

**GOVERNOR'S PROGRAM BILL  
2024**

**MEMORANDUM**

An act to the penal law, in relation to transit crimes and prohibition orders relating to such crimes

**Purpose:**

To expand and clarify the existing statute, Penal Law § 65.10(2)(k-2), which allows judges to ban certain convicted criminals from the Metropolitan Transportation Authority (MTA) system.

**Summary of Provisions:**

This legislation proposes to make the following changes to the current transit ban statute: adds coverage for rider-on-rider assaults; adds coverage for assaults on MTA workers and contractors in the course of their duties, whether or not on MTA property; clarifies that the entire MTA system is subject to the ban authority; clarifies that bans may be imposed as part of a split sentence; clarifies that bans need not be geographically limited to the county where the sentencing judge sits; requires that orders imposing or modifying bans be served on the MTA; and provides that the MTA shall not use facial recognition technology to enforce such orders.

**Justification:**

Although the original authority to ban individuals from the subway system was first enacted in 2020, few bans have been imposed. The failure to use this authority to ban offenders results in part from certain limitations in the current law. The proposed amendments in this legislation would correct for these limitations, as follows:

- a) The current law is too narrow, and rider-on-rider assaults are currently excluded. The amendments would allow for bans following conviction for a rider-on-rider assault. Under current law, only a rider-on-worker assault, or a rider-on-rider sexual assault is ban-eligible. A rider-on-rider assault raises public safety concerns that are equally significant.
- b) The current law is too narrow, and certain offenses committed adjacent to MTA property are currently excluded. The amendments would allow for bans in cases of assaults or sex offenses against MTA workers committed while workers are in performance of their duties not just in or on, but also adjacent to, an MTA conveyance or facility. MTA workers' jobs often call on them to perform their duties off MTA grounds or vehicles – for example, on a sidewalk, a public roadway, or private property not owned by the MTA. This leaves a gap: an MTA worker could be attacked while doing their job, but no

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ban would be possible because of the fluke of location. For example, today if a bus driver is assaulted on the bus itself, that offense is clearly ban-eligible. If the bus driver stepped onto the roadway before being attacked, that offense would not be eligible because the roadway is not an MTA facility or conveyance. The amendment closes that gap.

- c) The law is too narrow because it excludes contractors. The MTA relies extensively on private contractors. These contractors frequently have workers in the system playing public facing roles and at risk to their own safety. In one high-profile example, a contractor was struck with a metal pipe on a subway platform. The offender in this case would not be subject to a ban. Plainly, a ban is equally appropriate in the contractor case. The amendment closes that gap.
- d) The existing law is meant to allow for a ban as part of what is known as a split sentence – that is, a sentence for a period of incarceration followed by a period of probation or conditional discharge. To avoid any unintended limitation of the ban authority, the amendment explicitly states that a ban may be imposed as part of the probationary or conditional discharge portion of a split sentence.
- e) Any judge in the state system plainly has authority to issue orders with statewide effect. Practically, the MTA system crosses countless county lines. For example, the ban authority would have little force if the defendant were only banned from the Long Island Rail Road in a single county, given that the railroad traverses five counties. The amendment explicitly states that the ban authority is not geographically limited to the county of the sentencing judge.
- f) The existing law does not require notice to the MTA when a ban is issued or modified. The MTA will play a central role in enforcing bans, so it is essential that the MTA be notified. The proposed amendment would require service on the MTA of ban orders or modifications.
- g) The existing law does not address the use of technology for enforcement of bans. To address any possible concerns in this regard, the amendments state explicitly that facial recognition technology shall not be used for enforcement.

### **Legislative History:**

2023: A3008/S4008, A3008-A/S4008-A, S4008-B

### **Budget Implications:**

None.

### **Effective Date:**

This act shall take effect immediately.