate lawyers won't suffer. This is simply being smart about crime prevention.

The Senate version passed at the end of the session, and we look forward to its consideration this session. Your resolution in support would go a long way.

In closing, we commend the leadership of this Committee, especially its Chair, as well as all of the members of the Committee and Speaker Quinn, and we respectfully recommend that the full Council issue the proposed resolution. Thank you again for providing us with the opportunity to share our views today.

**Testimony before the New York City Council Committee on  
Transportation – January 22, 2013**

Jeffrey L. Ferguson, Executive Assistant District Attorney

Good morning ladies and gentlemen, my name is Jeffrey Ferguson. I am an Executive Assistant District Attorney in the Rackets Division of the Kings County District Attorney's Office and I thank the Committee for inviting me to speak today.

As a preliminary matter, I would like to commend the Committee and Counsel members Vacca, Ignizio, Comrie, Lander, Mealy, Rodriguez, Vann and Koo for proposing Resolution Number 1194-A. This Resolution calls upon the State Legislature and the Governor to enact legislation that would make it a crime in New York State to unlawfully procure clients, patients, or customers by a "runner" or by someone who uses, solicits, directs, hires or employs another to act as a "runner." By the way, if you are in my business, a "runner" is the individual who organizes a "staged" or phony accident in exchange for a fee paid by the clinic to which the runner refers the individual allegedly injured in the "staged" accident.

It is extremely encouraging to see the Council take action on an issue that directly affects so many of the residents of the City of New York. The passage of such a bill is critically necessary to stem the fraud and abuse in the no-fault automobile insurance system.

Most of us are aware of the statistics, and some of those statistics are cited in the proposed resolution itself. It is suspected that twenty-two percent of no-fault claims submitted in 2010 had elements of fraud, while an additional fourteen percent of no-fault claims submitted were either inflated or were for unnecessary treatment. These unlawful activities are particularly manifest in New York City and are evidenced by the drastically higher insurance premiums being charged to and paid by City residents to underwrite the payment of fraudulent claims.

Kings County has the dubious distinction of being at the forefront of no-fault insurance fraud. The cost of no-fault fraud to the citizens of the State is staggering. An estimated \$241 million in additional insurance premiums was passed on to all New York automobile owners in 2010 and again, as the numbers in the resolution indicate, it is the residents of this City that must pay the vast majority of those additional premiums.

Accordingly, the Kings County District Attorney's Office welcomes and supports the reform proposed by Resolution Number 1194-A, and we urge the Council to adopt it. We believe that this Resolution will send a message to the Legislature and to the Governor that no-fault reform legislation is needed and it is needed now.

What is particularly significant about Resolution Number 1194-A is that it criminalizes the acts of not only the actual "runner" – the accident stager, it also



criminalizes the conduct of the individual who uses, solicits, hires, or employs the “runner,” as well as other complicit actors such as the operators of the medical clinics who pay the “runners,” namely the clinic that pays the runner for their referrals and then submit fraudulent no-fault claims for the alleged treatment of the phony accident victims.

Also significant is that the Resolution is distinguishable from past proposals to amend the Insurance Fraud statutes in that the proposed crime’s elements do not unnecessarily and duplicatively require “an intent to commit insurance fraud.”

The proposed legislation would provide enormous leverage to the police and other investigators in their efforts to reach those individuals who profit from no-fault insurance fraud. It would also enable the District Attorneys’ Offices to prosecute all the participants in this recurring crime. So, it is for these foregoing reasons that the Kings County District Attorney’s Office endorses this important and very necessary reform proposed by Resolution 1194-A.

I would also like to take this opportunity to encourage the Committee to propose and recommend additional legislative reforms intended to assist law enforcement in its battle against no-fault fraud. In particular, I would like to direct the Committee’s attention to the need for a more equitable distribution of particular funds that are collected pursuant to New York State Insurance Law § 9110 by insurance carriers.

Originally, these funds were intended to be earmarked for the investigation of vehicle theft and insurance fraud. The legislation that was first created in 1992 required insurance carriers to forward to the State a portion of every insurance premium collected from every motorist to this fund. A portion of the monies collected was then given to the Department of Criminal Justice Services to be distributed to local law enforcement agencies in the form of grants. The remainder of the funds was given to the State Police. Over the years, this legislation has been periodically amended, and in 2010 it required that the insurance carriers collect and forward to the fund \$10 per motor vehicle insured which amounted to approximately \$120 million dollars. Approximately \$115 million of the funds collected were distributed to the State Police, while less than \$ 5 million was distributed to local law enforcement entities through DCJS grants.

