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## **SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 819                    **Hearing Date:** June 13, 2023

**Author:** Bryan

**Version:** February 13, 2023

**Urgency:** No

**Fiscal:** Yes

**Consultant:** MK

**Subject:** *Crimes: public transportation: fare evasion*

### **HISTORY**

**Source:** Streets for All

Prior Legislation: AB 1337 (Lee), Chapter 534, Statutes of 2021

SB 882 (Hertzberg) Chapter 167, Stats. 2016

AB 869 (Cooper) 20015, died Senate Inactive

Support: California Public Defenders Association; Culver City Democratic Club; National Association of Social Workers, California Chapter

Opposition: Foothill Transit; Debra Allen, Board of Director, San Francisco Bay Area Rapid Transit District (BART)

Assembly Floor Vote: 62 - 12

### **PURPOSE**

***The purpose of this bill is to provide that a third or subsequent fare evasion violation, as specified, is no longer a misdemeanor punishable by imprisonment in county jail for a period of not more than 90 days, and shall be a fine of not more than \$400.***

*Existing law* provides that the following acts are, upon a first or second violation, an infraction punishable by a fine not to exceed \$250 and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days:

- a) Evasion of the payment of a fare of the system, including entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining a fare or entering a transit vehicle without valid fare;
- b) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare; and,
- c) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, as specified. (Penal Code § 640 (a)(1) & (c)(1)-(3).)

*Existing law* provides that a third or subsequent violation of the above acts is a misdemeanor punishable by a fine of not more than \$400, or by imprisonment in a county jail for a period of not more than 90 days, or both that fine and imprisonment. (Penal Code § 640 (a)(1).)

*Existing law* provides that the following acts are infractions punishable by a fine not to exceed \$250 and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days:

- a) Eating or drinking in or on a system facility or vehicle in areas where those activities are prohibited by that system;
- b) Playing unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise;
- c) Smoking in or on a system facility or vehicle in areas where those activities are prohibited by that system;
- d) Expectorating upon a system facility or vehicle;
- e) Skateboarding, roller skating, bicycle riding, roller blading, or operating a motorized scooter or similar device, as specified, in a system facility, vehicle, or parking structure; and,
- f) Selling or peddling goods. (Penal Code § 640 (a)(1) & (b)(1)-(6).)

*Existing law* provides that the following acts are punishable by a fine of not more than \$400, by imprisonment in a county jail for a period of not more than 90 days, or by both a that fine and imprisonment:

- a) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior;
- b) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle;
- c) Urinating or defecating in a system facility or vehicle, except in a lavatory, unless the person cannot comply with this prohibition because of a disability, age, or a medical condition;
- d) Willfully blocking the free movement of another person in a system facility or vehicle; and,
- e) Willfully tampering with, removing, displacing, injuring, or destroying any part of a facility or vehicle of a public transportation system. ((Penal Code § 640 (a)(1)) & (d)(1)-(5).)

*This bill* would no longer categorize as a misdemeanor a 3rd or subsequent violation, by an adult, of evading the payment of a fare of a public transportation system, the misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare, or the unauthorized use of a

discount ticket, and would make a 3rd or subsequent violation punishable only by a fine of up to \$400

## COMMENTS

### 1. Need for This Bill

According to the author:

Enforcement of fare evasion is discriminatory. People who face criminal charges for not paying their transit fare are disproportionately people of color. Today, people who evade fare 3 times, can be charged \$400 in fines, spend up to 90 days in jail, or both. It costs \$245 a day to incarcerate someone in LA County jail. The cost of incarcerating someone for 90 days in jail could pay for 37 years of LA Metro monthly passes.

AB 819 will remove the option of incarcerating and charging someone with a misdemeanor for fare evasion. Studies from across the country have shown that fare enforcement disproportionately targets black and brown people, and they face harsher penalties when they are stopped. Removing harmful policies from state law will guide California into a more equitable future."

### 2. Reduces misdemeanor to infraction

Under current law, a first or second fare evasion violation is an infraction punishable by a fine of up to \$250 and up to 48 hours of community service. A third or subsequent fare evasion violation is a misdemeanor punishable by a fine of up to \$400 or by up to 90 days in county jail, or both. Under this bill, a third or subsequent fare evasion violation would no longer be a misdemeanor with potential imprisonment in county jail. Instead, a third or subsequent violation would be only an infraction punishable by a \$400 fine.

