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Statement of the Council for Court Excellence Before the Committee on Judiciary and Public Safety of the Council of the District of Columbia

Hearing on B25-0318 - Metro Safety Amendment Act of 2023

Thank you for the opportunity to submit written testimony regarding B25-0318, the *Metro Safety Amendment Act of 2023* on behalf of the Council for Court Excellence (CCE). CCE is a nonpartisan, nonprofit organization with the mission to enhance justice in the District of Columbia. For over 40 years, CCE has worked to improve the administration of justice in the courts and related agencies in D.C. through research and policy analysis, convening diverse stakeholders, and creating educational resources for the public. Please note that in accordance with our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of, or endorsement by, any judicial member of CCE.

At the outset, CCE recognizes that fare evasion is unlawful and that any citations for evasion should be enforceable under the law in some reasonable manner. Nevertheless, we have concerns about the lack of clarity about how this legislation would (or could) be implemented in practice, with possible unintended and inequitable consequences. We know – based on case law and the experience of practitioners in the field – that these types of “true name” stops, which carry with them additional charges and fines, can lead to escalated interactions and confusion about whether someone is or is not in custody. To that

end, we encourage the D.C. Council to share more information and data before enacting this legislation, and to work with WMATA to consider existing alternatives that do not involve increasing the use or scope of police stops for civil infractions before determining that this legislation is the best tool to achieve our collective goals of a safe transit system and reasonable payment of fares.

Unclear Enforcement Procedures and Potential Unintended Consequences

First, this bill requires the individual to state their true name and address and leaves significant discretion to MPD or Metro Police¹ to determine if the individual is telling the truth, likely resulting in the officer asking for them to show identification. This level of subjective discretion leaves room for biases and escalation to arrest. Although existing law clearly recognizes that D.C. residents are not required to carry identification when leaving the house, many pragmatic enforcement issues remain unclear. Per the [MPD's 2023 Police Academy training materials](#) on dealing with these circumstances, it makes clear that these “true name” citation interactions can easily lead to an arrest anytime the officer conducting the stop has a reasonable suspicion that information being provided by a person is fictitious or was refused. There is no guidance, at least in writing, to reflect what examples would be reasonable to arouse suspicion. This is a broad discretion.

What if a commuter forgets their wallet at home and the officer persists in disbelieving the information they provide? Unhoused people may not be able to provide an address; what happens to them? How long are the police allowed to detain a person while they determine whether the person is giving their true name and address? Do the police have the power to remove a person from a bus or Metro station, or take them to a secondary location prior to

¹ These are the two law enforcement agencies in D.C. most likely to be making stops or issuing citations under this provision. *See* DC Code §35-254(a)(3) (“Individuals authorized to issue notices of infractions for the violations penalized under this subsection include any police officer with authority to make arrests within the District, including members of the Metro Transit Police Department.”)

effectuating an arrest? The answers to these questions are important, and depending on the answers, this legislation can significantly impact a person's civil liberties and contradict existing policies and practices regarding showing identification to the police.

Second, this bill and other existing laws may mean that fare evasion stops will lead to individuals picking up other additional charges, compounding the impacts on the person being cited. For example, will people who fail to comply with this legislation's requirements also be subject to a charge of "Failure to Make Identity Known" under D.C. Code § 50-2303, seeing as they are likely to be on-foot or interpreted as a pedestrian? The Council should be clear to the public, in discussing this legislation, as to whether the failure to provide your name per this legislation is a misdemeanor charge that could show up on your criminal record for life.

Third, D.C. Courts, and many other courts, have grappled with when stops like these – including for citation issuance or "true name" inquiries – become detention and if they are custodial stops not. In other words, would a reasonable person think they are free to leave during these interactions, or under arrest? Will officers be allowed to handcuff people during the detentions while seeking identity information? The Council should be clear that this is a complex area of Fifth Amendment jurisprudence and may lead to interactions where evidence that is obtained during these stops could be excluded if a person is not read their *Miranda* rights. And, also importantly, we know that detention, even for short periods of time, can increase the likelihood of a police interaction escalating harmfully or dangerously, [inflict psychological trauma](#), and takes away time from the officer to help someone else in crisis or who has been a victim of a crime.

Which D.C. Residents Will Be Most Impacted

As an organization committed to highlighting where inequities exist within our criminal legal system, CCE wants to remind Councilmembers and the public that there is a risk of exacerbating racial disparities within D.C.'s criminal legal system with policies like these,

especially for Black residents. Data we have analyzed in recent years tells us that Black residents make up only 46% of the District's population, but 67% of all non-arrest police stops, and over 85% of subjects reported use of force incidents [according to a 2021 report by MPD](#). Even more specifically within the Washington Metro Area Transit Authority (WMATA), a [2018 analysis](#) found that over 90% of tickets for fare evasion on the Metro were given to Black people.

Additionally, and importantly, the threat of arrest and an increased fine for fare evasion disproportionately harms our neighbors experiencing poverty. [13.3%](#) of the D.C. population is below the poverty line and as of 2021, [27.7%](#) of Black people in D.C. live below the poverty line. While we do not condone fare evasion, we also recognize that this legislation has high stakes consequences for low-income individuals who can't pay Metro's underlying fares, let alone a misdemeanor and a fine on top of it, and likely do not have access to a car or other reliable means of transportation as an alternative to avoid risk of these citations.

