

Multnomah County District Attorney's Office

# Interfering With Public Transportation (IPT)

UPDATED REPORT

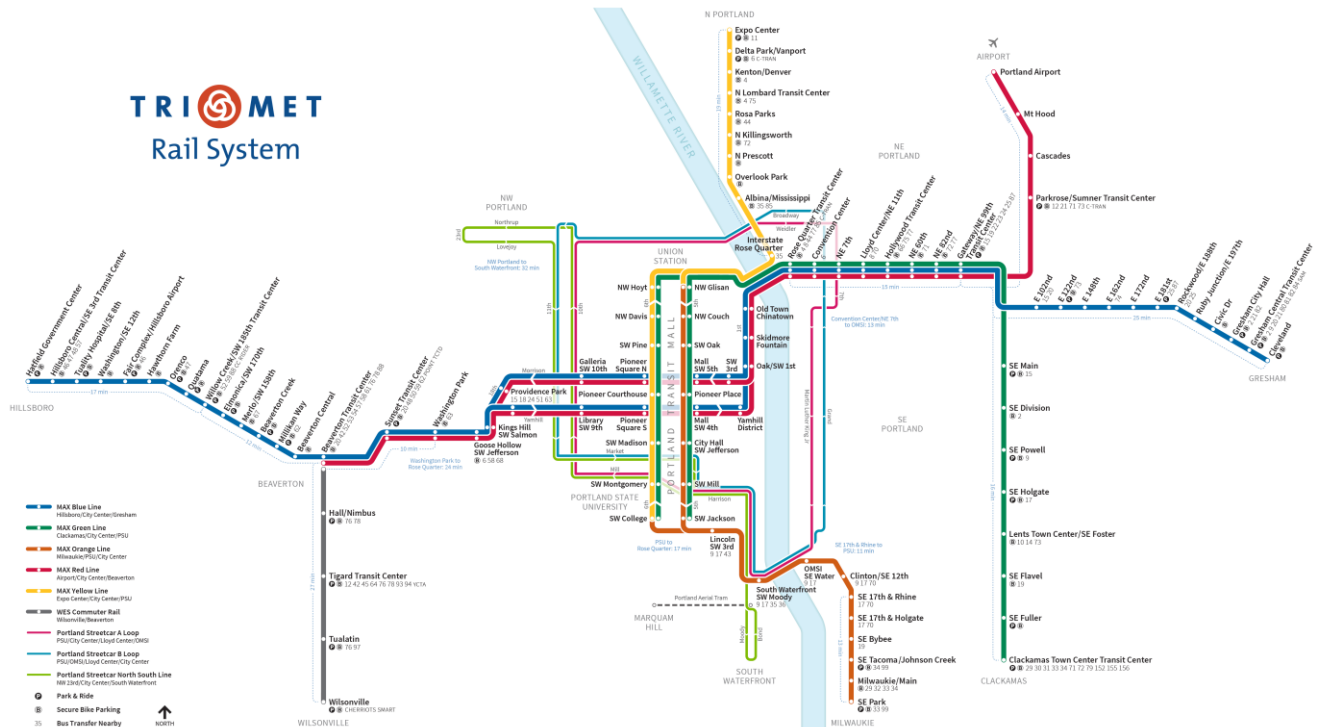
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## INTRODUCTION

Founded 45 years ago, TriMet provides bus, light rail and commuter rail transit services in the Portland, Oregon, metro area (TriMet, 2019). This area covers the three largest counties by population in Oregon, including Clackamas, Multnomah and Washington counties. TriMet’s light rail, Metropolitan Area Express (MAX), consists of five MAX lines that run on 60 miles of track and serve 97 stations (TriMet, 2019). Unlike the bus lines, MAX ridership does not require proof of fare prior to boarding. Instead, payment enforcement is conducted through the use of random fare inspections. A fare enforcement incident can include either 1) a warning, 2) a citation, or 3) exclusion for not having valid fare at the time of the inspection. Concerns over “profiling” or “enforcement bias” arise when there are racial/ethnic disparities in enforcement or arrest practices.

In the fall of 2016, the Clackamas, Multnomah, and Washington County District Attorney offices (The Tri-County DA Offices) began examining Interfering with Public Transportation (IPT) cases that were submitted for prosecution consideration involving persons riding TriMet without fare. ORS 166.116(1)(a) provides: “A person commits the crime of interfering with public transportation if the person \* \* \* intentionally or knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station.” In that same timeframe, on December 14, 2016, a TriMet commissioned study from Portland State University (PSU) Criminal Justice Policy Research Institute was released (Renauer, 2016). The report confirmed similar prosecution findings that among persons riding TriMet who do not pay fare, Black individuals are excluded from TriMet property at a disproportionately higher rate than White individuals. Although the PSU report did not find any systemic racial and/or ethnic bias, the author of the study did suggest that the “elevated percentage of African American riders being excluded should be examined more closely.”

It is of the highest importance that justice guides prosecutorial decisions. When deciding whether to initiate prosecution it is imperative to consider, among other things, fairness, equity and proportional consequences. The Tri-County DA Offices were therefore concerned that the racial disparity confirmed in the PSU study could lead to unjust results in the criminal justice system.

The Tri-County DA Offices recognized that primary responsibility to address this issue lay with TriMet and how it chooses to enforce rules and laws on its transportation system. Beyond the issues of disparate exclusion practices of Black fare evaders on TriMet, the Tri-County DA Offices further evaluated whether the level of harm to TriMet caused by fare evasion is proportional to the level of prosecution for a Class A Misdemeanor (punishable by up to 1 year in jail). They determined that in all but the most chronic or exceptional circumstances applying this law to any previously excluded fare evader is not a proportional consequence, and it compounds an unfair and disproportionately higher rate of exclusion from TriMet. For these reasons the Tri-County DA Offices decided to modify the way fare evasion based IPT cases are handled by their offices.

On January 3, 2017, the Tri-County DA Offices changed the way they handle prosecution of certain Interfering with Public Transportation (IPT) offenses. Whereas trespassing on TriMet based on exclusions for non-payment of fare had previously been prosecuted as Class A Misdemeanors, these three offices decided to no longer prosecute IPT offenses based on fare evasion exclusions. When exceptional circumstances arise or an individual chronically violates their TriMet exclusion, these offices will consider whether issuance of Criminal Trespass and/or Theft III (Class C Misdemeanors) charges are appropriate. The Tri-County DA Offices decided that using Class C Misdemeanor charges (punishable by up to 30 days in jail) to address chronic fare evasion offenders on TriMet balanced TriMet's need to maintain order on its system, while simultaneously equating the level of harm with the appropriate charge in the criminal justice system.

The Tri-County DA Offices agreed with TriMet and others that riders need to feel safe on the MAX and bus lines. Consequently, the Tri-County DA Offices continued to review for prosecution IPT charges for persons engaging in or excluded from TriMet for qualifying behavior-related conduct such as conduct that involves assaultive or offensive physical conduct, disorderly conduct that involves the use of physical force or conduct immediately likely to result in the use of physical force.

As the Multnomah County District Attorney's Office (MCDA) continues to prioritize reducing disparity in the local criminal justice system, this report is an effort to monitor the effects of the Tri-County DA Offices' policy change to no longer prosecute IPT offenses based on fare evasion exclusions. This document contains Multnomah County specific data and will summarize the changes that occurred after the new policy implementation, focusing on cases with IPT charges referred to the MCDA, changes in issued IPT charges, potential displacement of IPT charges to Criminal Trespass II charges, and the racial composition of individuals involved. For this report, the racial breakdown included White, Black, Hispanic, and Asian individuals. Individuals whose race was identified as Indian were not included due to the potential inaccuracy of grouping these individuals either as Asians or as Native Americans. Native American individuals were not included in the racial breakdown due to insufficient sample sizes per year (27 total referrals over 6 years).

# Methods and Data

The data used in this report were collected from the CRIMES database, which is the Multnomah County District Attorney's case management system. The selection criteria for the data was any referred and issued case with at least one IPT charge (a – d) or Criminal Trespass II charge with an accompanying "TriMet Flag." A "TriMet Flag" is an indicator used within CRIMES to denote if the crime was committed against TriMet property or elicited the response of a TriMet officer.