The consequences for fare evasion can be harsh. They are generally more severe than for similar violations, such as toll violations or parking violations. (See e.g., Veh. Code, § 40200, subd. (a) [standing or parking violation is subject to a civil penalty].) Unlike those other violations, a fare evasion violation could result in 90 days in county jail. For undocumented people, a violation may result in deportation.

The harshness of the penalties and the disparities in their application have led researchers, advocates, and transit agencies to question the utility of continuing to criminalize fare evasion. According to recent report by the Transit Cooperative Research Program, "There is also an increasing interest among organizations such as transit agencies and transit and social justice advocates in decriminalizing fare evasion to address concerns that criminal citations are criminalizing poverty and to better align penalties for fare evasion with the severity of the offense." (Transit Cooperative Research Program, *Report 234, Measuring and Managing Fare Evasion*, (2022) p. 7 <<https://nap.nationalacademies.org/read/26514/chapter/1>> [last visited Mar. 15, 2023.]) It added, "Among the issues are the appropriateness of criminal penalties and the possibility of a criminal record relative to the price of transit fare as well as the affordability and equity of potentially sizable fines for individuals with low or no income. Attitudes about fare enforcement and penalties are changing, particularly where fare evasion entails criminal penalties." (*Id.* at pp. 7-8.)

In 2010, the San Francisco Municipal Transportation Agency (SFMTA) decriminalized fare evasion. Since that time, “SFMTA has not seen measurable increases in fare evasion, nor has it seen revenue decreases affecting the agency’s bottom line.” (Transit Center, *supra*, at p. 14.)

SB 882 (Hertzberg) provided that minors are not subject to criminal penalties for evading a transit fare. (Chapter 167, Statutes of 2016.) Instead, fare evasion by a minor may result in an administrative fee of \$125 for a first or second offense or \$200 for a third or subsequent offense. (Pen. Code, § 640, subd. (g).) This bill would limit the penalty for fare evasion by an adult to a \$400 fine, eliminating the classification of the offense as a misdemeanor and the possibility of incarceration in county jail for a violation.

### 3. Argument in Support

The National Association of Social Workers, California Chapter supports this bill stating:

This bill is a commonsense criminal justice reform for a very minor offense. Punishing someone with imprisonment for evading a fare with possible jail time is not equal to the crime and represents our failed policies of over incarceration. In addition, according to the analysis: "Studies from across the country have shown that fare enforcement disproportionately targets black and brown people, and that people of color face harsher penalties when they were stopped." (Transit Center, *A Fare Framework: How transit agencies can set fare policy based on strategic goals*, (Oct. 2, 2019) p. 14 <<https://transitcenter.org/wp-content/uploads/2019/10/FareFramework-1.pdf>>

### 4. Argument in Opposition

Debra Allen, Board of Director, BART opposes this bill as an individual stating:

Under current law, a first or second fare evasion violation is an infraction punishable by a fine of up to \$250 and up to 48 hours of community service. A third or subsequent fare evasion violation is a misdemeanor punishable by a fine of up to \$400 or by up to 90 days in county jail, or both. AB819 would reduce existing penalties **on the third offense** from a misdemeanor and a fine to only a maximum of \$400 fine for fare evasion.

BART is amid a severe financial crisis, now carrying about 40% of its pre-pandemic ridership, and BART lags the rest of the country in riders returning to our transit system. Our regular paying riders cite their concerns for their own public safety as the top reason they aren't returning to BART. A recent poll conducted by the Bay Area Council indicated that our ridership returns much faster if BART was able to get the riders to feel safe again. Only 19% of respondents rated BART as safe and only 12% felt BART was doing a good job at enforcing fare payment. Survey after survey indicates that public safety is among the top reasons for riders choosing not to use BART. Now is not the time to reduce penalties for fare evasion and make the jobs of our public safety officers harder.

**BART has data showing that the bulk of our crimes in the BART system are committed by people who have not paid a fare.** The enforcement of fare evasion is one of several keys to making BART a safe system for our workers and riders. The reduction of penalties included in AB819 will be in direct conflict with our mitigation efforts to address fare evasion and make it increasingly challenging for BART Police Officers to address other criminal activity in the system.

**-- END --**