

Face Mask Exemptions: A Legal Guide for Shoppers and Business Patrons in New York State

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Introduction

What follows is a compilation of relevant federal and New York State laws as they relate to the rights of shoppers and people who patronize stores and businesses, and who are exempt from wearing a face mask. By law, retail stores and businesses are considered "public accommodations," and there are laws which prohibit these businesses from discriminating against people based on disability. (For a full legal definition of "public accommodations," see Appendix 1.)

It is important to emphasize the following:

- **EVERYONE**—both "disabled" and "non-disabled"—is **exempt** from having to wear a face covering, according to the *New York State Department of Health Interim Guidance on Executive Order 202.17 and 202.18* (see below). Although a governor's executive order is not an actual law (and therefore is not enforceable—see #1), the interim guidance excerpt below explicitly states that an individual is not required to wear a face covering if it would "inhibit or otherwise impair" their health. Humans depend upon respiration for their health and survival. Any physical barrier, such as a piece of fabric, indisputably inhibits normal human respiration—including the inhalation of oxygen and exhalation of carbon dioxide and other waste products—which in turn induces negative physiological changes and thus "impair[s] an individual's health."

**Interim Guidance on Executive Orders 202.17 and 202.18
Requiring Face Coverings in Public During the COVID-19 Outbreak**
New York State Department of Health
April 17, 2020

If a face covering would inhibit or otherwise impair an individual's health or if an individual is not older than two (2) years of age, an individual is not required to wear or use such a covering.

https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_eo20217-20218publicfacecovering_041720.pdf

- Common sense tells us that information regarding an individual's health is personal and confidential. Not only is it confidential, even health care providers—with whom you have voluntarily shared this information—are strictly regulated by HIPAA (*Health Insurance Portability and Accountability Act*) and are legally required to protect your personal health information and to keep it private (per the HIPAA Privacy Rule, 45 CFR, Part 160 and Subparts A and E of Part 164). A store manager has no more legal right to inquire about your medical history or medical condition, than a stranger on the street has to demand that you answer

such questions. You are not required to disclose private medical information, nor are you required to provide any medical documentation or evidence of disability, as a condition for entry into a store or business. Furthermore, asking a disabled business patron to provide personal health information is an unlawful form of discrimination known as "screening" (see #2). The legal prohibition against being forced to disclose private health details is explicitly affirmed by the interim guidance excerpt below:

**Interim Guidance on Executive Orders 202.17 and 202.18
Requiring Face Coverings in Public During the COVID-19 Outbreak**
New York State Department of Health
April 17, 2020

...essential business operators and enforcement authorities are **prohibited from requesting or requiring medical or other documentation** from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage.

https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_eo20217-20218publicfacecovering_041720.pdf

- Our constitutionally protected human and civil rights, along with existing federal and state laws which guarantee those rights, are NOT superseded, overridden, suspended, revoked, or invalidated by state governors' executive orders, guidances, or mandates.
- Federal Civil Rights law and the *Americans with Disabilities Act* (ADA) protect the rights of all individuals, including disabled people.
- Under New York State Human Rights Law (§ 296), it is unlawful for businesses to discriminate—either directly or indirectly—based on disability. Discriminatory practices include screening customers, denying entry, offering unequal treatment, refusing to sell, or refusing services, to a business patron who is unable to wear a mask or face covering. Anyone associated with the business, including "*any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement,*" may be held personally liable for violations of human rights.
- All business owners, store managers, and employees who violate federal Civil Rights, New York State Human Rights, and New York State Penal laws outlined in this legal guide are personally responsible and liable for their actions, and may be subject to criminal or civil penalties.

- As in any situation which may involve an encounter with law enforcement, there is no guarantee that the police will honor—or even know—every law that is outlined in this guide. However, if we educate ourselves, we will be better prepared to meet such challenges with confidence and resolve.

This legal guide is intended as an educational tool, a portable resource, and a call to action to assert our rights, because the laws are on our side, and the purpose of the laws is to protect our rights.

Know your rights. Use this legal guide to assert your rights.