TriMet law enforcement is a conglomeration of 13 separate law enforcement agencies. These agencies include: Beaverton Police Department, Clackamas County Sheriff's Office, Gresham Police Department, Hillsboro Police Department, Lake Oswego Police Department, Milwaukie Police Department, Multnomah County Sheriff's Office, Port of Portland Police Department, Portland Police Bureau, Tigard Police Department, Tualatin Police Department, West Linn Police Department and the Washington County Sheriff's Office.

There are several ways to monitor the effect of a policy change. In particular, this report uses multiple decision points and multiple metrics. Multiple decision points refer to variables in separate stages of the prosecutorial process:

- "Referred cases" are examined as a proxy for the arrest practices of law enforcement;
- "Issued cases" are examined to study the charging practices of Deputy District Attorneys; and
- "Criminal Trespass II" cases are studied to see if there has been a displacement of cases by either.

In regard to multiple metrics, four are used throughout this report:

- Raw counts;
- Rates;
- The Relative Rate Index (RRI); and
- Raw Differential Representation (RDR).

The most straightforward method is to examine how the raw counts of cases change over time. The second way is to examine the rate at which populations experience an event compared to their population size. An RRI, also called a Risk Ratio (Girvan, McIntosh, & Smolkowski, 2019), allows us to compare one group's rate to another. In this case, rates for White individuals serve as the baseline against which rates for Black, Hispanic, and Asian individuals are compared. The final metric, Raw Differential Representation, reveals the number of individuals who are over or under experiencing the event (i.e. referrals for an IPT charge) if they shared the same risk (RRI) as the reference group (Girvan, McIntosh, & Smolkowski, 2019).

Population data for White, Black, and Hispanic individuals over age 18 in Multnomah County were acquired from the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Easy Access to Juvenile Populations (EZAJPOP) for 2013 through 2017 which uses U.S. Census data. It is acknowledged that use of general census population data is a limitation and is discussed further in the limitations and future research section. Population data for 2018 is not available yet from the U.S. Census Bureau and had to be derived. The average proportion of Multnomah County to the state of Oregon was calculated for the last 18 years (2000 to 2017) and was used to derive the average estimated Multnomah County population given the U.S. Census's estimated Oregon population in 2018. Additionally, the average proportion for the last 18 years (2000 – 2017) was calculated for each race and ethnicity group of Multnomah County, and used to estimate the proportion of each group in the Multnomah County population estimate for 2018 (Figure 1a). Figure 1b shows the percentage of the total population each racial or ethnic group of Multnomah County.

Figure 1a. Adult Race/Ethnicity Population Counts in Multnomah County by Year

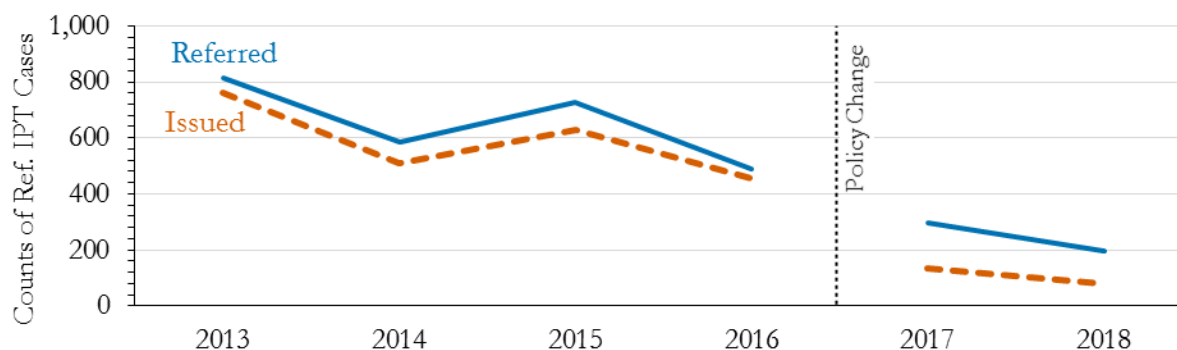
Year	White	Black	Hispanic	Asian	Native Am.	Total
2013	470,366	33,517	54,324	48,703	5,937	612,847
2014	475,707	34,481	56,024	51,040	6,009	623,261
2015	481,834	35,327	58,439	53,514	6,105	635,219
2016	486,925	36,396	61,129	56,027	6,089	646,566
2017	487,901	37,404	63,357	58,449	6,127	653,238
2018 Est.	492,200	38,081	66,033	60,554	6,175	663,532

Figure 1b. Adult Race/Ethnicity Population Percentage of Multnomah County Total by Year

Year	White	Black	Hispanic	Asian	Native Am.	Total
2013	76.8%	5.5%	8.9%	7.9%	1.0%	612,847
2014	76.3%	5.5%	9.0%	8.2%	1.0%	623,261
2015	75.9%	5.6%	9.2%	8.4%	1.0%	635,219
2016	75.3%	5.6%	9.5%	8.7%	0.9%	646,566
2017	74.7%	5.7%	9.7%	8.9%	0.9%	653,238
2018 Est.	74.2%	5.7%	10.0%	9.1%	0.9%	663,532

## SECTION ONE: REFERRED CASES

Figure 2a. Cases with Referred and Issued IPT Charges Totals  
Multnomah County District Attorney's Office (2013 - 2018)



Besides slightly aberrant totals for 2015, the number of cases referred from law enforcement to the MCDA involving an IPT charge (ORS 166.116) has been on a general downward trend since 2013. Cases issued also decreased during this period, with a widening gap after 2016. The graph above shows 12-month totals for the years 2013 through 2018 and a 75.8% reduction in the number of referred cases (Figure 2a).

The percent changes in Figure 2b highlight the differences in referred cases from the years 2013 to 2018. Compared to the pre-policy implementation year 2016, referred cases with an IPT charge decreased a total of 39.3% in 2017. Cases involving White individuals decreased the most at 46.5%, followed by Hispanic (32.4%), Black (25.9%), and Asian (0.0%) individuals. In 2018, cases decreased an additional 33.7%. Asian individuals had the largest decrease (75.0%) from 2017 to 2018, followed by Black (39.0%), White (34.6%), and Hispanic (0.0%) individuals.

In 2013, there were 814 cases referred with at least one IPT charge. By 2016, just before the policy change, there were 489 referred cases. Four of these cases involved defendants with an unknown race. Eleven cases had defendants that were identified as Indian (n=7) or Native American (n=4). The remaining 466 cases involved White (n=297), Black (n=135), Hispanic (n=34), and Asian (n=8) individuals. In 2016, 60.7% of referred cases with an IPT charge involved White individuals, followed by Black (27.6%), Hispanic (7.0%), and Asian (1.6%) individuals. The number of cases referred with at

Figure 2b. Yearly Percent Change in Referred IPT Cases  
Multnomah County District Attorney's Office (2013 - 2018)

Year	White		Black		Hispanic		Asian		All Other		Total	
	f	% Chg	f	% Chg	f	% Chg	f	% Chg	f	% Chg	f	% Chg
2013	489	-	231	-	51	-	11	-	32	-	814	-
2014	344	-29.7%	165	-28.6%	38	-25.5%	12	9.1%	24	-25.0%	583	-28.4%
2015	402	16.9%	232	40.6%	47	23.7%	25	108.3%	20	-16.7%	726	24.5%
2016	297	-26.1%	135	-41.8%	34	-27.7%	8	-68.0%	15	-25.0%	489	-32.6%
2017	159	-46.5%	100	-25.9%	23	-32.4%	8	0.0%	7	-53.3%	297	-39.3%
2018	104	-34.6%	61	-39.0%	23	0.0%	2	-75.0%	7	0.0%	197	-33.7%
Total Change		-78.7%		-73.6%		-54.9%		-81.8%		-78.1%		-75.8%

least one IPT charge fell by 59.4% to 197 cases in 2018. In 2018, 52.8% of referred cases involved White individuals, followed by Black (31.0%), Hispanic (11.7%) and Asian (1.0%).

While the DA offices have direct control over prosecution decisions, the MCDA was also hoping for a change in law enforcement IPT arrests and referrals. District Attorney Rod Underhill and prosecutors assigned to review TriMet cases made a concerted effort to ensure extensive outreach to TriMet officials and law enforcement personnel to explain the new policy and rationale behind the decision. This could explain the 2017 and 2018 case referral decrease for IPT trespassing charges.

