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August 25, 2015

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Chapter Amendment or Veto Request for S4747/A5266 - An act to amend the vehicle and traffic law, in relation to aggravated leaving the scene of an incident without reporting

Dear Governor Cuomo:

On behalf of the District Attorneys Association of the State of New York (DAASNY), I write to express our concerns about the above-referenced bill and to urge a chapter amendment that will achieve the stated goals of removing the incentive to flee for impaired drivers and providing an appropriate range of penalties for drivers who flee the scene of a crash where serious injury or death results. Importantly, the bill's sponsors Senator Funke and Assemblyman Thiele support the proposed chapter amendment.

Our recommendation is to elevate the existing Leaving the Scene of an Incident where a fatality results to a C felony, and Leaving the Scene of an Incident where a serious physical injury occurred to a D felony (Appendix A).

Simply put, fleeing the scene of a fatal crash makes it impossible to conduct a blood alcohol test that could result in a C felony Vehicular Manslaughter in the First Degree charge. The driver who flees hopes to avoid the consequences of the crash altogether but, even if caught, will only face a maximum D felony charge for fleeing the scene where death results and an E felony where serious physical injury results. Leaving the scene is a particularly egregious offense since a severely injured person's chance of survival is greatly diminished when medical care is delayed. The incentive for drivers to leave the scene of a DWI crash, resulting in less severe punishment, must be removed.

The bill sponsors have stated that their intent was to address the rise in hit and run incidents and the fact that more offenders are leaving crashes that have resulted in injury or death to avoid punishment for other serious infractions, like driving while intoxicated or driving with a suspended license. The rise in these offenses corresponds with the passage of New York's stronger impaired driving laws.

3 COLUMBIA STREET, ALBANY, NEW YORK 12210
TEL: (518) 598-8968 EMAIL: PRESIDENT@DAASNY.ORG
WWW.DAASNY.ORG

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DAASNY recognizes and applauds the legislature and your office for making New York a leader in the fight to end impaired driving by enacting advanced legislation. Indeed, the efforts of the last decade have been recognized by the National Highway Traffic Safety Administration, among others. But these advances have resulted in an unintended consequence: New York has lost the essential parity it had achieved between leaving the scene charges and DWI homicides and assaults.

In 2005 the legislature recognized that the penalties for fatal leaving the scene charges must not be lower than the penalties for Vehicular Manslaughter because it created an incentive to flee.¹ Fatal leaving the scene charges were elevated to a D felony that year. Almost immediately thereafter (2006) extensive DWI reforms were passed into law.²

Chapter 732 of the Laws of 2006 raised the penalties for some DWI assaults and homicides. The reforms included the creation of Aggravated DWI for drivers with blood alcohol concentrations (BACs) of .18% or higher, the creation of a “combined influence” offense for drivers using drugs and alcohol or multiple drugs and the complete overhaul of Vehicular Manslaughter in the First Degree, making it a C felony to cause someone’s death while driving with a BAC of .18% or higher.

More recently, Leandra’s Law (Chapter 496 of the Laws of 2009) created a felony offense and enhanced penalties for driving while intoxicated with a child in the car and required interlock devices for all DWI convictions. These changes are lauded as national models to combat drunk driving.

One year after fatal leaving the scene charges were raised to a D felony in 2005, the parity was lost and the incentive for impaired drivers to leave the scene was reinstated. Because the sanctions for DWI crimes have been elevated, but leaving the scene of a fatal crash remains a D felony, the legislature has inadvertently re-created the same anomaly that existed in 2005.