1. Discriminatory Policies Requiring Masks

If a store or business claims that its "policy" requires that a customer wear a face mask, this policy is null and void. It is unlawful for a business to have—much less attempt to enforce—a policy which violates established law. Store "policies" do not supersede federal and state laws. Although it may be privately owned, a store or business which is open to the public is considered a "public accommodation" (federal) or "place of public accommodation, resort or amusement" (New York State). (For full legal definitions of these terms, see Appendix 1.) Federal and state civil and human rights laws forbid discrimination based on disability. These laws protect disabled customers and guarantee their "full and equal enjoyment" of all goods and services provided by "public accommodations." "Policies" which discriminate based on disability are therefore **ILLEGAL**. For the same reason, any discriminatory "written or printed communication" of an unlawful policy—such as a sign saying "face mask required" which is displayed or posted at the entrance to a store or business—is also **COMPLETELY ILLEGAL**.

UNITED STATES

Title 42 USC—The Public Health and Welfare

Chapter 126: Equal Opportunity for Individuals with Disabilities ["Americans with Disabilities Act of 1990" or "ADA"]

SUBCHAPTER III—Public Accommodations and Services Operated by Private Entities

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a), discrimination includes—

- (ii) a failure to make reasonable modifications in **policies**, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations....

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

NEW YORK STATE

New York State Human Rights Law

§ 291: Equality of opportunity a civil right

2. ...the use of **places of public accommodation**... without discrimination because of... **disability**, as specified in section two hundred ninety six of this article, is hereby recognized as and declared to be a civil right.

§ 296: Unlawful discriminatory practices

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the... **disability**... of any person, directly or indirectly, **to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof...** or, directly or indirectly, to publish, circulate, issue, **display**, post or mail **any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to** any person on account of... **disability**... or that the patronage or custom thereof of any person... **having a disability is unwelcome, objectionable or not acceptable, desired or solicited.**
- (c) For the purposes of paragraph (a) of this subdivision, "discriminatory practice" includes:
 - (i) a refusal to make reasonable modifications in **policies**, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages or accommodations to individuals with disabilities, unless such person can demonstrate that making such modifications would fundamentally alter the nature of such facilities, privileges, advantages or accommodations....

<https://dhr.ny.gov/law>

2. Screening: Masks, Temperature Checks, Health Questionnaires, Proof of Disability

It is illegal for "public accommodations" to impose discriminatory "eligibility criteria" as conditions for entry, when such criteria "screen out or tend to screen out" people with disabilities. These "eligibility criteria" may include requiring that customers wear a face mask (or any other so-called "personal protective equipment"), submit to medical procedures (such as "temperature checks"), or complete health questionnaires. In addition, as discussed in the Introduction section of this legal guide, it is illegal for a store owner or manager to ask a customer health-related questions. As discussed in the Introduction of this legal guide, you are not required to answer any health-related questions (including "what is your disability?") or to disclose any personal medical

information, nor are you required to provide any medical documentation or evidence of a disability. Your private medical information is **none of their business**. It is not only inappropriate, it is totally illegal, for them to ask customers about their health.

UNITED STATES

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No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a), discrimination includes—

- (i) the imposition or application of eligibility criteria that **screen out or tend to screen out an individual with a disability** or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered....

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

3. Unauthorized Practice of a Licensed Profession (Medicine) by Asking Someone to Wear a Mask

Yet another reason why it is illegal for "public accommodations" to require customers to wear a face mask is because only a qualified, licensed medical professional has the authority to recommend or prescribe the use of a face mask, which is a medical intervention. According to federal law, face masks are "devices" which are "intended to prevent disease" [per U.S. Code Title 21. FOOD AND DRUGS; Chapter 9. FEDERAL FOOD, DRUG, AND COSMETIC ACT; Subchapter II, DEFINITIONS; §321, Definitions; generally: "(h) The term '**device**'... means an instrument, apparatus, implement... or other similar or related article... (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or **prevention of disease**...."].