In Figure 4, rates per 10,000 are shown for each race/ethnicity. Figure 5 shows the RRI for individuals by race and ethnicity; while Figure 6 is the RDR for the same groups. Between 2013 and 2018 the rates of cases for both Whites and Hispanics were relatively the same, decreasing from around 10 to 2.1 referrals per 10,000 for Whites and 3.5 for Hispanics in 2018. This has resulted in RRI values for cases involving Hispanic individuals that are consistently around 1.0 ( $\pm .01$ ). Cases where the defendant is identified as Asian have the lowest rates of all the groups, not exceeding 5 per 10,000 Asian people; despite having an estimated population similar to that of Hispanics. This results in the RRI for cases with Asian defendants being small: 0.2 in 2013 and 0.2 in 2018. As the RDR reveals in Figure 6, cases where the defendant is Asian are underrepresented for referral of IPT when compared to the White population.

Figure 3. Referred IPT Cases, Counts

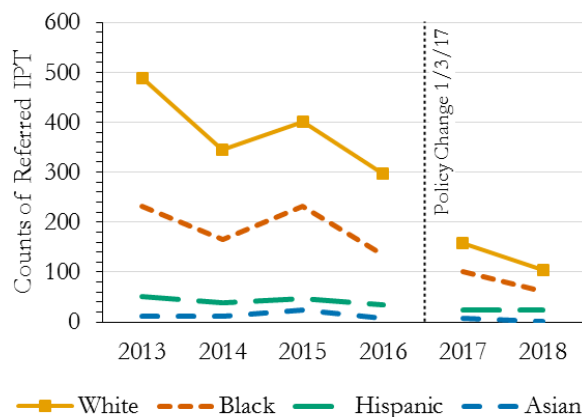


Figure 4. Referred IPT Cases, Rates

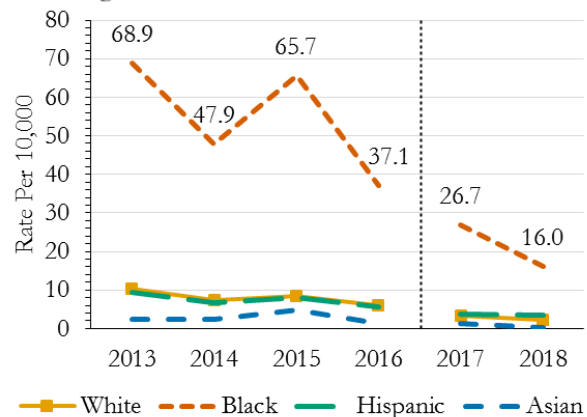


Figure 5. Referred IPT Cases, RRI

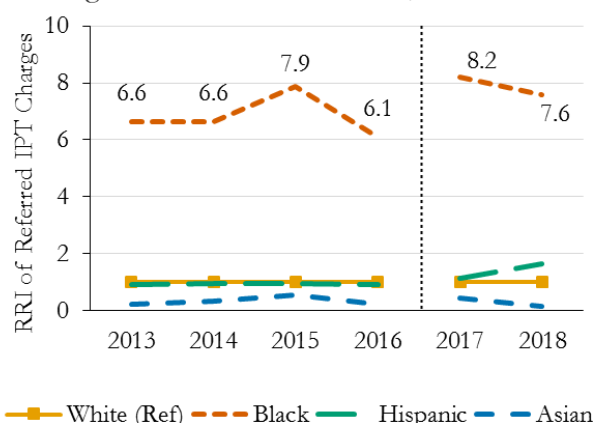
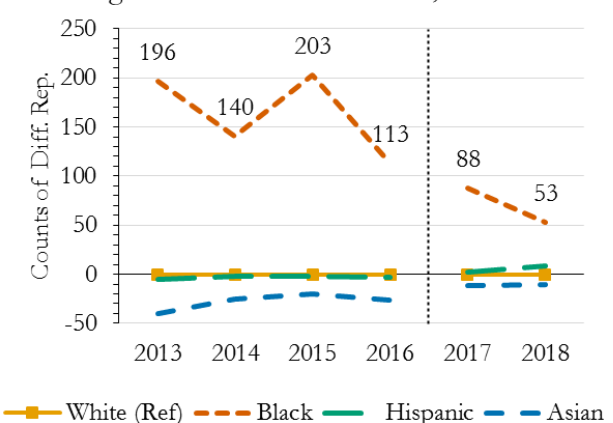


Figure 6. Referred IPT Cases, RDR



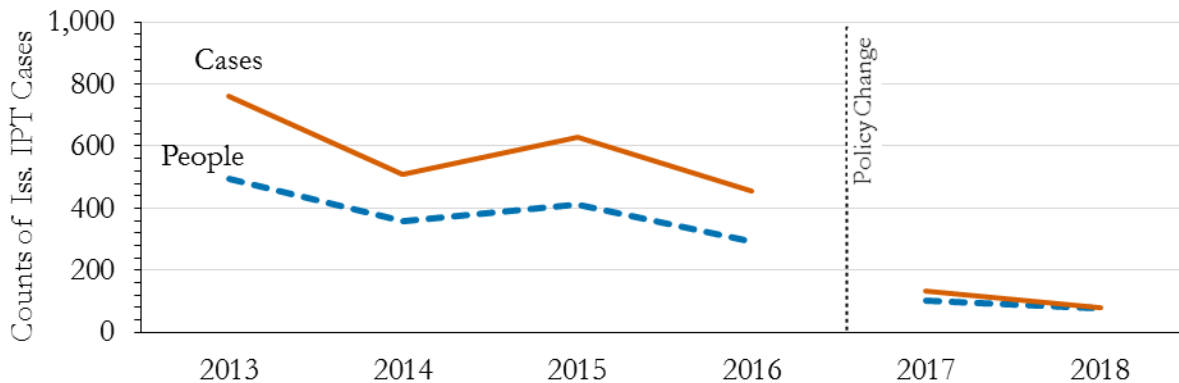


Yearly rates for cases involving cases with Black individuals are higher, though decreasing from 2103 (68.9 per 10,000) to 2018 (16.0 per 10,000). While rates for cases with Black individuals are currently at their lowest, very low rates of cases with White defendants resulted in Black defendants' RRI maintaining over time. This is an example of how rates can decrease over time without decreasing the RRI metric of disparities. However, as Figure 6 shows, the over-representation of cases where the defendant was identified as a Black individual has decreased. Another way to interpret Figure 6 is that it shows that the number of cases where the defendant is identified as Black would need to decrease by a further 53 cases to have equity between the number of cases where the defendant is Black versus where the defendant is White.

Overall, total count of referred IPT case rates are decreasing for each race and ethnicity. Cases where the defendant is identified as a White individual saw the largest decrease in referred cases by 65.0%, from 2016 to 2018. Cases with a Black defendant saw a decrease of 54.8%, Hispanic defendants by 32.4%, and Asian defendants by 75.0% (8 cases to 2) between 2016 and 2018.

