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TRIMET ALTERS RULE ON UNRULY

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Summary: Law-enforcement officers say they feel handcuffed after transit officials, looking to avoid legal challenges, revise standards on excluding riders.

Portland's transit police say TriMet's overhaul of its 15-year-old system for excluding unruly riders has hamstrung their ability to keep potential troublemakers off trains and buses.

In the past year, the proposed change fueled a flurry of sharply worded e-mail exchanges and memos between TriMet's legal staff and the Portland Police Bureau's Transit Division. Police argue that raising the bar to exclude only repeat offenders and the most-obvious law-breakers makes it more difficult to protect passengers from drug dealers, gangbangers, drunks and malcontents who harass, intimidate and assault other commuters.

TriMet officials say they had no choice. They say TriMet's civil exclusion authority wasn't being consistently applied, didn't protect accused people's legal rights and was ripe for legal challenge.

TriMet officials also point out that crime has not increased on the system since the agency made its exclusion policy more restrictive on March 26. Since then the number of people banned from trains and buses on any given day has dropped from about 1,000 to a few hundred, according to the transit agency.

Police, however, argue that crime statistics don't tell the entire story. They say they are dealing with more problems at the usual trouble spots, including MAX platforms at Southeast 82nd Avenue, Holladay Park and Hollywood.

Some officers are so concerned they won't let their families ride light rail alone.

"Last year, we were making a difference," said Sgt. Todd Davis. "Right now we are just treading water."

Davis says that riders shouldn't have to put up with people whose behavior threatens others' sense of security. But on the flip side are civil rights lawyers who say police can't deny someone access to public transportation without evidence he has committed a crime.

TriMet officials say they revised the agency's exclusion policy to bring it into compliance with recent legal decisions that found parts of other Portland exclusion zones, for parks and drug-free areas, unconstitutional. Helen Koliner, TriMet's assistant general counsel, said the new code limits police discretion to issue exclusion orders but adds 20 new code violations and a beefed-up appeals system. She says police have every ability to deal with crime as effectively as before.

Even Multnomah County Sheriff Bernie Giusto agreed with the change as a member of TriMet's board. He said it's too difficult to defend exclusions in court that are based on a

police officer's "sixth sense." He said TriMet ran the risk of having the courts strike down any ability to exclude people.

Police officers "may know someone is up to no good, and I know that they know that, but that's not good enough," Giusto said. "Because if we ever get challenged on the exclusion and we found no dope on them, at that point we are out on a Ouija board trying to explain in court how we came to the conclusion they needed to be excluded."

Mike Bell, commander of the transit police, said that overall the system is "very safe" and he respects TriMet's authority to set its own policy. But in internal memos and e-mails he has argued strenuously against making changes to the exclusion policy that he claimed would turn trains and buses into "refuges from police."

And Bell says his 35-member unit is already stretched. Although the transit division gets significant help from local police agencies on emergency calls, its uniform and undercover officers are the primary force dealing with chronic nuisance activity along 44 miles of light rail and on 93 bus lines and at 18 major transit centers.

TriMet police point to a recent call they say illustrates the kind of situation the old exclusion policy could have resolved. A frightened woman called 9-1-1 after a man followed her from train to train, leering and trying to engage her in conversation. In the past, police say, they probably could have excluded the man for 30, 60 or 90 days if they'd caught up with him, and he would risk being arrested for criminal trespass if he returned. Such arrests -- which also have dropped -- often turn up evidence of more serious crime, they say.

But today they probably wouldn't have excluded the man because his behavior -- while disconcerting -- didn't appear to cross the line into criminal conduct.

"Now all we can do is talk to him," said Sgt. Mark Georgioff. And that's why police are frustrated.

As Bell puts it, it's the difference between having to make a full-blown criminal case against someone, which can take hours of limited police time, "and simply getting rid of them."

But not everyone thinks simply getting rid of annoying people is fair -- or legal. In April, the Oregon Law Center, which advocates for the homeless, sued TriMet in federal court over its old exclusion policy. The Oregon Law Center argued that TriMet's policy did not provide sufficient opportunity for riders to appeal their exclusions or clearly spell out the exclusion zone and gave police officers too much discretion to boot suspected individuals without evidence they had committed crimes. The case settled, after TriMet had already made changes, with TriMet clarifying its exclusion areas and paying the two plaintiffs a total of \$3,000.

"My clients are just as interested in not having people pulling knives and dealing drugs," said lawyer Marc Jolin. "But too often they get lumped in with them and end up suffering the consequences."

All exclusions face review

In the blur of a busy transit system, which carries roughly 300,000 commuters every day, officers often have to make quick decisions about how and when to tell someone they are

no longer welcome. Frequently those unwanted people are chronic low-level offenders who are free to hang out on mass transit because there isn't a place for them at the jail.

Today however, police say the exclusion system is more unwieldy for them to use. There's a new matrix they must consult -- a two-tiered chart developed by TriMet that spells out more specifically what infractions and crimes can result in exclusion and for how long.

Every exclusion order must now go to a city hearings officer for review, even those that haven't been challenged. And officers say they can no longer exclude people for "misuse of a transit station," a code violation they relied on frequently to get rid of loiterers until that language was revised in the code.

"We used to be able to ask people who were just hanging out and not getting on trains what they were doing, and if they had no purpose for being there, we could exclude them," Bell said. Bell favored making the appeals process fairer, he said, but thinks TriMet's revamp went too far.

In TriMet's view the policy is as straightforward as it can be while still meeting the requirements of law. For example, violent offenders can be excluded for a first offense, subject to review by the hearings officer. Fare violators can only be excluded after the third violation, and then for only 30 days.

But officers say that people are going to get away with more because officers won't realistically have time to document each violation with a written warning or citation. To them, it boils down to losing the discretion to prevent nuisance behavior from escalating into actual crime.

Beaverton police spokesman Officer Paul Wandell says his agency is also trying to get used to the changes.

"I wouldn't say safety is diminished," he said. "But in terms of controlling chronic offenders, I think the question yet to be answered is whether the matrix will adequately handle that."

Shortly after the changes went into effect, John Copic, a deputy district attorney for Multnomah County assigned to prosecute transit crimes, advised TriMet in a strongly worded memo that, in his view, it was making its system less safe.

"When your customers call 9-1-1 and request police response to disruptive persons in your kiosks and on your platforms, the police will issue a warning and leave," he wrote. "The passengers and disruptive persons will be left and the police will be gone. Prostitutes could loiter in your shelters and on your platforms but could not be excluded. Drug dealers and drug addicts could loiter on your system and nothing can be done to exclude them. Gang members could occupy these areas with no intent of using your system, but simply to hang out and wait for the next adventure or worse, the next victim."

In the meantime, TriMet has urged police to get with the new program, but selling it to the ranks has been difficult after a hearings officer threw out most of the exclusions the first few months for technical errors.

Things may be improving, however. Two weeks ago, all 15 exclusions were upheld.