

October 15, 2018

The Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Vote "YES" on The Fare Evasion Decriminalization Amendment Act of 2018 (Bill 22-408)

Dear Chairman Phil Mendelson,
Councilmember Charles Allen
Councilmember Anita Bonds,
Councilmember Mary M. Cheh
Councilmember Jack Evans
Councilmember Vincent C. Gray
Councilmember David Grosso,
Councilmember Kenyan McDuffie
Councilmember Brianne K. Nadeau
Councilmember Elissa Silverman,
Councilmember Brandon T. Todd
Councilmember Robert White, Jr.,
and Councilmember Trayon White, Sr:

We, the undersigned organizations, urge you to vote "Yes" on Bill 22-408, the "Fare Evasion Decriminalization Amendment Act of 2018."

Introduced by Councilmember Trayon White, Anita Bonds, Mary Cheh, David Grosso, Kenyan McDuffie, Brianne Nadeau, Elissa Silverman, and Robert White in July of 2017, Bill 22-408 would make evading fare on WMATA buses and trains a civil offense punishable by a fine. Currently, fare evasion in the District is a crime that can result in arrest, jail time, and/or a fine of up to \$300.¹

We commend Councilmember Allen and all members of the Committee on the Judiciary and Public Safety for advancing Bill 22-408 out of committee, and for amending the bill to reduce to civil infractions other minor offenses on public transit that are currently categorized as crimes, including eating and drinking, playing a radio, and operating roller skates, among others. We ask that the Council take the final step to vote this important piece of legislation into law, and in so doing, recognize that fare evasion and other low-level offenses do not pose a threat to public safety, but the continued criminalization of these offenses does.

¹ D.C. Official Code 35-253

First, there is zero evidence that criminalization is an effective deterrent. The zero-tolerance criminal enforcement of low-level offenses like fare evasion by the Metro Transit Police Department (“MTPD”) is an example of “broken windows” policing, a discredited theory² that arresting people for low-level offenses will deter behavior and prevent more serious crimes. A proven failure, broken windows policing has led to our current crisis of mass incarceration and the destruction of trust between communities and police.³

Second, criminal enforcement of fare evasion has proven especially harmful to young people, black and brown residents, and low- and no-income residents who rely on public transit. These communities are also most likely to be targeted on suspicion of fare evasion and saddled with arrests, jail time, and court obligations that upend their lives over a \$2 fare. And the collateral consequences of these arrests can be great. For immigrant communities, fare evasion arrests and convictions can trigger deportation proceedings. For those who are reentering society, they can trigger revocation of parole. And for young people, they can serve as a gateway into the criminal justice system. Stops for fare evasion have also led to confrontations between Metro transit officers and riders, especially young riders, that often result in excessive use of force by transit police.

Contrary to claims that people are never arrested for fare evasion, according to data from the Office of the Attorney General, between 2015 and 2017 there were over 2,500 fare evasion arrests in the District, and fare evasion stops, citations and arrests have increased by almost 300 percent since 2013.⁴ Moreover, criminal enforcement of fare evasion leads to pretextual stops and searches of riders with the purpose of finding other reasons for arrest, contributing to the overcriminalization of already marginalized communities.⁵

And finally, the racial disparities in fare enforcement are alarming. A recent report by the Washington Lawyers’ Committee revealed that MTPD enforces fare evasion almost exclusively against black riders.⁶ This is consistent with reports from other jurisdictions that reveal people of color are stopped more often than their white counterparts on suspicion of fare evasion and are arrested and cited at much higher rates when they’ve been identified as evading fare.⁷ An

² See <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/>

³ A NY Inspector General Report in 2016 found no significant relationship between policing misdemeanor type offenses like fare evasion and more serious crimes. The NY District Attorney announced in fall of 2017 that it would stop prosecuting fare evasion cases. The report can be found here:

<https://www1.nyc.gov/assets/oignvdp/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf>

⁴ Source: Committee of the Judiciary and Public Safety Committee Report on Bill 22-408, pp 7-8.

⁵ Between January 2016 and February 2018, Metro Transit Police arrested more than 2,000 people following incidents that began with a fare evasion stop. See Washington Lawyers’ Committee Report, “UNFAIR: Disparities in Fare Evasion Enforcement by Metro Police” released 9/13/18, available at <https://www.washlaw.org/news/764-the-committee-releases-report-on-shocking-disparities-in-fare-evasion-enforcement-by-metro-police>

⁶ Id.

⁷ See <https://www.themarshallproject.org/2018/09/12/subway-policing-in-new-york-city-still-has-a-race-problem?ref=collections>

important obstacle to addressing this disparate enforcement directly is that MTPD is a regional policing body over which there is no independent District oversight.⁸

Metro transit provides a critical public service that many District residents rely on to move about their community and to access basic needs like grocery stores, jobs, schools, doctor's appointments, and other critical services. It's time that D.C. removes excessive criminal penalties for low-level offenses and focuses on ways to make public transit more, not less accessible to those who need it the most. In recent years, the District has made significant progress in advancing criminal justice reform with passage of comprehensive legislation like the NEAR Act, and this bill would be another significant stride forward.

A parking ticket doesn't result in potential jail time, and failure to pay Metro fare should not either.

We thank you in advance for acting to end criminal penalties for fare evasion and other low-level offenses on public transit by passing Bill 22-408, "The Fare Evasion Decriminalization Amendment Act of 2018."

Sincerely,

AARP Legal Counsel for the Elderly

ACLU-DC

Amara Legal Center

Americans 4 Transit

Black Lives Matter DC

Black Swan Academy

Black Youth Project 100 (BYP100)

Bread for the City

Coalition for Smarter Growth

Collective Action for Safe Spaces

Community Mediation DC

DC Fiscal Policy Institute

⁸ For example, The DC Office of Police Complaints serves as an independent oversight agency with jurisdiction over the Metropolitan Police Department (MPD) and the D.C. Housing Authority Office of Public Safety officers, investigating complaints by D.C. residents against officers for alleged misconduct and issuing important reports on the policies and practices of MPD. No similar agency exists for the Metro Transit Police Department.

DC for Democracy

D.C. Hunger Solutions

DC Jail & Prison Advocacy Project

DC Jobs With Justice

DC Statehood Green Party

Fair Budget Coalition

HIPS

Human Rights Defense Center

Jews United for Justice

Justice for Muslims Collective

Legal Aid Society of the District of Columbia

National Juvenile Justice Network

National Law Center on Homelessness & Poverty

The National Reentry Network for Returning Citizens

No Justice No Pride

ONE-DC

Open City Advocates

Project Retail

Rev. Graylan Scott Hagler, Senior Minister, Plymouth Congregational United Church of Christ

Southeast Ministry

StandUp For Kids

Stop Police Terror Project DC

Tzedek DC

Washington Council of Lawyers

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Washington Legal Clinic for the Homeless