## SECTION TWO: ISSUED CASES

Figure 7. Counts of All Issued IPT Cases by Race and Year



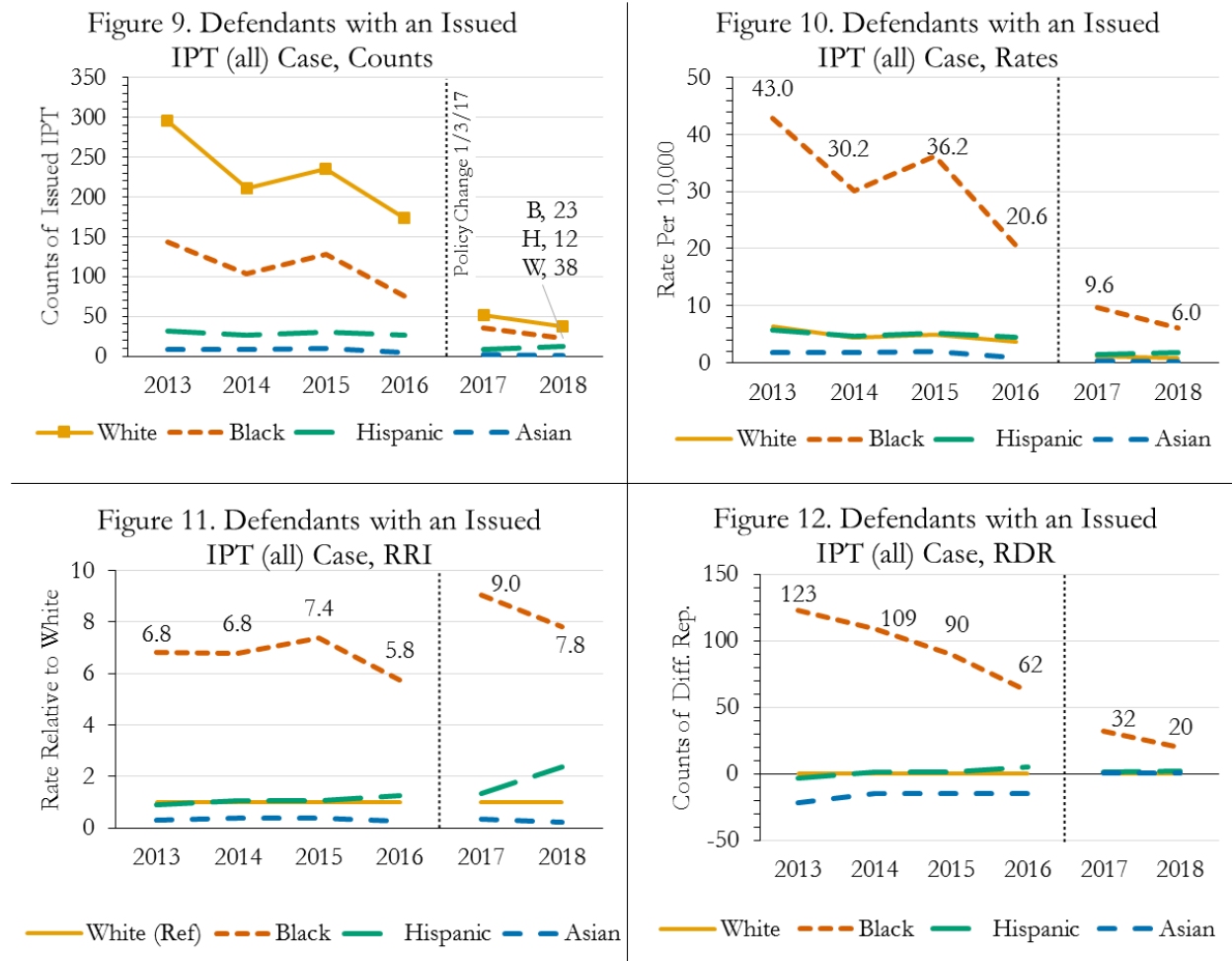
Aside from 2015, the number of cases issued by the MCDA involving an IPT charge (ORS 166.116) has been on a general downward trend since 2013 (Figure 1 and 7). The graph above shows 12-month totals for the years 2013 through 2018 for both individuals and the number of cases they have produced. As Figure 7 shows, the proportion of cases to people has decreased over time, particularly after 2016. There were 454 cases issued with at least one IPT charge for White, Black, Hispanic, Asian, and Native American individuals in 2016. This number changed to 80 in 2018. In 2016, 59.9% of issued cases with an IPT charge involved White individuals (59.9%), followed by Black (28.4%), Hispanic (7.7%), and Asian (1.3%) individuals. In 2018, 50.6% of issued cases involved White individuals, followed by Black (29.6%), Hispanic (14.8%), and Asian (1.2%) individuals. These percentages are similar to the proportions of cases referred to the MCDA.

However, it is important to emphasize that the new IPT policy only affects prosecution of offenders who violate a TriMet exclusion resulting from a *non-payment of fare*. Raw counts of IPT charges issued would not be expected to decrease to zero in 2018 because there were offenders who entered or remained unlawfully on TriMet property (e.g. MAX train, train tracks, bus kiosks, etc.) following an exclusion that was based on conduct outside of non-payment of fare (e.g. assaultive behavior, disorderly conduct, damage to TriMet property, etc.).

Figure 8. Yearly Percent Change in Issued (all) IPT Cases

Multnomah County District Attorney's Office (2013 - 2018)

Year	White		Black		Hispanic		Asian		All Other		Total	
	<i>f</i>	% Chg	<i>f</i>	% Chg	<i>f</i>	% Chg	<i>f</i>	% Chg	<i>f</i>	% Chg	<i>f</i>	% Chg
<b>2013</b>	449	-	224	-	44	-	12	-	33	-	762	-
<b>2014</b>	300	-33.2%	144	-35.7%	32	-27.3%	12	0.0%	23	-30.3%	511	-32.9%
<b>2015</b>	338	12.7%	213	47.9%	42	31.3%	22	83.3%	12	-47.8%	627	22.7%
<b>2016</b>	272	-19.5%	129	-39.4%	35	-16.7%	6	-72.7%	12	0.0%	454	-27.6%
<b>2017</b>	72	-73.5%	46	-64.3%	13	-62.9%	2	-66.7%	1	-91.7%	134	-70.5%
<b>2018</b>	41	-43.1%	24	-47.8%	12	-7.7%	1	-50.0%	3	200.0%	81	-39.6%
<b>Total Change</b>		-90.9%		-89.3%		-72.7%		-91.7%		-90.9%		-89.4%



The percent changes in Figure 8 highlight the differences in issued cases from the years 2013 to 2018. Since the policy change (from 2016 to 2018), cases involving an IPT charge decreased a total of 73.7%. Cases involving White individuals decreased the most at 84.9%, followed by Asian (83.3%), Black (81.4%), and Hispanic individuals at 65.7%.

Between 2013 and 2018 in Figure 10, rates of White and Hispanic individuals with issued IPT charges have remained similar to each other (below 6 per 10,000 people). This results in RRI values (Figure 11) for Hispanic individuals that are consistently between 0.9 and 2.4. Asian defendants with at least one IPT case have decreased over this time as well, and the rate for Asians has followed suit. Black individuals have seen the greatest magnitude of change in yearly rates, and have decreased overall by 85.9% from 43.0 per 10,000 in 2013 to 6.0 per 10,000 in 2018. The relative rate for Blacks has remained high over time as the RRI is sensitive to proportional decreases to the reference group (Whites). However, the RDR in figure 12 shows that the over-representation of Black individuals for IPT charges has decreased by 83.3% to a low of 20 people.

Overall, total cases issued and the number of defendants are decreasing for each race and ethnicity. Asian individuals saw the largest decrease between 2013 and 2018 by 88.9%, while Hispanic individuals saw the smallest decrease in issued cases by 61.3 %. Black individuals also experienced a decrease over the study period (84.0%); and the frequency of White individuals with at least one case in a year decreased 87.2%.

