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Push to Prosecute Drowsy Driving May Hinge on Its Definition

By WINNIE HU

Roadside signs around the country have long warned drivers not to doze off behind the wheel with gentle catchphrases like "You Snooze, You Lose" and "Drive Alert, Arrive Alive."

Now the campaign against so-called drowsy driving is moving to the courtroom, with law enforcement officials increasingly pushing to hold sleepy drivers criminally accountable when they cause fatal crashes.

In the most high-profile case to date, Bronx jurors have been wrestling this week with a difficult and subjective question: just how tired is too tired to drive? The defendant in this case, Ophadell Williams, was driving a bus on what prosecutors said was just a few hours of sleep when it crashed in the early morning hours, killing 15 passengers. He faces up to 15 years in prison if convicted of manslaughter and criminally negligent homicide.

Drowsiness has also been cited in criminal cases against drivers in more than half-a-dozen other states, including Florida, New Jersey and Texas. In Virginia last month, a bus driver was convicted of involuntary manslaughter; authorities said that he fell asleep before a crash that killed four passengers and injured dozens of others.

The shift from polite chiding to prosecution follows successful efforts to criminalize other dangerous driving habits, like speeding, drinking alcohol and using cell phones. But drowsy driving, which the

AAA Foundation for Traffic Safety calls "one of the most significant, unrecognized traffic safety problems," faces tougher legal hurdles. A blood-alcohol test can show whether a driver was drunk. Skid marks may betray a speeder. And cell phone records will reveal whether someone was texting right before a crash. But drowsiness is a personal and often fleeting state of mind that leaves no permanent record.

The absence of any kind of objective standard has loomed over the Bronx trial, where prosecutors spent nearly two months trying to prove their case with 55 witnesses, in an exhaustive attempt to provide clarity on the central question of just how tired Mr. Williams was when the bus crashed. Prosecutors said he was so sleep-deprived that he might as well have been intoxicated when he got behind the wheel. Mr. Williams's lawyer maintained that his client was rested enough to drive.

"It's a very gray area," said Florence Wong, whose father died in the crash. Ms. Wong, a fixture at the trial, acknowledged that she had driven while tired herself only to be startled by so-called rumble strips on the highway, designed to keep drivers alert. "Everybody has a different line, and only when a person crosses the line, then you know," she said.

The push toward the courts has been supported by traffic-safety advocates, researchers and lawyers who say that when it comes to, say, driving without seat belts or driving while texting, educational



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efforts alone are rarely enough to change human behavior.

"The threat of criminal prosecution can go a long way to heighten driver awareness," concurred Daniel Brown, a lawyer who is on the board of the National Sleep Foundation, a scientific and educational group in Washington.

But Mr. Brown and others acknowledged that proving driver fatigue beyond a reasonable doubt could be difficult. For one thing, because some people need more sleep than others, there is no clear consensus on the minimum hours of sleep required for safe driving. For another, drivers may nod off as a result of being bored, not poorly rested.

"The bottom line is if you're fatigued, there really isn't a good measure to say yes, you're fatigued at this level of impairment," said J.

Peter Kissinger, president and chief executive officer of the AAA Foundation for Traffic Safety.

In cases where drivers do not admit to falling asleep behind the wheel, law enforcement officials have nevertheless found ways to show evidence of fatigue by reconstruction, often with the assistance of traffic cameras, event data recorders, GPS tracking and even cell phone records. “I would not be surprised based on everything that’s now available to investigators and prosecutors to see more of these cases being charged,” said Joanne Thomka, director of the National Traffic Law Center of the National District Attorneys Association.

New Jersey sought to address some of these legal hurdles with a 2003 law allowing drowsiness to be considered in fatal crashes if a driver had fallen asleep at the wheel or had been awake for more than 24 consecutive hours. But critics said the 24-hour standard was arbitrary and far too narrow, not applying to drivers who sustained themselves on just a few hours of sleep.

In most other states, driver fatigue can be prosecuted under broader, existing laws for reckless or negligent behavior, legal experts said. But efforts to go further and specifically criminalize driver fatigue have failed. “There was a concern that government again was encroaching into people’s day-to-day lives,” said Jonathan L. Bing, a former New York State assemblyman who sponsored an unsuccessful bill on drowsy driving in 2004.

The reluctance to take a harder line on drowsy driving also stems from a perception that driving tired — unlike driving drunk — may be an unavoidable consequence in a modern world, in which people have busy schedules and may work long hours or more than one job. Some legal experts said there was a sense that it could happen to anyone.

Thomas Callaghy fell asleep while driving his van through Virginia in April 2001, drifting off the road and striking a tree. His wife was killed in the crash. “I had driven since I was 16 so I thought I’m going to get through this like I’ve done every other,” he said. “It’s a much bigger problem than most people think.”

Mr. Callaghy, now 66 and a retired political science professor, was not charged in the crash. He said that while he preferred education campaigns to criminal laws, he generally supported prosecutions of drowsy drivers in cases of “extreme negligence” rather than in instances like his own, which he saw as more of a common event.

Mr. Williams, 41, was driving back from the Mohegan Sun Casino in Uncasville, Conn., around 5:40 a.m. on March 12, 2011, when the bus struck a guard rail on Interstate 95, flipped over and crashed into a signpost with enough force to shear off part of the roof. Fifteen of the 32 passengers died. One survivor’s arms were ripped off as he tried to shield his face, while others suffered head wounds and broken bones.

In response to the prosecution’s allegations of driver fatigue, Mr. Williams’s lawyer,

Patrick L. Bruno, noted that his client had worked long hours just like other professionals, including police officers, firefighters, and he pointed out in court, judges. Mr. Bruno said that Mr. Williams had lost control of the bus not because he was tired but because he was cut off by a tractor-trailer; prosecutors said evidence showed that Mr. Williams did not apply the brakes before the crash. Mr. Williams did not take the stand. A jury began deliberating on Tuesday.

But day after day, a parade of witnesses brought the accident to life. Survivors shared terrifying memories of the fateful trip, and drivers on the road at the time described a bus that was speeding and swerving erratically before the crash.

A sleep disorders specialist, Dr. Michael J. Thorpy, even surmised that based on Mr. Williams’s cell phone and car rental records, work logs and investigators’ reports, he had averaged about three hours of sleep a day for the three-day period before the crash.

“He exhibited all the symptoms of sleep deprivation,” Gary Weil, as assistant district attorney, told the jury in closing arguments on Monday.

Mr. Bruno countered that prosecutors had focused on driver fatigue as a fallback, because they were unable to prove any other wrongdoing and wanted to find someone to blame for the tragedy. “They’re desperate to make the case,” he said. “You don’t have a drunk, you don’t have a druggie, so we’ve got to go with the sleepy issue.” ■
