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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Public Testimony in Support of SB 515 Crimes - Indecent Exposure - Elements

**Before the Senate Judicial Proceedings Committee
February 19, 2020**

Mr. Chairman, members of the committee, thank you for allowing me to testify today. I'm Kevin Gaddis, Deputy Chief of the Metro Transit Police Department. I thank Senator Waldstreicher for sponsoring SB 515 and urge that this committee provide a favorable report.

The Metro Transit Police Department (MTPD) is a tri-jurisdictional police force created pursuant to the Washington Metropolitan Area Transit Authority (WMATA) Compact. The MTPD has full police powers for all facilities owned, controlled or operated by WMATA in the State of Maryland, the Commonwealth of Virginia and the District of Columbia.

The MTPD enforces the laws of the jurisdictions wherever its officers serve, and occasionally, they find a situation where a difference in the criminal laws of the three jurisdictions changes MTPD's ability to arrest an individual for the same conduct that is criminal in the other two jurisdictions -- conduct which most of us might assume violates the law now, but does not.

The legislation before you today addresses such a situation and aims to make Maryland criminal law similar to the laws in the District of Columbia and Virginia regarding indecent exposure. Specifically, this bill will hold criminally accountable any person who masturbates in public, whether they expose their genitalia or not, by making their conduct, fall within the definition of the crime of indecent exposure.

For your reference, I have included with my testimony an article from the Washington Post which provides additional background and details an account of a rider who was traumatized by this type of situation while riding the Red Line between Silver Spring and Glenmont. While such an occurrence is, fortunately, uncommon, MTPD wants its passengers to feel assured that such lewd acts by a perpetrator will constitute a crime for which MTPD can act.

Therefore, WMATA respectfully supports SB 515 and seeks a favorable report from this Committee.

Metro police inform another woman that men masturbating on the Metro is legal

By [Kery Murakami](#)

July 29, 2019

A 20-year-old woman got on a Red Line train at the Silver Spring station one recent Sunday morning thinking she was heading toward home in Virginia.

It might have been because she was still sleepy. Or that she was distracted by the man staring at her. But for whatever reason, she got on a train going the wrong way. It was a bad time to get confused, she said later, because when she got off at Glenmont a short while later, she was shaken. Between the three stops, a man on her train masturbated while staring at her.

She knew that women can get harassed on the Metro. “I didn’t know *this* was possible,” said the woman, whose name is being withheld to protect her privacy and safety.

But then came another surprise. When she reported the incident to Metro police, she was told it wasn’t a crime.

It was the second time in recent months that a woman has told Express she saw a man masturbate on the train only to be informed that, in some circumstances, it’s perfectly legal.

The man, whom she described as African American with a gray buzz cut and a belt buckle that made a clicking sound when he refastened it, had already been on the Silver Spring platform when the woman arrived around 10:30 a.m., she said.

He stared at her in a way that made her uncomfortable.

When the train came, the woman, who is studying architecture at a local college, hurried to a different door than the one that opened in front of her. She wanted to see if the man would follow. He did.

She sat next to a window that reflects the car’s interior when the car passes through a tunnel. He sat diagonally a few rows after her, facing forward toward her.

She debated with herself. He was just looking. Wouldn’t it be rude to change seats? Would that set him off?

She focused on the music in her earbuds but was aware enough of the man to notice that he’d draped a jacket over his lap.

“I saw his hand clearly doing fast-paced gestures with his pants lowered,” she said.

Finally, the train got to Glenmont, the last stop on the line. But the man didn’t get off, and she says she thought to herself that he wasn’t going anywhere in particular. He’d just been following her.

She got off, deciding not to stay on and head the other way. She wasn’t interested in an encore. On a bench on the platform, she waited a half hour for the next train. “I was definitely in shock,” she said.

On the ride back she filed a report online with Metro. Transit police called quickly. But the officer seemed to lose interest, she said, when she explained that the man hadn’t exposed himself. He had stuck his hand into his pants. It didn’t seem like a crime then, the officer said.

That Tuesday, another officer called her and said the same thing, but also said she’d track the man on surveillance videos to see if he did the same thing in a different state.

A Metro spokesperson wouldn’t explain why police considered what the woman saw to be legal. As Express [reported last year](#), Maryland is the only one of the areas Metro trains run through that requires genitals to be visible for something to be considered indecent exposure. D.C. and Virginia laws prohibiting public masturbation or

simulated masturbation do not require visible genitals. However, Metro spokesman Ian Jannetta said: “We are unable to comment on legal interpretation. Metro Transit Police enforce the laws of each jurisdiction as they are written.”

But it might have been possible to pursue the man for other crimes. “Even if the alleged conduct falls outside the legal requirements of indecent exposure, it could fall within another criminal offense, such as disorderly conduct,” said Ramon Korionoff, spokesman for the Montgomery County state’s attorney’s office. Indeed, Maryland’s broad disorderly conduct law prohibits acting in a “manner that disturbs the public peace” and classifies such as a misdemeanor. Indecent exposure is also a misdemeanor.

But Randolph Rice, a Baltimore defense attorney and a former Baltimore County assistant state’s attorney, said it would be an unusual use of the law and hard to prove if the person wasn’t exposing himself. The man could argue that he wasn’t doing what people thought, Rice said. “Also, the people affected would have to show it caused a public disturbance, so the victim would have to be looking at it and keep looking at it,” he said.

The case is similar to another [Express reported in December](#), after Stephanie Cumings saw a man masturbate in his pants on the Orange Line near Falls Church. But a Metro police officer had emailed her then to say: “What you described is indeed a criminal act in D.C. Not in Virginia and it can be murky in Maryland.”

Meanwhile, the woman on the Red Line feels less safe now, knowing that laws can vary as she rides from one end of the line to another.

“Every woman or person should feel comfortable going to places,” she said. “It shouldn’t be that you’re vulnerable if you’re in one state and less vulnerable in another state,” she said.