Figure 13. Issued IPT (a) Cases, Counts

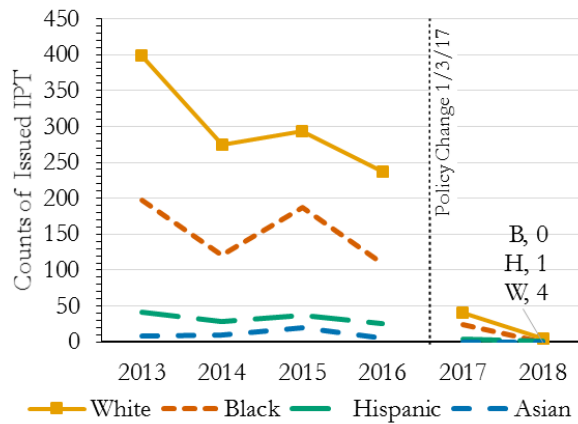


Figure 14. Issued IPT (a) Cases, Rates

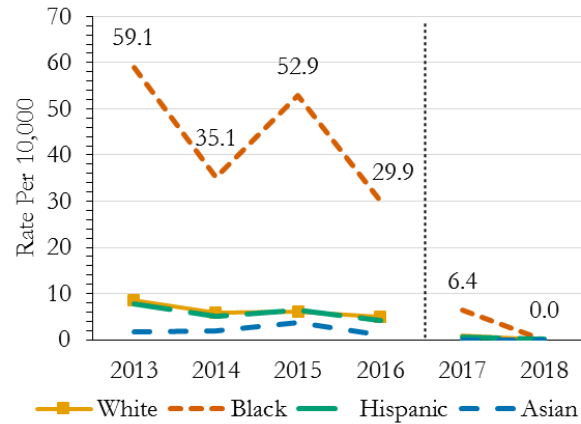


Figure 15. Issued IPT (a) Cases, RRI

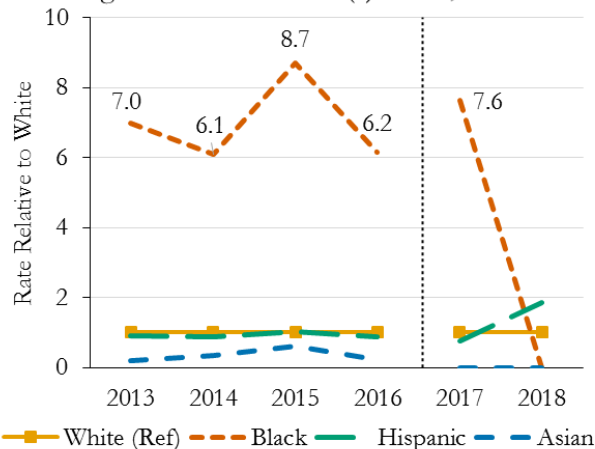
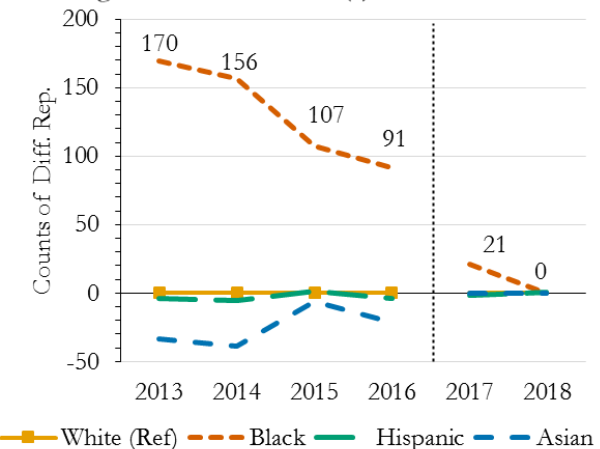


Figure 16. Issued IPT (a) Cases, RDR



## Issued Cases by Charge Type

In addition to changes in all types of issued IPT charges, it is necessary to examine the type of IPT charge issued to assess how this change in policy has affected trespass (ORS 166.116(a)) as well as behavior-based (ORS 166.116(b)-(d)) charges.

### ORS 166.116(a)

The following section examines issued cases with at least one ORS 166.116(a) IPT charge between 2013 and 2018. These cases involve trespass onto TriMet property following either a non-payment of fare exclusion or a behavioral-based exclusion. While these cases have generally declined over this time period, there was a significant decrease from 2016 to 2017 where total cases went from 372 to 69. Another significant decrease occurred between 2017 and 2018, resulting in five IPT (a) cases. In 2016, the majority of these cases involved White individuals (60.9%), followed by Black (28.0%), Hispanic (6.7%), and Asian (1.5%) individuals. In 2018, there were four cases for White defendants, and one case for a Hispanic defendant—none of which involved an exclusion for non-payment of fare. Black and Asian individuals did not have any IPT (a) cases.

Again, it is important to note that the new IPT policy only affects prosecution of offenders who violate a TriMet exclusion resulting from a *non-payment of fare*. Raw counts of IPT charges issued would not be expected to decrease to zero in 2017 because there were offenders who entered or remained

unlawfully on TriMet property following an exclusion based on conduct outside of non-payment of fare (e.g. assaultive behavior, disorderly conduct, damage to TriMet property, etc.).

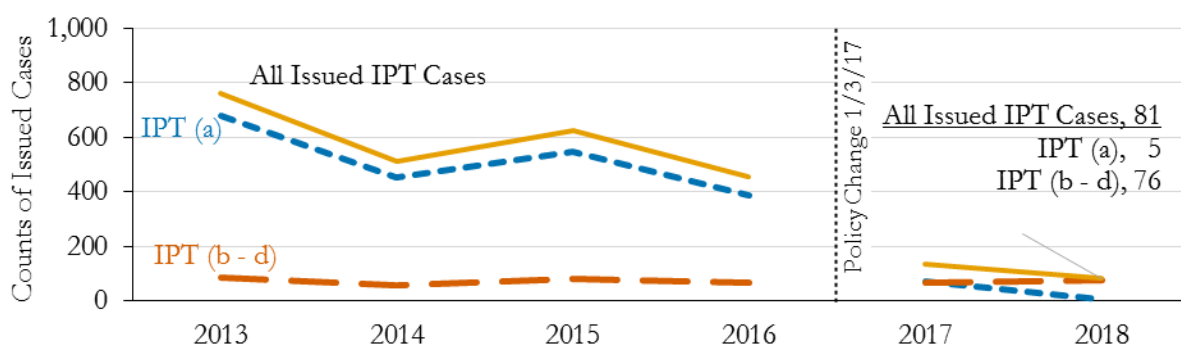
Figures 14 and 15 show the rates and RRIs of cases issued with a trespass IPT charge between 2013 and 2018. All races and ethnicities experienced a sizable decrease between 2016 and 2018. Rates for cases involving Black individuals were highest between 2013 and 2016, ranging from 59.1 per 10,000 in 2013 to 29.9 per 10,000 in 2016. In 2018, the rates for Black individuals dropped to 0 per 10,000. The RDR of figure 16 shows that there were no Black individuals that received differential representation for cases involving IPT (a) fare-based exclusions. Because there were only 5 IPT (a) cases issued in 2018, it made for an extremely small number when calculating RRI. For example, if one additional case were to have been issued against a Black individual, the Black RRI would have jumped to 3.9 from 0. Therefore, we caution interpreting RRI changes that might occur in future years for all racial and ethnic groups.

### ORS 166.116(b)-(d)

The MCDA agreed with TriMet and others that riders need to feel safe on the train and bus lines. Consequently, the MCDA continues to review for prosecution IPT charges for persons engaging in, or excluded from, TriMet for qualifying behavior-related conduct such as assaultive or offensive physical conduct, disorderly conduct that involves the use of physical force or conduct immediately likely to result in the use of physical force. The following segment examines issued cases with at least one behavior-based (ORS 166.116(b)-(d)) IPT charge between 2013 and 2017. These sections of the IPT statute provide that “[a] person commits the crime of interfering with public transportation if the person: \* \* \* (b) Intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles; (c) While in or on a public transit vehicle or public transit station, engages in disorderly conduct in the second degree as defined in ORS 166.025 (Disorderly conduct in the second degree); or (d) Subjects a public transportation passenger, employee, agent or security officer or transit police officer to offensive physical contact.”

