

# **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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## **MEMORANDUM**

### **ATTORNEY-CLIENT PRIVILEGED & CONFIDENTIAL**

**TO:** Deputy Chief Kevin Franklin  
BART Police Department

**DATE:** May 19, 2021

**FROM:** Byron K. Toma

**SUBJECT:** Whether certain laws related to the crime of fare evasion are general intent or specific intent in character.

### **BACKGROUND:**

It is my understanding that certain members of the BART Police Citizen Review Board (BPCRB) have questioned whether the BART Police are legally correct in addressing fare evasion as a general intent crime. Based upon what I have been told about their questions, it appears that some of the BPCRB believe that criminal sanctions should not be imposed in the absence of clear evidence that the party apprehended intended to escape the payment of fares.

### **QUESTION:**

Is fare evasion as described in Penal Code Section 640(c)(1) an act that should be supported by a general intent to violate the law or a specific intent to violate the law?

### **DISCUSSION:**

Under Common Law principles, every crime had two elements: a criminal action (actus reus) and a criminal intent (mens rea). The criminal action involved in fare evasion is failure to pay the required transit fare. The criminal intent that must accompany this action is what the BPCRB questions.

There are certain crimes where the criminal action need not be accompanied by a criminal intention. Those are crimes that are generally so heinous, that the lawmakers agree that the act alone is sufficient to warrant the imposition of criminal sanctions. Those include, for instance, crimes involving the improper handling of highly toxic materials where the mens rea requirements have been lowered or eliminated due to public policy interests. In addition to these strict liability crimes, there are vicarious liability crimes such as felony murder where the intention is imputed to another person to support a criminal prosecution where no specific intent to kill was present.

In the case of most criminal laws, the Legislature requires the presence of some actual intention to commit the crime. The question is whether the party had to intend the consequences of performing a criminal action (specific intent) or whether the party had to merely intend to perform certain actions without a specific intention to achieve the specific consequences of that act.

How does one determine whether a crime is one of general intent or specific intent? It all rests upon the intention of the State Legislature as reflected in the language of the law.

The language of the Penal Code Section 640(c)(1) supports the view that the law is intended to be a general intent crime. There is nothing in the description of the crime that requires a specific intention to avoid payment of the fare. Not obtaining a valid fare is enough to constitute a violation of the law.

The fact that there are other provisions in the same law (Section 640) that do address a "specific" intent further bolsters the position that Section 640(c)(1) is a general intent law. To the extent that lawmakers called out a specific intention element – to evade – in other portions of the law but did not define 640(c)(1) with a similar intention strongly argues that the lawmakers intended for that particular offense [i.e. 640(c)(1)] be one only requiring a general intent to commit the crime – i.e. to do the acts necessary for the offense without requiring the conscious intent to escape payment of a fare.

Penal statutes are narrowly construed. Normally that means that they cannot be interpreted in a manner that departs from the clear language used to express the crime. By the same token, the words cannot be viewed to involve more elements than are actually expressed in the language of the law despite the BPCRB's view that public policy should be involved in the law's interpretation. Taking public policy into account is permissible for certain types of laws that are liberally construed [e.g. to promote public health, child welfare, etc.], but not for penal laws that are narrowly construed. What is stated by the Legislature is the entire law. There are furthermore no ambiguities or vagueness in the expression of 640(c)(1). Hence, there is no need to look outside the language of the law to assist in its interpretation.

## **CONCLUSION:**

Penal Code Section 640(c)(1) is a general intent fare evasion law.

Byron K. Toma