Additionally, the way the law has evolved has made it so that the State Police are no longer required to devote the entirety of these funds to the prevention of auto theft and insurance fraud. In fact, in 2010, less than \$10 million of the \$115 million given to the State Police was devoted to this purpose. This troublesome situation was legislatively created and, therefore, must be legislatively corrected. The investigations required to properly address the problem of insurance fraud are extremely labor intensive and expensive to conduct. Therefore,

local law enforcement agencies, including District Attorneys' offices, need a greater piece of this pie in order to effectively and efficiently combat the problem.

In conclusion, again, I strongly urge the City Council to pass proposed Resolution Number 1194-A recommending the criminalization of the activities of "runners," as well as those who utilize their services. And I further urge the Committee to consider additional no-fault reform. Your efforts may greatly enhance our chances to succeed in stemming the increasing incidence of no-fault fraud.

Thank you for your time and attention and thank you for your continuing efforts.

STATEMENT OF AAA NEW YORK, INC.  
BEFORE THE NEW YORK CITY COUNCIL  
COMMITTEE ON TRANSPORTATION  
NEW YORK, NEW YORK - January 22, 2013

My name is John A. Corlett, Legislative Committee Chairman for AAA New York State which serves more than 2.7 million members residing in New York State.

New York is awash in a tsunami of insurance fraud. Indeed, no-fault is rampant in New York, particularly in the City of New York. In fact, no-fault fraud amounted to nearly \$400 million last year, a cost shared by every single driver. This is a principal reason drivers in the state face the fourth-highest no-fault rates in the nation.

From staged crashes to unscrupulous doctors and "medical mills" that trump up injuries and treatments, scammers are cashing in by abusing the no-fault system and taking advantage of loose laws and ragged enforcement.

Nearly one-fifth of all no-fault claims filed in 2010 had elements of fraud, says a study by the Insurance Research Council.

While some insurance-fraud busts make headlines – such as the March 2012 roundup of 36 people allegedly tied to a \$279 million scheme – these are just Band-Aids on a wound that's gushing money.

Last year, Governor Andrew Cuomo began a crackdown on doctors and others whose no-fault medical bills raise red flags. After years on the back burner, there is now

bi-partisan support to enforce current laws and pass new measures decertifying – even criminally charging – practitioners of no-fault medical rip-off.

But more is needed. As we went to press, legislators in Albany were debating a range of reforms backed by the AAA. Among them, bills that would make it a felony to stage a crash. Not only because it's thievery, but also because these miscreants often prey on senior drivers – particularly women – who are seen as less likely to challenge the other drivers and "injured" passengers. Yet for the unwitting drivers targeted to be hit by the accident-stagers, the damage and injuries they face are quite real.

Other proposals would make it a felony to steer crash victims toward unnecessary medical treatments. "Runners" – people who recruit patients for medical mills and even cast the staged crashes with willing "victims" – deserve prison time.

The state's no-fault insurance system needs serious reforms to make it the money-saver and hassle-saver it was meant to be. It's about time that New York drivers stopped being easy pickings for criminals.

In our opinion state Senate bill S.7451 and Assembly bill A.9768-A could help reduce the scale of insurance fraud and over premiums in New York State.

Accordingly, our Association strongly supports the City Council's resolution.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 1194-A

in favor  in opposition

Date: 1/27/13

(PLEASE PRINT)

Name: DANIEL R. ALONSO

Address: 1 HOGAN PLACE

I represent: MANHATTAN DA

Address: 1 HOGAN PLACE

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THE CITY OF NEW YORK**

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Date: 1/22/2013

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Name: John Corlett

Address: 1415 Kellum Place Garden City

I represent: AAA

Address: \_\_\_\_\_

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Name: Jeffrey Ferguson

Address: Kings City DA's office

I represent: \_\_\_\_\_

Address: 350 Jay St. Brooklyn, NY

Please complete this card and return to the Sergeant-at-Arms