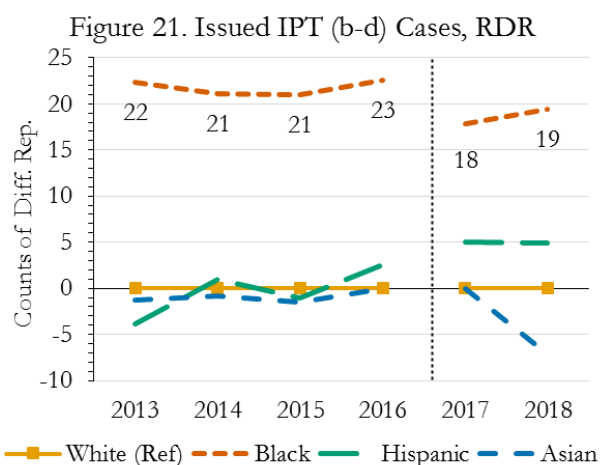
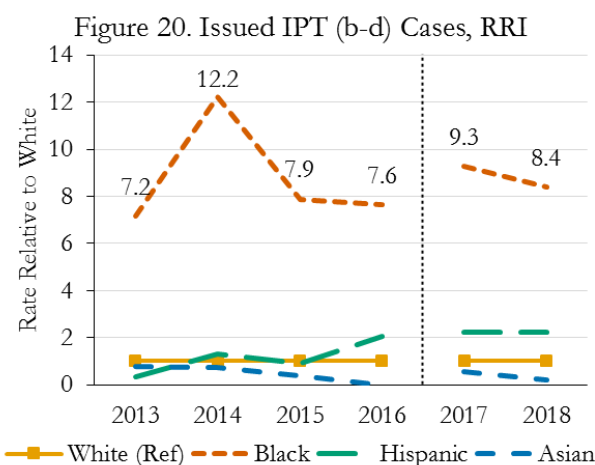
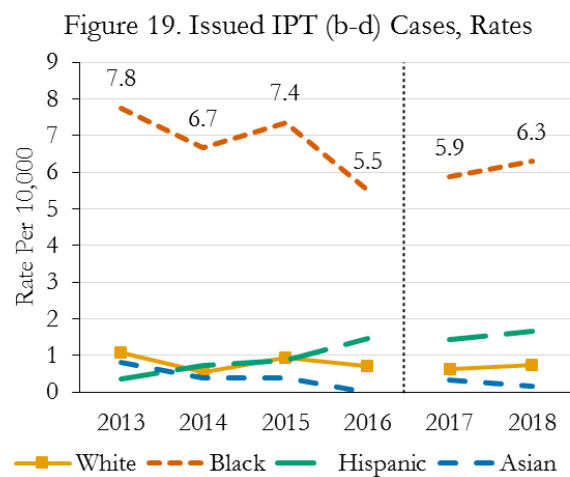
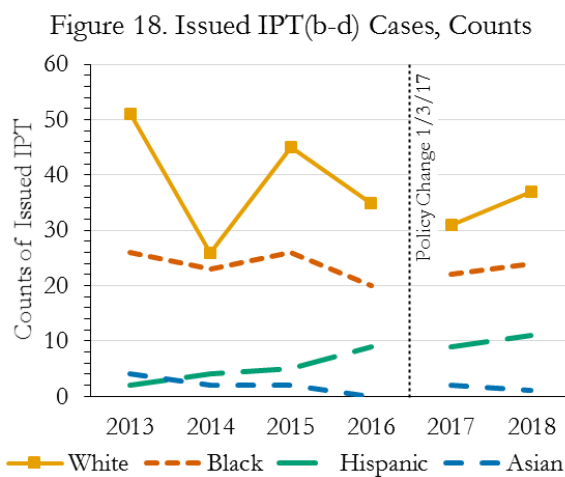
Unlike total and trespass IPTs where the highest counts occurred in 2013 and lowest in 2018, behavior-based charges have not decreased substantially over the years (Figure 17). In 2016, the majority of these cases involved White individuals (53.8%), followed by Black (30.8%), Hispanic (13.8%), and

Figure 17. Counts of Issued IPT Cases by Charge Type



Asian individuals. In 2018, White individuals accounted for 48.7% of all defendants, followed by Black (31.6%), Hispanic (14.5%), and Asian (1.3%) defendants. Furthermore, the little variation over time is expected as the policy did not aim to effect prosecution of behavioral based charges.

Figures 19 and 20 shows the rates and RRI of cases issued with a behavior-based IPT charge between 2013 and 2018. Rates of issued cases with a behavior-based IPT charge are consistently lowest for White and Hispanic individuals, though no rates for any individuals exceed 8 per 10,000. Currently in 2018, rates for issued cases with behavior-based IPT charges involving Black individuals are 6.3 per 10,000. Since the White rate per 10,000 is so small, RRI values for Black and Hispanic individuals should be interpreted cautiously. In 2018, the RRI for IPT cases with a behavior based charge involving Black individuals was 8.4 while cases involved Hispanic individuals at a rate similar to Whites (RRI = 2.2). Figure 21 shows that the RDR for Black individuals has not decreased substantially over the study period; yet 2017 and 2018 are lower than the previous 4 years.



## SECTION THREE: CRIMINAL TRESPASS II

Although MCDA no longer prosecutes IPT offenses based on fare evasion exclusions, when exceptional circumstances arise or individuals chronically violate their TriMet exclusions (defined as receiving a third exclusion within a 90-day period), the MCDA will consider whether issuance of Criminal Trespass II (CTII) (Class C Misdemeanor) charges are appropriate. The MCDA believes that using Class C misdemeanor charges to address chronic fare evasion offenders balances TriMet's need to maintain order on its system, while simultaneously equating the level of harm with the appropriate charge in the criminal justice system. Therefore, it is important to examine potential displacement from IPT cases to issued Criminal Trespass II cases.

ORS 164.245 provides that “[a] person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises.” This report used the “TriMet Flag” located in the CRIMES database (MCDA’s case management system) in order to separate criminal trespass charges on TriMet property from similar trespass charges county-wide. Criminal trespass cases involving a “TriMet Flag” indicate trespass charges specific to TriMet property or involve a TriMet law enforcement response, while those with “No TriMet Flag” constitute a general trespass offense to non-TriMet property. Additionally, a file review was completed on individuals identified as having a TriMet Flagged CT II case, as to ascertain the nature of the underlying circumstances. These circumstances were aggregated into three categories: “True Trespass,” “Behavioral Exclusion,” and “Only Fare-Based Exclusion.”

Figure 22. Counts of All Issued TriMet Criminal Trespass II Cases by Year

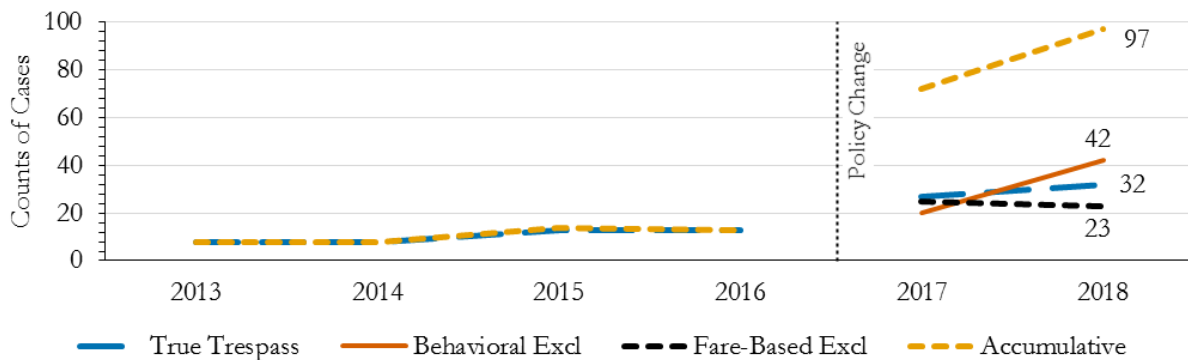
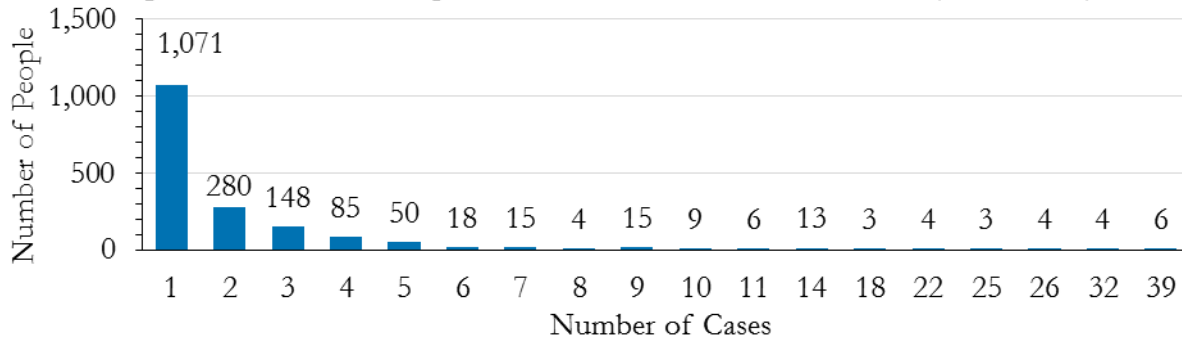


Figure 22 depicts all Criminal Trespass II cases with a TriMet Flag (gold line in Figure 22) and three categories that comprise the aforementioned criteria. “True Trespass” cases involve trespasses from either private entities that resulted in a TriMet police response or refusals to leave TriMet property when asked. “Behavioral Exclusion” trespasses involve offenders who are back on TriMet property after receiving an exclusion for inappropriate behavior, such as fighting or property damage on TriMet. “Only Fare Based Exclusion” cases involve trespassers who are located on TriMet property after receiving an exclusion for non-payment of fare and who have no other behavioral based exclusion. The “Only Fare Based Exclusion” category is of specific importance to analyze because MCDA’s new policy directly affects those prosecuted under such circumstances.