Proposed Steps Before Adoption

CCE proposes several steps that Council and WMATA could and should take before considering whether this legislation is the best-tailored response to the problems of fare evasion and/or crime within the Metro system.

1. Clarify the problems to be solved and the scopes of those problems for the public.

Metro estimates that it loses just [under 2%](#) of its annual operating budget to fare evasion. It makes sense that Metro wants to minimize the frequency of this violation and collect fares for rides provided, but it is unclear if the primary purpose of this bill is deterrence of fare evasion or to identify the people committing other types of crimes in Metro. Either way, understanding the actual goals for this bill and why policymakers think this will deter fare evasion, stop other crimes, encourage more fare evaders to start paying, prevent fare evaders from entering the Metro system at all, or something else. Once that purpose is clear, the community with relevant expertise – as well as data – can better help the Council to determine if this proposed policy

solution will help achieve that goal. But it is important that Council and WMATA not inadvertently and overbroadly conflate the group of people who fare evade with the people committing crimes in the Metro system.

Additionally, the scope of the problem as it relates to individuals providing inaccurate names or addresses is unclear. How many people are transit police stopping for fare evasion annually? How many are they not stopping? Of those people who are stopped for fare evading, how many provide the police with false names and addresses? It is important that we understand the scope of the problem, and if the number is significant enough to necessitate the new penalties and stops proposed in this bill.

2. Increase the use other fare evasion prevention measures

WMATA is already taking steps to reduce fare evasion by installing new fare gates and creating accommodations for low-income riders. The new fare gates have already been shown to [reduce fare evasion by 70%](#). The District and WMATA should work in partnership to ensure that these new fare gates are installed in Metro stations across the District.

If we believe that economic circumstance is precluding people from paying the full fare, leading them to jump turnstiles and gates, then the new MetroLift program (launched end of June) and Kids Ride Free lanes (launched end of August) should also contribute to a decrease in fare evasion. D.C. Council and WMATA should work in collaboration to promote the effective administration of the MetroLift program so everyone who needs this accommodation has signed up and is using it. CCE recommends D.C. Council wait until the new fare gates, Kids Ride Free lanes, and income-qualified programs have been in use for at least one year and relevant data adequately analyzed before considering detention as a solution. Waiting one year will allow the District to collect data on its effectiveness in reducing fare evasion before passing policies that increase the use of detention and authority of the police.

3. Increase the use of other safety measures

To increase security, WMATA should provide more meaningful, long-term solutions to disruptions or violence. In Philadelphia, the [Southeastern Pennsylvania Transportation Authority](#) (SEPTA) has focused on bettering its relationship with people experiencing homelessness by partnering with Project HOME and city officials to provide resources and health services. The Bay Area Rapid Transit (BART) in San Francisco has undergone a series of transformations to make their transportation cleaner and safer to protect their community and attract more riders. The BART hired non-armed, community-based personnel, like elevator attendants and ambassadors, and launched the Not One More Girl campaign in 2021. Through this initiative, they are seeking to reduce sexual harassment instances by shortening trains so there are fewer empty cars at night, encouraging girls, youth, and anyone else who feels unsafe to ride in the first car, and placing hundreds of posters about steps to take if riders are harassed or witnessed harassment. The number of riders experiencing sexual harassment on the BART is reported to have [decreased by 12%](#) since Phase 1 of the Not One More Girl campaign. If reducing instances of violence on the Metro are a concern this bill is hoping to address, WMATA should consider investing directly in other safety measures that will improve passenger security.

4. Limit provision for stopping and detaining people

No one under age 21 should be stopped since K-12 students are covered by the Kids Ride Free program. These interactions should only last as long as necessary to identify the stopped individual. The recent [Street Vending law overhaul](#) includes a similar provision about requiring true identification, but the amendment redefines “detain” to mean that officers will verbally ask individuals to remain at their current location. This is intended to reduce the use of force when trying to identify unlicensed vendors when dealing civil infractions. B25-0318 would benefit from a similar clause providing a narrow definition of the stop and its scope, with clear guidelines for law enforcement so they can better instruct officers on procedure for these situations.

Conclusion

While we understand the importance of enforcing citations, and the financial burdens WMATA has faced due to the pandemic, CCE urges D.C. Council to pursue other non-detention alternatives to enforcing citations, decreasing fare evasion, and improving safety on the Metro. Our testimony provides several non-detention alternatives, including continued investment in reduced-fare programs and taller fare gates. These measures should be done in tandem with community-oriented solutions to reducing crime on the Metro, such as what SEPTA and BART are doing. CCE shares the Committee's goal of decreasing fare evasion, increasing safety, and increasing socioeconomic equity and access and believes the proposed solutions outlined in our testimony provide government leaders with the roadmap to do just that. Thank you for the opportunity to provide this testimony for the record. We are always available to answer questions that any members of this Committee or the Council may have.