Furthermore, face masks undeniably restrict a person's breathing, decrease a person's

oxygen intake, increase the levels of carbon dioxide within the body, and cause other detrimental physiological changes. The Occupational Safety and Health Administration (OSHA)—the federal agency responsible for protecting workers' health and safety—requires that before employees can be asked to wear a face mask in the workplace, they must first be evaluated by a medical professional for "fitness." Obviously, this common-sense precaution is not being observed by business owners who demand that customers wear a mask. Under New York State law, the "unauthorized practice" of a licensed profession (i.e., medicine) is a Class E Felony and is punishable by up to four years in prison.

NEW YORK STATE

The Laws Of New York Consolidated Laws Education

Title 8: The Professions

Article 130*: General Provisions

Subarticle 1: Introductory Summary

§ 6503: Practice of a profession

Admission to the practice of a profession (1) entitles the licensee to practice the profession as defined in the article for the particular profession....

<https://www.nysenate.gov/legislation/laws/EDN/6503>

The Laws Of New York Consolidated Laws Education

Title 8: The Professions

Article 130*: General Provisions

Subarticle 4: Unauthorized Acts

§ 6512: Unauthorized practice a crime

1. Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts,... or who aids or abets an unlicensed person to practice a profession,... shall be guilty of a class E felony.

<https://www.nysenate.gov/legislation/laws/EDN/6512>

4. Claiming That Wearing a Mask is a "Law" and Then Impersonating a Police Officer by Trying to Enforce a (Non-Existent) Law Without the Legal Authority to Do So

Firstly, it is illegal for business owners to attempt to enforce laws, executive orders, guidances, or mandates, under the false pretense that they are legally authorized to do so. Secondly, there is no "law" that requires people to wear a mask—the New York State Governor's "Executive Order" (No. 202.34; dated May 28, 2020; see Appendix 2) is only a recommendation, and does not have the force of law. Governors do not make

laws—only legislators make laws. Thirdly, the New York State Governor's "Executive Order" explicitly stipulates that people who are not able to "medically tolerate a face covering" are exempt from the order. However, this exemption is routinely being disregarded not only by many stores and business owners, but also by many police officers. Instead of honoring the exemption, and protecting the rights of the disabled, business owners have inexplicably rewritten the "Executive Order" to omit the exemption (under the guise of an *illegal* store "policy"—see #1). When a business owner, in the course of committing a felony (such as practicing medicine without a license—see #3), uses false pretenses and misrepresentations in an attempt to induce a customer to abide by a purported law (whether real or imaginary), this combination constitutes "criminal impersonation" of a police officer, which is a Class E Felony under New York State law, and is punishable by up to four years in prison.

NEW YORK STATE

The Laws Of New York Consolidated Laws Penal

Part 3: Specific Offenses

Title K: Offenses Involving Fraud

Article 190: Other Frauds

§ 190.26: Criminal impersonation in the first degree

A person is guilty of criminal impersonation in the first degree when he:

1. Pretends to be a police officer... or **expresses by his or her words or actions that he or she is acting with the approval or authority of any police department;**... and
2. So acts with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon said pretense and **in the course of such pretense commits or attempts to commit a felony.**

<https://www.nysenate.gov/legislation/laws/PEN/190.26>

5. Unequal Treatment, Separate Treatment, or Segregation

Under federal and New York State law, unequal treatment, separate treatment, and segregation based on disability are unlawful forms of discrimination. Current frequent examples of such unlawful discrimination are "curbside pickup," or stores offering to shop for a patron who is medically unable to tolerate a face covering. Although at one time in history, certain people were expected to sit at separate lunch counters, use different restrooms, or sit in the back of the bus, today, these practices are rightly viewed as shameful and loathsome relics of a barbarous past. The *U.S. Civil Rights Act of 1964* outlawed discrimination based on race, color, religion, sex, and national origin. Likewise, the *Americans with Disabilities Act of 1990* outlawed discrimination based on disability, prohibiting, among other things, unequal or separate treatment.

UNITED STATES

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(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is **not equal to that afforded to other individuals.**

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is **necessary** to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is **as effective as that provided to others.**

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

NEW YORK STATE

New York State Human Rights Law

§ 291. Equality of opportunity a civil right.

2. ...the use of **places of public accommodation**... without discrimination because of... **disability**, as specified in section two hundred ninety six of this article, is hereby recognized as and declared to be a civil right.

