



**Testimony of Kimberly McCullough, Policy Director
In Support of HB 3335, HB 3336, and HB 3337
House Committee on Judiciary
March 25, 2019**

Chair Williamson and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 3335, HB 3336, and HB 3337, which seek to decriminalize fare enforcement by:

- a) Fully removing fare evasion from the crime of Interfering with Public Transit;
- b) Ensuring that people who provide a preferred name, which is used regularly by the person, are not criminalized for providing a false name; and
- c) Prohibiting law enforcement from engaging in fare inspections, leaving them to focus on public safety issues.

This legislature and TriMet (our largest mass transit district) have taken positive steps to address our long-standing concerns about transit fare enforcement policies and tactics. That is why the ACLU of Oregon supported efforts in 2017 to reform our laws related to fare enforcement in mass transit districts, which resulted in the passage of HB 2777 and SB 357. One of the positive results of the passage of these laws was the creation of an administrative process to help people with transit citations avoid entanglement with the justice system. We appreciate TriMet's work on implementing an administrative system, and the thoughtful stakeholder process that informed their work. We are also grateful that TriMet increased access to public transit passes for low-income individuals, seniors, and people with disabilities.

It is clear, however, that further reform is needed. This is particularly apparent in light of incidents that have occurred since 2017, including a traumatic recent experience of a former ACLU client. The three bills before you are intended to address the issues our client faced and ongoing problems in the system that continue to criminalize transit enforcement.

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

HB 3335 will help to further decriminalize transit enforcement by fully removing fare evasion from the crime of Interfering with Public Transit. While we appreciated this legislature’s passage of SB 357 in 2017, which partially removed fare evasion from the crime of Interference with Public Transit, we would appreciate the legislature’s reconsideration of its decision to leave a “third-strike” in this criminal law.

Oregonians do not face criminal penalties when they fail to fill a parking meter, even when they do so repeatedly. Yet analogous behavior in the public transit context does can lead to criminal penalties. This is an inequity in our law, where people who can afford a vehicle face lesser penalties for analogous behavior to those Oregonians—often with lower incomes—who do not have access to a vehicle.

Passing this bill would not hinder law enforcement’s ability to address non-fare-related problematic behavior. While we understand that there may be instances where repeated failure to pay transit fare may be accompanied by other problematic behavior that transit agencies, law enforcement, or district attorneys would like to address through criminal penalties, we believe there are adequate alternative charges available to them that exist in current law to address that accompanying behavior. For example, ORS 164.245 (Criminal Trespass) imposes a Class C misdemeanor for remaining unlawfully on a vehicle or premises, ORS 164.245 applies to disorderly conduct, ORS 166.065 applies to harassment, and ORS 166.116 (IPT) will still be available to address interfering with movement to or access to transit, disorderly contact, and offensive contact with transit employees.

HB 3336 recognizes that a person should not be criminalized for providing their common name, recognizing the ways that diverse communities in Oregon use preferred names in good faith. It is common, especially for commuters from different cultural backgrounds and transgender individuals, to identify themselves with a preferred name that may not match their legal name on identification cards. When such a name is given to law enforcement officers without any malicious intent or intent to deceive, it should not lead to criminal consequences. HB 3336 would simply remove the criminalization of providing in good faith a commonly used and preferred name to a peace officer.

HB 3337 will keep our law enforcement officers focused on public safety and avoid unnecessary contact with law enforcement with people in our communities. If we are going to have a system with fare inspections, we find it problematic for peace officers to inspect fares and issue citations for fare evasion. For many people in our communities, contact with law enforcement that does not occur on a voluntary basis can be intimidating, triggering anxiety and fear—particularly for the poor, the houseless, individuals with

mental health issues, survivors and people who have experience trauma, and communities of color. Law enforcement conducting stops without individualized reasonable suspicion also raises constitutional concerns and diverts law enforcement's attention and resources away from public safety issues.

For these reasons, we believe HB 3335, HB 3336, and HB 3337 are an important of much-needed next step of reform of transit fare and enforcement policies. Please feel free to contact us if you have any questions, comments, or concerns.