



Proposed Amendment to Section 80 of DC Code § 9-1107.01 also known as the WMATA Compact

Background

The Washington Metropolitan Area Transit Authority (“WMATA”), created effective February 20, 1967, is an interstate compact agency and, by the terms of its enabling legislation, an agency and instrumentality of the Signatories: the District of Columbia, State of Maryland, and Commonwealth of Virginia. WMATA was created by the Signatories to plan, develop, finance and caused to be operated a comprehensive mass transit system for the Washington Metropolitan Area.

WMATA Compact Codified

In the District of Columbia, the WMATA Compact is cited as D.C. Code § 9-1107.1; in Maryland as Md. Code. Ann. Transp. §10-204; and in Virginia as codified in Va. Code Ann. §§ 56-529 and 56-530 (the WMATA Compact does not, however, appear at §§ 56-529 and 56-530, instead it is set forth in full in the “Compacts” companion volume at p. 410 (2010)). The WMATA Compact is also set forth at 2009 Acts of Assembly of Virginia, Ch. 771, and that is the citation used for Virginia in this volume.

Legislative History

Congress provided its consent to the Washington Metropolitan Area Transit Authority Compact as Title III of the previously adopted Washington Metropolitan Area Transit Regulation Compact (“Transit Regulation Compact”). See, “Consent Legislation.” Generally, references in the WMATA Compact to “this Title,” mean Title III (i.e. WMATA Compact). References to “this Compact,” on the other hand, mean either the Transit Regulation Compact as a whole (e.g. Section 59: “as granted by Titles I and II of this Compact”), or the WMATA Compact (e.g. Section 76(e): “in accordance with Section 62(c) and (d) of this Compact”), depending on context.

As of this publication, the WMATA Compact has been amended seven times. A history of the Compact from adoption through amendment can be found on page 38 of the Official WMATA Compact document, which is publicly available.

Purpose of this Amendment

To bring reform to WMATA's police operations by making WMATA financially responsible for the torts committed by members of its police force against passengers.

This *partial* waiver of immunity would be limited to torts committed by members of the Metro Transit Police Department. The language added is similar to the language of Section 1983, Chapter 42 of the United States Code which permits individuals to bring suit against law enforcement officials and municipalities when their constitutional rights are allegedly violated.

The amendment also permits a prevailing party to award attorney's fees similar to fee provisions under federal law for plaintiffs who are successful under Section 1983. Those fee provisions can be found at Section 1988, Chapter 42, of the United States Code.

Due to a recent rise in violent incidents involving MTPD and Black passengers and revelations about quota systems and other corruption within MTPD, the signatories for the WMATA compact should act swiftly to bring about much-needed reform in the manner of amending sovereign immunity for WMATA.¹

Language of Proposed Amendment

Liability for Contracts and Torts

8o. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function, except that torts committed by employees of the Metro Transit Police Department who are acting under color of any statute, ordinance, regulation, custom, or usage, of any signatory of this Compact, and subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. A court of competent jurisdiction shall award a prevailing party, other than a signatory, a reasonable attorney's fee as part of the costs incurred by the injured party. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

¹ See Appendix A for list of prior incidents, verdicts and settlements and relevant data.

APPENDIX A

Prior incidents:

- June 22, 2019 a 28 year old Howard Univ. alumni was arrested and tased repeatedly by MTPD officers for advocating on behalf of a 14- year old boy whom officers had in custody while there was no guardian. As a result of the repeated tasing, the man has suffered traumatic brain injury and had to withdraw from a post-graduate program at MIT.
- February 6, 2018, a 20-year old mother of two toddlers was arrested and beaten in SE Washington for fare evasion. She was a student at the time and rode the bus for free. The officer who arrested her broke her teeth and one of her legs for her failure to pay \$2.25 in bus fare. **Case settled for \$250,000.**
- Feb. 16, 2018, MTPD assaulted an individual by striking the individual with a baton multiple times on the head and then using the baton to choke the individual.
- In May 2018, MTPD pinned down a 24-year-old woman accused of fare evasion and in the process ripped open her shirt exposing her breasts. The officers also menaced her with a taser at the Ft. Totten Metro station.
- February 17, 2017, MTPD William O'Brien drew his service weapon on Mark Anthony Hawkins and his 4 year old daughter, Sparkle Hawkins as they were leaving a children's event at the Verizon Center. Officer O'Brien remains on the force
- In April 2017, an MTPD officer grabbed a young man at the Congress Heights Metro station while he was holding his one-year-old daughter, endangering both her and her father.
- In October 2016, MTPD grabbed an 18-year-old girl and kicked her legs out from under her. The officers arrested her for eating chips and a lollipop in the Columbia Heights metro station.

In the lawsuits that have resulted in verdicts or settlements against individual MTPD officers, the damages are nominal. Officers keep their jobs while victims are permanently scarred with little compensation that is not commensurate to the injuries they have suffered.

Prior settlements and verdicts:

In 2019, WMATA paid Diamond Rust, 20-year old mother of two, **\$250,000.00**, pre-suit after an officer broke her teeth and her leg while she was in handcuffs. She'd allegedly failed to pay \$2.25 in bus fare.

In 2013 *Hall v. Wood*, an MTPD officer placed a 14-year-old boy in a chokehold, pepper-sprayed him and punched him the torso repeatedly. **(Resulted in a \$15,000.00 settlement)**

In 2013, *Winslow v. Taylor*, a MTPD officer punched a 14-year old girl in her face and repeatedly slammed her head against a bus shelter, causing head trauma. **(Resulted in a \$45,000.00 settlement)**

In a 2002 lawsuit, *Halcomb vs. WMATA*, a jury awarded a passenger \$250,000.00 for false arrest and emotional distress.

Fiscal impact of tort liability:

Most other transit authorities bear some form of tort liability in the operation of their police force. In the US, transit authorities pay out an average of between 2-8% of their annual income on tort liability. Cases involving police are just a portion of the 2-8%. *WMATA is an exception.*

The Data Shows that Metro Transit Officers Target Communities of Color²

MTPD officers encounter most Black riders under the suspicion of fare evasion. In a November 29, 2018 letter to the D.C. Council, MTPD admitted to enforcing the fare evasion law in a discriminatory manner for the express purpose of using it as a pretext to search and run warrant checks on riders—and almost everyone they stop for this purpose is black.

Fact: Between January 1, 2016 and February 5, 2018, more than 30,000 people were stopped for suspected fare evasion. Of those 30,000 people, just over 2,000 people were arrested for fare evasion.

Fact: 91% of citations/summons were issued to Blacks, and only 8% to Whites. There is no evidence that Black people evade fares more than White people within the WMATA system.

Fact: 46% of all citations were issued to Blacks under the age of 25.

Fact: Anacostia Station, located in D.C.'s Ward 8, is the location where Metro transit officers have issued the second highest number of citations (3,977) within the WMATA system in the last two years. 90% of Ward 8 residents are Black and 35.7% of Ward 8 residents live beneath the poverty line—this is double the poverty rate in D.C.

² All data was reported in the article "UNFAIR, Disparities in Fare Evasion Enforcement by Metro Police" https://www.washlaw.org/pdf/2018_09_13_unfair_disparity_fair_evasion_enforcement_report.PDF.