19. The term "discrimination" shall include **segregation and separation**.

<https://dhr.ny.gov/law>

6. Denying Access or Entry

Any business owner who prevents, or attempts to prevent, the lawful entry into a "public accommodation" of a person who is unable to medically tolerate a face mask, is guilty of unlawful discrimination based on disability. Both federal and New York State law explicitly guarantee everyone's right to the full and equal enjoyment and use of the goods and services of "public accommodations." Businesses are therefore prohibited from denying access or entry to persons without a face mask.

UNITED STATES

Title 42 USC—The Public Health and Welfare

Chapter 126: Equal Opportunity for Individuals with Disabilities ["Americans with Disabilities Act of 1990" or "ADA"]

SUBCHAPTER III—Public Accommodations and Services Operated by Private Entities

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

NEW YORK STATE

New York State Human Rights Law

§ 291. Equality of opportunity a civil right.

2. ...the use of **places of public accommodation**... without discrimination because of... **disability**, as specified in section two hundred ninety six of this article, is hereby recognized as and declared to be a civil right.

§ 296. Unlawful discriminatory practices.

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the... **disability**... of any person, directly or indirectly, **to refuse, withhold from or deny to such person any of the accommodations**, advantages, facilities or privileges thereof....

<https://dhr.ny.gov/law>

7. Harassing, Annoying, Stalking, or Alarming Customers Who Are Not Wearing a Mask

Anyone who deliberately, and for no legitimate purpose, follows, shadows, stalks, harasses, or engages in unwelcome physical contact with a customer who is not wearing a face mask, is guilty of "Harassment in the second degree." Business owners, store managers, employees, and even other customers, routinely violate this law by annoying, alarming, or even trying to publicly shame the disabled person. In other instances, business owners or their employees use harassment and intimidation in an attempt to compel the customer to wear a mask or to leave the store. In neither case is this conduct legitimate, because the New York State Governor's "Executive Order" (No. 202.34; dated May 28, 2020; see Appendix 2) explicitly stipulates that people who are not able to "medically tolerate a face covering" are **exempt** from the order. Under New York State Penal Law, "Harassment in the second degree" is a violation which is punishable by up to fifteen days imprisonment.

NEW YORK STATE

The Laws Of New York Consolidated Laws Penal

Part 3: Specific Offenses

Title N: Offenses Against Public Order, Public Sensibilities and the Right to Privacy

Article 240: Offenses Against Public Order

§ 240.26: Harassment in the second degree

A person is guilty of harassment in the second degree when, with **intent to harass, annoy or alarm another person**:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or

3. He or she engages in a course of conduct or repeatedly **commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.**

Harassment in the second degree is a violation.

<https://www.nysenate.gov/legislation/laws/PEN/240.26>

8. Unlawful Imprisonment in the Second Degree by Obstructing or Restricting a Person's Freedom of Movement

Anyone who "intentionally"—whether by "physical force, intimidation, or deception"—physically obstructs, blocks, restrains, or restricts the free movement of a customer in a "public accommodation," or attempts to move or confine the customer to a specific area, without the customer's consent, may be guilty of "Unlawful Imprisonment in the Second Degree." If a business owner or store manager attempts to "restrain" a person's movement as described above, the customer should inform them that their business is a "public accommodation" and that their conduct is therefore unlawful. If the business owner or store manager persists, then they are guilty of violating this law. Under New York State Penal Law, "Unlawful Imprisonment in the Second Degree" is a Class A Misdemeanor and is punishable by a maximum of one year in jail, or a fine of up to \$1,000, or both.

