

July 28, 2021

Members of the Board of Directors
Washington Metro Area Transit Authority (WMATA)
600 5th Street NW Washington, DC 20001

VIA EMAIL

Re: Vote "NO" on Suspension Rule Proposal For Rider Guidelines

Dear Board Members:

The undersigned organizations urge you to vote "NO" on the proposed rule change to Metro's rider guidelines that would allow WMATA to suspend access to Metrorail and Metrobus to riders that "engage" in certain criminal offenses on the system under the laws of D.C., Maryland, or Virginia.¹

While the stated goal of such a policy is to make Metro safer for all riders, what the policy amounts to is a blanket expansion of police power with no oversight. WMATA has provided little to no evidence that this suspension policy will have any deterrent effect, and MTPD can offer no information on how this policy would be meaningfully enforced without violating the civil rights and civil liberties of public transit users.

First, there are significant due process concerns with taking away someone's access to a critical resource like public transit when they've merely been *accused* of having committed a crime. Contrary to WMATA's public statements,² the proposed rule would enable WMATA to suspend riders not only after being arrested for weapons- or sex-related offenses on the Metro property (which would be troubling enough, because there would be no adjudication about whether they had actually committed the offense); the rule would also allow suspensions of anyone who "engages" in such offenses—regardless of whether Metro Transit officers have probable cause to make an arrest. Thus, the rule vests Metro Transit officers with vast authority to bar riders based on hunches and biases.

Furthermore, the proposed appeals process is wholly inadequate. Metro Transit officers have no obligation to present riders with the evidence against them so riders will be unable to meaningfully contest the basis for the suspension. Riders have to appeal the suspension in writing to someone appointed by WMATA's General Counsel, not a neutral decision-maker. Moreover, suspensions remain effective while appeals are pending. Under the proposed rule, WMATA has 15 days to process appeals, even though many suspensions will last only 14 days. Thus, even riders who successfully challenge a suspension will still lose their ability to use Metro for two weeks at a minimum—long enough to be fired from a job that the rider could no longer commute to or miss court dates and suffer the consequences. Under the proposed rule, if a rider boards a train or bus pending the outcome of their appeal, they can be arrested for criminal trespass.

¹ <https://www.wmata.com/about/board/meetings/board-pdfs/upload/3A-Tariff-Update.pdf>

² <https://www.wmata.com/about/news/Suspensions-for-offenders-of-sex-weapons-related-crimes.cfm>

Second, the potential collateral consequences of this policy are extremely high. Many riders rely on Metro to move about their community and to access basic needs and critical services. Now, under this proposed policy, officers' mistakes, biases, and prejudices can deprive people access to what may be their sole way of getting to work, traveling to care for a sick loved one, attending a court date, or buying groceries. For those who are re-entering society, enforcement of such a policy can trigger revocation of parole. For immigrants, a criminal trespassing charge if they violate a wrongful suspension can trigger deportation proceedings. For young people, officer abuse of this policy can serve as a gateway to the criminal legal system.

Third, enforcement of the proposed rule poses the greatest risk of harm to communities that are already over-policed: Black and brown communities, low- and no-income residents, and young people who rely on public transit. How will Metro Transit officers determine who has been suspended and who hasn't? Short of requiring everyone to show an ID upon entering Metro, which would pose its own civil liberties concerns, officers will have vast discretion to stop people on the pretext of assessing whether they've been barred from riding Metro. Data shows that this discretion will be used in ways that disproportionately harm Black and brown people. These communities are most likely to be targeted by MTPD for stops and frisks, arbitrary citations suspending their access to public transit, and arrests for criminal trespassing if they fail to comply.

As WMATA's governing body, you have a responsibility to ensure that Metro policies and programs are free from discrimination. In your oversight role, you are well-aware of MTPD's troubling history of excessive force tactics (like tackling, pepper-spraying, and tasing) and over-policing of Black and brown riders for minor offenses such as fare evasion or eating and drinking. And you're also aware of the need for meaningful oversight of MTPD, launching the WMATA Metro Transit Police Investigations Review Panel (IRP) in June of 2020.³ Your goal as a governing body should be to reduce, not increase, interactions between MTPD and Metro transit riders. Not only is enforcement of this policy likely to perpetuate existing racial inequities and discriminatory police practices, but it will also lead to increased confrontations between Metro Transit Police and Metro riders that too often escalate and result in excessive use of force by police, making transit less safe for everyone.

And finally, the proposed rule is not evidence-based. There are many questions about whether the rule will serve as a deterrent or have any public safety value at all. WMATA shouldn't adopt this policy under any circumstances, but certainly not when the proposed justification is spurious. Instead, WMATA could take immediate steps to adopt non-police approaches to safety, several of which have already been successfully implemented by other transit agencies, like hiring non-police attendants with experience in de-escalation tactics and crisis intervention to prevent unwanted behavior⁴ and launching multilingual public education and bystander intervention campaigns.⁵

³ <https://www.wmata.com/about/transit-police/investigation-review-panel.cfm>

⁴ See <https://transitcenter.org/wp-content/uploads/2021/07/SafetyForAll.pdf> .

⁵ See <https://www.bart.gov/guide/safety/gbv>

In June of 2020, in the midst of racial justice protests for police accountability, you issued a statement decrying the racism that had led to the death of George Floyd and countless others at the hands of law enforcement. That statement ended with a promise: “We commit to identifying and addressing inequitable policies and practices that do not advance our mission. We collectively condemn systemic racism within and throughout our transit system.”⁶

To stay true to this commitment and for all the reasons enumerated above, we urge you to vote “NO” on the proposed rule change.

Sincerely,

1. ACLU of the District of Columbia
2. ACLU of Maryland
3. ACLU of Virginia
4. Black Lives Matter DC
5. Black Swan Academy (BSA)
6. Bread for the City
7. Bridge Center at Adam’s House
8. Broken Chains Inc
9. Collective Action for Safe Spaces
10. Council for Court Excellence
11. Criminal Justice Clinic, American University, Washington College of Law
12. The DC Center for the LGBT Community
13. DC Fiscal Policy Institute
14. DC IWOC
15. DC Justice Lab
16. Drug Policy Alliance
17. Elenore Wade, GW Law Prisoner & Reentry Clinic
18. Empower DC
19. Extinction Rebellion DC
20. Georgetown Juvenile Justice Initiative
21. Girls Rock! DC
22. Harriet’s Wildest Dreams
23. HIPS
24. Ingrid
25. International Human Rights Law Clinic, American University Washington College of Law
26. Ivàn Entertainment!
27. Justice For Muslims Collective
28. Law 4 Black Lives DC
29. Latino Economic Development Center
30. Life After Release
31. Metro DC Democratic Socialists of America
32. Montgomery County Civil Rights Coalition
33. National Lawyers Guild, DC Chapter
34. Open City Advocates
35. Public Defender Service for the District of Columbia
36. Reframe Health and Justice

⁶ <https://www.wmata.com/about/news/board-statement.cfm>

37. Rev. Anthony J. Motley
38. Sanctuary DMV
39. Serve Your City/Ward 6 Mutual Aid
40. Stop Police Terror Project DC
41. Sunrise DC
42. Sunrise Movement DC
43. Washington Area Bicyclist Association
44. Washington Lawyers' Committee for Civil Rights & Urban Affairs