To understand why S4747/A5266 does not correct this anomaly it is important to recognize that this legislation only provides for a C felony under the extremely rare circumstances when a driver:

- Leaves the scene a crash where there was injury to another party in violation VTL §600(2)(a),
- **AND** causes the death or serious injury of more than one person,
- **AND** the death or injury is caused by the driver’s reckless driving under VTL §1212,
- **AND** the driver’s license is suspended or revoked due to impaired or intoxicated driving under VTL §1192 or due to a prior leaving the scene,

¹ Justification Section; Sponsor’s Memo; Bill S4584/A 3327-A, Chapter 49; Signed into law May 24, 2005: “...This bill will bring the penalties for leaving the scene of an accident resulting in serious personal injury or death more in parity with those for vehicular assault and vehicular manslaughter. Under current law, for example, an intoxicated driver causing an accident, resulting in death of another person, who stays at the scene faces a more serious charge - second degree vehicular manslaughter, a class D felony - than if the person left the scene and sobered up - a class E felony. The bill obviates the problems with current law which, in essence, rewards an intoxicated driver for fleeing the scene.

² S8232/A11859/A11963 was signed into law on September 13, 2006, Chapter 732.

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- **OR** the driver has a prior conviction for leaving the scene of a crash where there was injury to another party in violation of VTL §600(2) or a prior conviction for impaired/intoxicated driving in violation of VTL §1192 in the last 10 years.

Essentially, this requires as an element of the new C felony, Aggravated Leaving the Scene, an underlying crime of a totally different C felony – Manslaughter in the Second Degree. The bill would penalize drivers who leave the scene after having “recklessly caused the death of more than one other person and/or serious physical injury to more than one other person.” Recklessly causing a single death is already Manslaughter in the Second Degree; there is no reason to create another crime with additional elements when the C felony already exists for this offense without all of the additional elements in Aggravated Leaving the Scene.

Despite our concerns about the way this bill is worded, make no mistake that a change in the law is urgently needed. Several recent cases illustrate the need for the suggested chapter amendment.

In Nassau County, a 13-year-old special-needs victim, Bryanna Soplin, was struck and killed by a retired police officer who had been drinking at a bar. He immediately fled the scene, surrendering 42 hours later – enough time to have reduced his BAC by as much as .84%. The driver initially claimed that he thought he struck a construction cone. He ultimately pleaded guilty and admitted that he had reason to know that he had struck a person. The Soplins will never know whether the driver was intoxicated or if his BAC was above a .18% because he left a child to die in the street and prevented a complete investigation.

In another case, a driver struck and killed Sherman Richardson before immediately fleeing the scene. Later that day, the vehicle was found engulfed in flames. Law enforcement will not be able to use forensic evidence to determine whether the driver was intoxicated or impaired by drugs. The victim’s widow, Jawana Richardson, will never know with certainty why her husband died that day. If the driver is apprehended, he can only be charged with a D felony for leaving the scene while the person who set the car on fire can inequitably be charged with a C felony for arson.

In Suffolk County, a driver crashed into the back of the Ostane family’s car on the Southern State Parkway. The driver fled the scene aided by a friend. Mrs. Ostane, the only survivor, helplessly watched her husband and young children burn to death inside the car. The current version of S4747/A5266 is so narrow, that it would not include this terrible crash.

In all of these cases, fleeing the scene was tantamount to destroying the evidence that would have proven whether or not – and to what degree – the driver was impaired by drugs and alcohol. The surviving family members are left to speculate, and the defendants are paradoxically rewarded with lesser charges.

Unfortunately the bill, as drafted, will not provide any effective tools to prosecute impaired drivers who flee the scene of a crash. The attached suggested chapter amendment will.