NEW YORK STATE

The Laws Of New York Consolidated Laws Penal

Part 3: Specific Offenses

Title H: Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation

Article 135: Kidnapping, Coercion and Related Offenses

§ 135.00: Unlawful imprisonment, kidnapping and custodial interference; definitions of terms

1. "Restrain" means to **restrict a person's movements** intentionally and unlawfully in such manner as to **interfere substantially with his liberty** by **moving him** from one place to another, or by **confining him** either in the place where the restriction commences or in a place to which he has been moved, **without consent and with knowledge that the restriction is unlawful.** A person is so moved or confined "without consent" when such is accomplished by (a) **physical force, intimidation or deception....**

<https://www.nysenate.gov/legislation/laws/PEN/135.00>

§ 135.05: Unlawful imprisonment in the second degree

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

<https://www.nysenate.gov/legislation/laws/PEN/135.05>

**9. Unlawfully Accusing a Shopper of Trespassing:
Demanding That a Shopper Leave is an Unlawful Order,
and Shopping is Not Trespassing**

Shoppers who do not wear a mask are often accused of "trespassing." Our purpose here is to prove that they are NOT trespassing. When customers enter a "public accommodation," they do so with "license and privilege." This means that they have a legal right to be there. **In order to be guilty of "trespassing," a customer must first have committed a crime or a violation!** If no such crime or violation has been committed, and if the customer is just peacefully going about their business inside a "public accommodation," **they are innocent! Therefore, they are not trespassing!** The New York State Governor's "Executive Order" (No. 202.34; dated May 28, 2020; see Appendix 2)—which is not even a law (see #4)—allows an exemption for people who are medically unable to wear a face covering. If a business owner or store manager demands that a customer who has NOT committed a crime or violation must leave the "public accommodation" because the customer is not wearing a mask, this constitutes an **unlawful** order. A person would only be guilty of "trespassing" if they had defied a **lawful** order.

Unlike the other points in this legal guide, this point does not describe a specific crime committed by a business owner or store manager. The actual crime being committed by the business owner or store manager—"Coercion"—consists of **falsely** accusing someone of a crime in an attempt to compel them to either wear a mask or leave the premises, and is described in greater detail below (see #10).

NEW YORK STATE

The Laws Of New York Consolidated Laws Penal

Part 3: Specific Offenses

Title I: Offenses Involving Damage to and Intrusion Upon Property

Article 140: Burglary and Related Offenses

§ 140.00: Criminal trespass and burglary; definitions of terms

5. "Enter or remain unlawfully."

A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. **A person who**, regardless of his intent, **enters or**

remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a **lawful** order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person.

<https://www.nysenate.gov/legislation/laws/PEN/140.00>

§ 140.05: Trespass

A person is guilty of trespass when he knowingly enters or remains **unlawfully** in or upon premises. Trespass is a violation.

<https://www.nysenate.gov/legislation/laws/PEN/140.05>

10. Coercion in the Third Degree: Falsely Accusing Someone of a Crime and Calling the Police, or Threatening to Call the Police

To attempt to coerce a customer to either wear a mask (which they have a **legal right to abstain from**), or to leave a store (in other words, to abstain from shopping, which they have a **legal right to engage in**), using the threat of calling the police—or actually calling the police—as a means of compelling or inducing a customer to comply with unlawful demands, constitutes "Coercion in the Third Degree." A typical scenario may unfold as follows: a store owner unlawfully insists that a customer wear a mask or leave the store; the customer lawfully exercises his right to not wear a mask and to continue shopping; the store owner then **misleadingly claims that his "public accommodation" is "private property,"** falsely accuses the customer of "trespassing," and threatens to call the police if the customer doesn't leave. As discussed above (see #9), unless the customer has violated another law, there are no legal grounds for an accusation of "trespassing" in a "public accommodation." Common sense dictates that, in a similar fashion, there are no legal grounds for any other false charges, such as "disorderly conduct," "disturbing the peace," or "resisting arrest." **Here, it is important to emphasize that police may not lawfully initiate an "arrest"—that you would be accused of "resisting"—unless you have first committed an actual crime!** "Coercion in the Third Degree" is a Class A Misdemeanor and is punishable by a maximum of one year in jail, or a fine of up to \$1,000, or both.

NEW YORK STATE

The Laws Of New York Consolidated Laws Penal

Part 3: Specific Offenses

Title H: Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation

Article 135: Kidnapping, Coercion and Related Offenses

§ 135.60: Coercion in the Third Degree

A person is guilty of coercion in the third degree when he or she compels or induces a person to engage in conduct which the latter **has a legal right to abstain from engaging in**, or to **abstain from engaging in conduct in which he or she has a legal right to engage**,... by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

4. **Accuse some person of a crime or cause criminal charges to be instituted against him or her...**

Coercion in the third degree is a class A misdemeanor.