Figure 23. Counts of People and Accumulative IPT Issued Cases (2013 - 2018)



Before 2016, the majority of cases were classified as “True Trespass” cases (Figure 22). However, “Behavioral Exclusions” and “Only Fare-Based Exclusions” have increased since 2016. In 2018, behavioral exclusions and true trespass cases accounted for 42 cases and 32 cases respectively, while fare-based exclusions accounted for 23 cases. Both behavioral and fare-based exclusions are behavior types that would have previously been charged as IPT (a) cases prior to the policy change.

Logically, the policy does not address the behavior of individual TriMet passengers so it is within reason to expect the behaviors warranting case referrals to continue. Therefore, if IPT (a) charges for fare-based circumstances are to be unilaterally declined, Criminal Trespass II charges are hypothesized to increase in frequency to absorb displacement. There were 69 IPT (a) cases in 2017 and 65 CT II cases in 2018, accounting for 94.2% of the IPT (a) cases from 2017. Additionally, there were five cases with at least one IPT (a) charge in 2018. Adding the IPT (a) and CT II cases together from 2018 totals 70 cases of similar behavior, or 101% of 2017 IPT (a) cases. Therefore, it appears that the policy has shifted the IPT (a) cases to CT II for “chronic offenders”.

The data available does not provide historical data on chronic offenders, which is defined as individuals who had received three or more exclusions in a 90 day period. Repeat offenders are analyzed as a proxy. Figure 23 provides such an analysis: the number of people by the number of cases they have over the entire study period. For example, 1,071 people had one case between 2013 and 2018, while six people were responsible for 39 cases each in the same time period. As this is not indicative of how many people had IPT cases each year, the number of cases per year was calculated for each individual shown in Figure 24. There were 1,330 individuals responsible for one case per year. This differs from Figure 23 because the one individual could have multiple cases, but over multiple years. Therefore, any individual with more than 3 cases in a year has the potential to be classified as a “chronic offender.” This is not all inclusive however, as an individual can be excluded without being arrested (which is not captured in the current data).

Figure 24. Counts of People by Number of Issued IPT Cases and Year (2013 - 2018)

Cases	2013	2014	2015	2016	2017	2018	Total
1	379	271	301	222	82	75	1,330
2	62	63	63	38	9	1	236
3	21	9	27	11	5		73
4	20	7	13	10	3	1	54
5	3	4	2	6			15
6	3	4	1	2			10
7	1	1	2	1	1		6
8	2	1					3
9	3		2				5
11				2			2
12				1			1
14	1						1
19	1		1				2
Total	496	360	412	293	100	77	1,738



### Criminal Trespass for Underlying Fare-Based Exclusions

The following analyses are Criminal Trespass II cases where the individual received an exclusion for only non-payment of fare, and were designated as a chronic offender during a case review of all Criminal Trespass II cases. There were no cases during the study period where an individual received an issued Criminal Trespass II case and were not identified as chronic. Additionally, there were no other race or ethnicities represented after the selection criteria was used.

Figure 25. Counts of Issued Fare-Based CT II Cases by Race

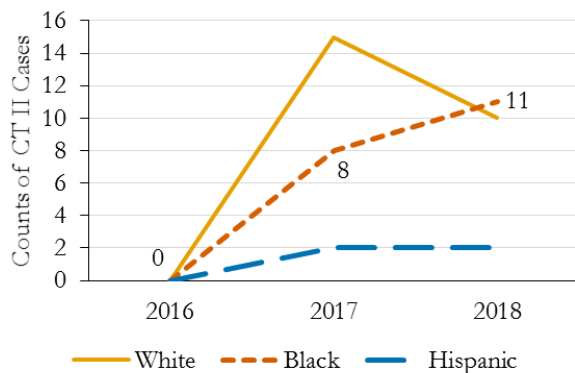
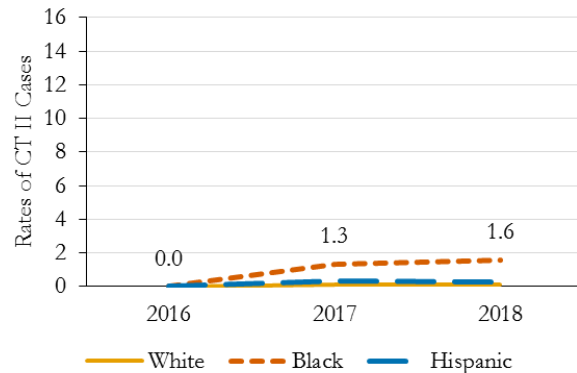


Figure 26. Rates of Issued Fare-Based CT II Cases by Race



There were 15 cases in 2017 where the defendant was identified as White, resulting in a rate of 0.3 cases per 10,000 White people (Figure 25 & 26). The number of cases in 2018 dropped for Whites, to 10 total and 0.2 per 10,000 people. There were two cases where the defendant was identified as Hispanic for both 2017 and 2018; resulting in a rate of 0.3 per 10,000 Hispanic people per year. Cases where the defendant was identified as Black increased from eight in 2017 to 11 in 2018 which also increased the rate from 1.3 to 1.6.

Figure 27. Counts of Issued Fare-Based CT II People by Race

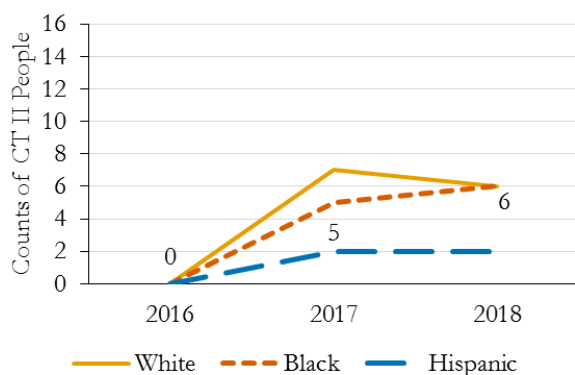
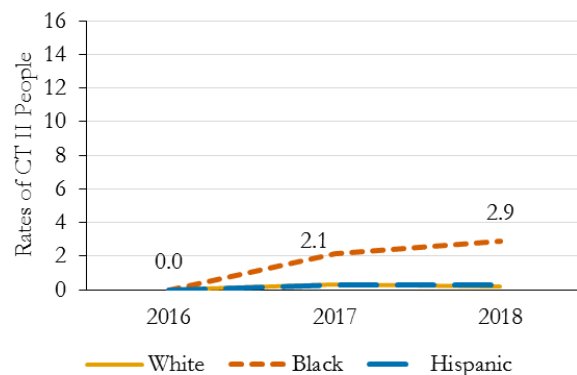


Figure 28. Rates of Issued Fare-Based CT II People by Race



However, Figures 27 and 28 report the counts and rates for people who had at least one case in each year (i.e. the same individual may be included in different years but no more than once for a given year). Figure 26 reveals that there were seven White individuals in 2017 and six in 2018; and the rates are 0.1 for each year. There were two Hispanic defendants for both 2017 and 2018, and the rate per 10,000 Hispanic people remained the same (0.3). There were five Black individuals in 2017 and six in 2018, although a difference of one increased the rate by almost 1.5 times from 2.1 to 2.9.