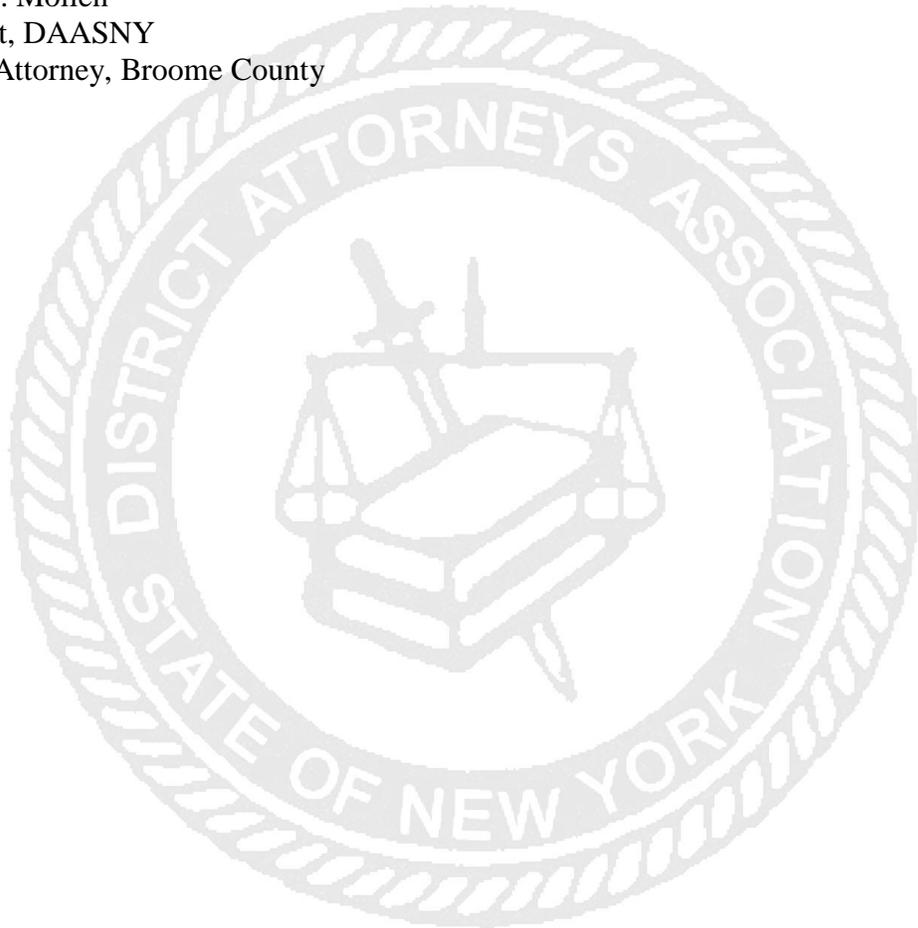
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The families of hit and run victims have sought the change represented by the suggested chapter amendment for many years without success and are seeking your leadership on this issue. If the suggested amendment is not possible, DAASNY respectfully recommends that you veto the bill.

Sincerely,



Gerald F. Mollen
President, DAASNY
District Attorney, Broome County



cc: Alphonso David
John Czajka

Appendix A

Vehicle and Traffic Law

§ 600(c). Leaving scene of an incident without reporting.

c. A violation of the provisions of paragraph a of this subdivision resulting solely from the failure of an operator to exhibit his or her license and insurance identification card for the vehicle or exchange the information required in such paragraph shall constitute a class B misdemeanor punishable by a fine of not less than two hundred fifty nor more than five hundred dollars in addition to any other penalties provided by law. Any subsequent such violation shall constitute a class A misdemeanor punishable by a fine of not less than five hundred nor more than one thousand dollars in addition to any other penalties provided by law. Any violation of the provisions of paragraph a of this subdivision, other than for the mere failure of an operator to exhibit his or her license and insurance identification card for such vehicle or exchange the information required in such paragraph, shall constitute a class A misdemeanor, punishable by a fine of not less than five hundred dollars nor more than one thousand dollars in addition to any other penalties provided by law. Any such violation committed by a person after such person has previously been convicted of such a violation shall constitute a class E felony, punishable by a fine of not less than one thousand nor more than two thousand five hundred dollars in addition to any other penalties provided by law. Any violation of the provisions of paragraph a of this subdivision, other than for the mere failure of an operator to exhibit his or her license and insurance identification card for such vehicle or exchange the information required in such paragraph, where the personal injury involved (i) results in serious physical injury, as defined in section 10.00 of the penal law, shall constitute a class ~~E~~ D felony, punishable by a fine of not less than one thousand nor more than five thousand dollars in addition to any other penalties provided by law, or (ii) results in death shall constitute a class ~~D~~ C felony punishable by a fine of not less than two thousand nor more than five thousand dollars in addition to any other penalties provided by law.