<https://www.nysenate.gov/legislation/laws/PEN/135.60>

11. Refusal to Sell

Any owner or employee of a "public accommodation" who refuses to sell to a person who is unable to medically tolerate a face mask is guilty of unlawful discrimination based on disability. Both federal and New York State law explicitly guarantee everyone's right to the full and equal enjoyment and use of the goods and services of "public accommodations." Businesses are therefore prohibited from refusing to sell to persons without a face mask.

NEW YORK STATE

New York State Human Rights Law

§ 291. Equality of opportunity a civil right.

2. ...the use of **places of public accommodation**... without discrimination because of... **disability**, as specified in section two hundred ninety six of this article, is hereby recognized as and declared to be a civil right.

§ 296. Unlawful discriminatory practices.

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the... **disability**... of any person, directly or indirectly, **to refuse, withhold from or deny to such person any of the accommodations**, advantages, facilities or privileges thereof...
13. It shall be an unlawful discriminatory practice (i) for any person... to **refuse to... sell to...** or otherwise discriminate against any person, **because of** the... **disability**... of such person... or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

<https://dhr.ny.gov/law>

12. Police, Employees, or Others Aiding and Abetting the Commission of a Crime

For each of the laws described above, there may be a "primary" guilty party (such as a business owner or store manager at a "public accommodation") who initially violates the law. However, it is not uncommon for one or more "accomplices" (such as a store employee, another customer, or even a **law enforcement officer**) to assist the primary lawbreaker in committing a crime—whether or not the primary lawbreaker or the accomplice is aware that a law is being broken. In these instances, the accomplice is "aiding and abetting" the primary lawbreaker in violating the civil and human rights of a disabled person.

A typical scenario may unfold as follows: a store manager threatens to throw a disabled person out of a store for not wearing a mask. The disabled person refuses to leave. The store manager then instructs one of his employees to call 911. If the employee calls 911, he is "aiding and abetting" his boss because he is assisting him in committing a crime ("Coercion," see #10). Then, a law enforcement officer arrives at the store, and he also "aids and abets" the commission of a crime by unlawfully insisting that the disabled person either wear a mask or leave the store. If the disabled person objects to these multiple infringements of his rights, the law enforcement officer may again "aid and abet" the store manager by unlawfully threatening to arrest the disabled person for "trespassing" or "disturbing the peace."

Other customers may also be guilty of "aiding and abetting" a business owner who has already committed a crime by having an unlawful "policy" requiring masks (see #1). This policy all too often "incites" one or more customers to approach the disabled person and threaten, harass, curse at, shout at, verbally abuse, name-call, or publicly shame the disabled person with taunts such as "didn't you see the sign?" or "can't you read?" or "where's your mask?" **With alarming and increasing frequency, these scenarios repeatedly play out in stores and businesses across the country, where everyone gangs up on the disabled person, fostering a mob mentality.**

NEW YORK STATE

New York State Human Rights Law

§ 291. Equality of opportunity a civil right.

2. ...the use of **places of public accommodation**... without discrimination because of... **disability**, as specified in section two hundred ninety six of this article, is hereby recognized as and declared to be a civil right.

§ 296. Unlawful discriminatory practices.

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of

any place of public accommodation, resort or amusement, because of the... **disability**... of any person, directly or indirectly, **to refuse, withhold from or deny to such person any of the accommodations**, advantages, facilities or privileges thereof...

6. It shall be an unlawful discriminatory practice for any person to **aid, abet, incite, compel or coerce** the doing of any of the acts forbidden under this article, or to attempt to do so.

<https://dhr.ny.gov/law>

APPENDIX 1:

Definitions of Public Accommodations

UNITED STATES

Title 42 USC—The Public Health and Welfare

Chapter 126: Equal Opportunity for Individuals with Disabilities ["Americans with Disabilities Act of 1990" or "ADA"]

SUBCHAPTER III—Public Accommodations and Services Operated by Private Entities

§ 12181. Definitions:

Subsection (7) Public accommodation:

The following **private entities** are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

- (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (B) a restaurant, bar, or other establishment serving food or drink;
- (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (D) an auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, library, gallery, or other place of public display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter126&edition=prelim>

NEW YORK STATE

New York State Human Rights Law

§ 292. Definitions.

