



One wrong step

Public defenders back a move in Salem to end what they say are exorbitant criminal charges on excluded TriMet riders

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This past July, at the Tigard Transit Center, Chris Tejero was arrested and slapped with two misdemeanor charges after he boarded TriMet's WES Commuter Rail line without paying for a ticket.

He was arrested despite the fact that the conductor gave him permission to board because the ticket kiosk wasn't working properly.

During trial, a jury listened to testimony from the WES line's conductor. Tejero had also provided his attorney with bank statements showing a history of consistent payments.

The jury acquitted Tejero, but not before taxpayers paid for his arrest, jail processing and time spent by court staff who were present for multiple courtroom appearances. Plus, 12 registered voters were summoned to the courthouse to hear Tejero's case. It took the jury 20 minutes to find him not guilty.

Tejero's story exemplifies what defense attorneys claim are common petty cases that contribute to a significant waste of diminishing court resources. They also say that in some cases, serious criminal charges are pressed in scenarios where a simple ticket or warning would be more appropriate.

Transit troubles

TriMet has a history of filling Multnomah County courts. After it cracked down on fare compliance in 2011, floods of people went to the Justice Center to get their fines reduced or to fight tickets on what has become known as "TriMet Tuesdays."

For boarding TriMet's WES line, Tejero was charged with "interfering with public transit," or IPT — a Class A misdemeanor, which carries the same weight as a drunken driving or misdemeanor assault charge. The definition of IPT allows transit officers to issue this serious criminal charge in circumstances that — were they to take place anywhere other than on transit property — usually would result in a ticket or Class C misdemeanor.

A Class A misdemeanor is punishable by up to one year in prison. A Class C misdemeanor is punishable by up to 30 days in jail.

Attorney Chris O'Connor, with Metropolitan Public Defender Services, explains that interfering with public transit isn't what it sounds like.

"The things most people think of as 'interfering' are very different than what is getting charged," he says.

"The overwhelming majority of IPT cases are for re-entry onto a bus or MAX train or platform after previously being excluded. It is

very rare to see someone charged with this crime for actually interfering with the vehicle or stopping the vehicle."

Jane Fox, a public defender who handles cases in Multnomah County's Community Court, says IPT charges make up 25 percent of her caseload, and it's rare that a client actually interfered with a transit vehicle. Because most IPTs only go to Community Court in Multnomah County, Fox handled about 420 IPT cases last year.

Fox says 99 percent of her clients charged with IPT are accused of entering TriMet property while under an "exclusion." She says in many cases, the rider has no idea they were excluded from TriMet property at the time of arrest, so it comes as a surprise when they find themselves facing significant criminal charges.

Most people receive temporary exclusions from TriMet property for not paying fares, but in some cases exclusions are issued for behavioral reasons.

"The way TriMet counts the exclusion is not how normal people would count. The exclusion says it's 30 days, but it doesn't start until 11 days after you get (cited)," Fox says. "So (the offenders) count 30 days, but there's still another week, so they get back on the bus and get another charge."

TriMet's Notice of Exclusion form states that the exclusion begins "on the eleventh

business day following the date of issuance of this exclusion." While there are two places where the officer issuing the citation can write the date of the incident, nowhere on the form does it indicate the actual start and end date of the exclusion.

Tejero was excluded as the result of his July arrest. He says that during that period, on days when he wasn't able to find a ride, he had to walk for two hours to get to work.

Metropolitan Public Defender Erica Rothman has defended clients in both Multnomah and Washington counties. She was instrumental in prompting a bill in this legislative session that would change IPT's definition. The change would mean that people who did no more than set foot on TriMet property when they weren't supposed to no longer would face a serious criminal charge.

She says she has up to four or five clients per week facing charges from transit police, and it's usually an IPT charge.

Under a Class A misdemeanor, people are more likely to be jailed, at least briefly, when they are being processed. But the charge can bring an actual jail sentence too, Rothman says.

"Within both counties that I've practiced in, I've seen people sentenced to jail time on these matters, upwards of 30 days in some cases," says Rothman. "And I don't want to say these are exceptional cases, because I've seen so many of them," she says.

According to data compiled by the Oregon Criminal Justice Commission, for those who received jail sentences resulting from IPTs from 2010 to April 2014, the average sentence in Washington County was 28 days. In Multnomah County, the average sentence was 15 days at a cost of \$2,520 for each inmate. During the same time period, Multnomah County dismissed 31 percent of issued IPT cases. (Washington County dismissed 9 percent and Clackamas dismissed nearly 10 percent.)

Many of the people Rothman says she's seen facing this charge are homeless or mentally ill. She says it's often people who ride the MAX to stay warm, or to get to social services spread out across the tri-county area, but who lack money for the fare.

Sara Mulroy, who also works as a public defender in Multnomah County, says she had a client who was homeless and had been racking up IPT charges for a long time for taking the MAX or sitting in bus shelters while he was excluded. "Almost always, he was stopped by officers that knew him," she says.

Her client was able to finally get housing and a bus pass, she says. "However, he still was picking up these IPTs when he was riding on the bus," says Mulroy. "And this was once he had a bus pass! He had valid fare, he was riding on the bus to services he needed, and he was still stopped and charged with them as crimes because he was excluded."

Another side effect, Rothman says, is that IPT plays a significant role in what she calls the "trafficking of petty warrants." Sometimes when people get charged with an IPT in one county, they already have an IPT or other misdemeanor charge pending in another county. They get arrested and booked into jail, which causes them to miss their court date for the first IPT. So the judge overseeing the arraignment they missed places a hold on them so they can be