Figure 29. Relative Rate of Issued Fare-Based CT II Cases by Race

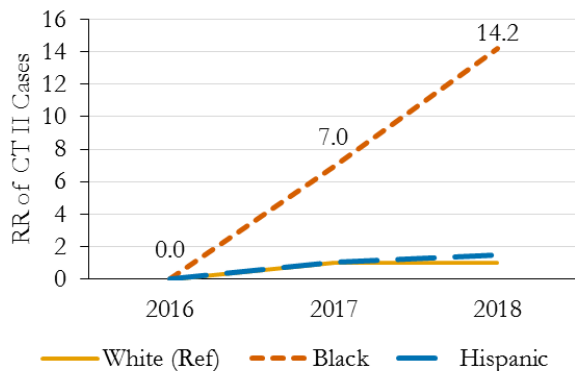
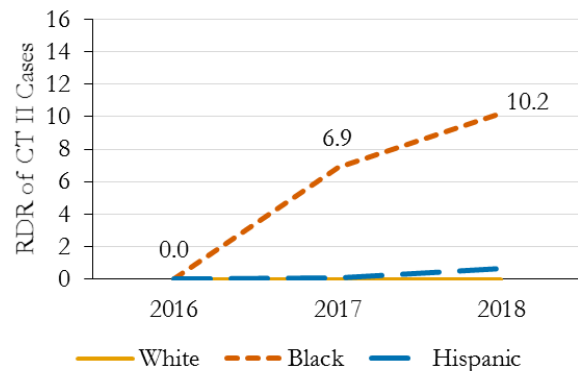


Figure 30. RDR: Issued Fare-Based CT II Cases by Race



The relative rate for cases where the defendant was identified as Hispanic was at parity (1.0 RRI) with Whites in 2017 (Figure 29). However, due to the decrease of the number of cases with White defendants, the Hispanic case RRI increased to 1.5 in 2018. The differential representation shown in Figure 30 increased from 0 in 2017 to one in 2018 as well. Cases where the defendant was identified as Black had a relative rate of 7.0 times that of Whites in 2017, and 14.2 in 2018. The differential representation of cases where the defendant is identified as Black increased from seven in 2016 to 10 in 2018.

Figure 31. Relative Rate of Issued Fare-Based CT II People by Race

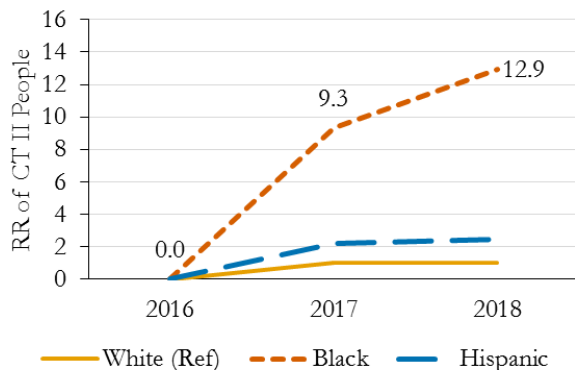
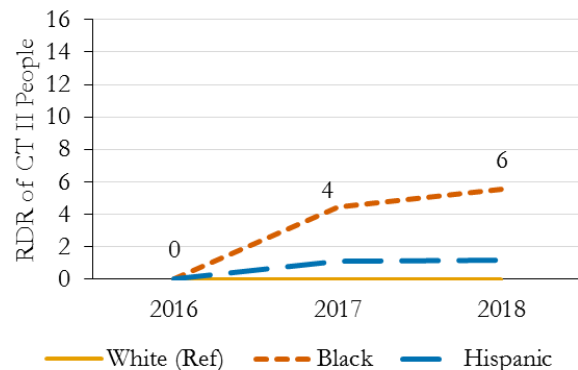


Figure 32. RDR: Issued Fare-Based CT II People by Race



The relative rate of Hispanic individuals increased from 2.2 in 2017 to 2.5 in 2018 (Figure 31). However, the raw differential representation did not change (1.0). The difference between the cases and the people calculations lies in the number of repeat White defendants being the same as the number of cases and number of Hispanic defendants. The relative rate of Black individuals rose from 9.3 in 2017 to 12.9 in 2018, largely for the same reason. The differential representation of Black individuals also increased, from four people to six people who are over represented (Figure 32).

# SUMMARY

Since the policy change enacted on January 3, 2017, there have been observable decreases in prosecutions for Interfering with Public Transportation in Multnomah County. Referred charges after 2016 fell 39.5% in 2017 and an accumulative 59.7% from 2016 to 2018. Furthermore, a greater change occurred in IPT charges issued by the MCDA. Compared to 2016, IPT charges issued by the office fell 70.5% in 2017 after the policy change to a total decrease of 82.2% in 2018. Expected decreases occurred in issued trespass IPT (a) charges which decreased 82.3% from 2016 to 2017, to an aggregate decrease of 99.3% between 2016 and 2018. IPT charges issued for behavior-based reasons remained mostly unchanged between these years. With this decrease in issued IPT charges also came an increase in issued Criminal Trespass II charges incurred on TriMet property, which increased from 13 in 2016 to 65 in 2018.

While it appears the policy has redirected charging choices from Interfering with Public Transit (a) to Criminal Trespass II, there are two arguments to consider. First, there were no individuals who were issued a Criminal Trespass II case for “fare-based exclusions only” who were not a “Chronic Offender.” In this regard, the policy has worked relatively as intended. Second, because charging decisions have shifted from a Class A Misdemeanor (with a potential sentence of up to one year jail) to a Class C Misdemeanor (30 days potential jail), the charges prosecutors are issuing are in line with the policy seeking proportional consequences to fare evasion.

The number and rate of referred cases where the defendant was identified as Black have decreased over the study period. However, because this policy change effects everyone, cases with White defendants also decreased. This caused the relative rate of cases with Black defendants to remain the same, while the differential representation has dropped by 73% over six years.

All issued cases for IPT with a Black defendant fell substantially from 2016 to 2018, with all metrics decreasing except the relative rate (as cases with White defendants also fell). There were a total of 21 cases where the defendant was identified as Black that are over represented, down from 192 in 2013. Issued cases for behavioral exclusions (IPT (b – d) charges) have not changed substantially over time for any population. For IPT (a) cases (any exclusion), all four metrics (counts, rates, RRI, and RDR) fell to zero as there were no cases with at least one IPT (a) charge where the defendant was identified as Black. It appears that the policy has had its intended effect.

In addition to diminishing and eliminating prosecution for fare-based exclusions, the policy aimed to prosecute “chronic offenders” who had received three or more exclusions in a 90 day period with Criminal Trespass II charges. Criminal Trespass II charges on TriMet have increased (from 8 in 2016 to 97 in 2018). However, 23 of TriMet Criminal Trespass II cases were for fare evasion only, and every case the defendant was identified as a chronic offender.

## Limitations and Future Research

As noted above in the first section, the use of U.S. Census general population data is a limitation. If enforcement is conducted at random, a common approach in disparity studies is to assume that the percentage of exclusions and/or arrests for each racial/ethnic group should be equal to their percentage of the local population. This is best summarized by Dr. Brian Renauer, a Portland State University professor and Director of PSU's Criminal Justice Policy Research Institute, who notes in his 2016 enforcement outcomes report:

[T]his traditional assumption can be fallible for four reasons:

1. Certain racial/ethnic groups may utilize public transportation at higher rates than their percentage of the general population, thus putting them at greater risk for fare enforcement activity.
2. Certain racial/ethnic groups may commit fare enforcement violations at higher rates than their percentage of the general population, thus putting them at greater risk for fare enforcement activity.
3. Local census population figures cannot accurately measure racial/ethnic populations using transit because an unknown percentage of transit riders come from counties or states outside the Portland metro area.
4. Deployment of enforcement personnel may tend towards a MAX line or stop that happens to be frequented by higher proportions of certain racial/ethnic groups increasing their likelihood of an enforcement incident.

These measurement issues have been referred to as the “baseline problem” common to race disparity studies.

In response to these four reasons, Dr. Renauer utilized two separate population estimate datasets to address the first two issues. Both sets originated from TriMet rider surveys. The first being the *Ridership Survey 2016*, used to estimate the number of people and percentages of racial/ethnic groups of that population (Renauer, 2016). The second is the *Fare Evasion Survey 2016*, in which contractors conducted a survey of the number of fare evaders was recorded as well as their race/ethnicity to attempt to acquire a “true incident rate” of fare evasion (Renauer, 2016 & 2018). As these four reasons are compelling arguments against using generic U.S. Census population data, the Research and Evaluation Team intends to obtain these datasets for a reasonable and representative baseline in future reports.

Another limitation is the current descriptive analysis cannot say with mathematical confidence that the policy change had an effect on the time series or not. This is a necessary distinction because there are at least two possibilities: the trend of IPT referred and issued cases was already declining and therefore the policy had no effect, or that the trend of cases was already decreasing and the policy expedited the decline in cases after 2016. The Research and Evaluations Team is actively seeking methods that will provide rigorous statistical testing to the observations in this report.

Ultimately, this report is one in a series of reports by the Multnomah County District Attorney's Office to evaluate the impact of the decision made by the Tri-County DAs. The Research and Evaluation Team intends to produce further reports with updated data to continue to understand the effects of the policy on the people of Multnomah County.

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