9. The term "place of public accommodation, resort or amusement" shall include, regardless of whether the owner or operator of such place is a state or local government entity or a private individual or entity, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and **retail stores** and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bath-houses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls, public rooms, public elevators, and any public areas of any building or structure. Such term shall not include kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; any such kindergarten, primary and secondary school, academy, college, university, professional school, extension course or other education facility, supported in whole or in part by public funds or by contributions solicited from the general public; or any institution, club or place of accommodation which proves that it is in its nature distinctly private. In no event shall an institution, club or place of accommodation be considered in its nature distinctly private if it has more than one hundred members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of a nonmember for the furtherance of trade or business. An institution, club, or place of accommodation which is not deemed distinctly private pursuant to this subdivision may nevertheless apply such selective criteria as it chooses in the use of its facilities, in evaluating applicants for membership and in the conduct of its activities, so long as such selective criteria do not constitute discriminatory practices under this article or

any other provision of law. For the purposes of this section, a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state or a religious corporation incorporated under the education law or the religious corporations law shall be deemed to be in its nature distinctly private.

No institution, club, organization or place of accommodation which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements shall be deemed a private exhibition within the meaning of this section.

<https://dhr.ny.gov/law>

APPENDIX 2:

New York State Governor's Executive Order No. 202.34

On May 28, 2020, New York Governor Andrew Cuomo signed Executive Order No. 202.34 granting business owners the "discretion" (meaning the right to make a choice) to "deny admittance to," or "require or compel" the removal of, any individual not wearing a face mask:



No. 202.34

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of this Executive Order through June 27, 2020:

- Business operators and building owners, and those authorized on their behalf shall have the discretion to ensure compliance with the directive in Executive Order 202.17 (requiring any individual over age two, and able to medically tolerate a face-covering, be required to cover their nose and mouth with a mask or cloth face-covering when in a public place), including the discretion to deny admittance to individuals who fail to comply with the directive in Executive Order 202.17 or to require or compel their removal if they fail to adhere to such directive, and such owner or operator shall not be subject to a claim of violation of the covenant of quiet enjoyment, or frustration of purpose, solely due to their enforcement of such directive. Nothing in this directive shall prohibit or limit the right of State and local enforcement authorities from imposing fines or other penalties for any violation of the directive in Executive Order 202.17. This directive shall be applied in a manner consistent with the American with Disabilities Act or any provision of either New York State or New York City Human Rights Law, or any other provision of law.

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO202.34.pdf>

APPENDIX 3:

Under Federal Law, Individuals May Be Sued—and Personally Liable—for Money Damages If They Violate Someone's Civil Rights

42 USC 1983: Civil action for deprivation of rights

From Title 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 21—CIVIL RIGHTS

SUBCHAPTER I—GENERALLY

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, **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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1983&num=0&edition=prelim>

APPENDIX 4:

Universal Declaration on Bioethics and Human Rights: Informed Consent

Although non-binding for signatory nations, the *Universal Declaration on Bioethics and Human Rights* incorporates internationally accepted human rights standards, including the principle of "informed consent":

Universal Declaration on Bioethics and Human Rights Article 6—Consent

1. Any **preventive, diagnostic and therapeutic medical intervention** is only to be carried out with the prior, **free and informed consent** of the person concerned, based on adequate information. The consent should, where appropriate, be express and **may be withdrawn** by the person concerned **at any time and for any reason without disadvantage or prejudice**.
2. Scientific research should only be carried out with the prior, free, express and informed consent of the person concerned. The information should be adequate, provided in a comprehensible form and should include modalities for withdrawal of consent. Consent may be withdrawn by the person concerned at any time and for any reason without any disadvantage or prejudice. Exceptions to this principle should be made only in accordance with ethical and legal standards adopted by States, consistent with the principles and provisions set out in this Declaration, in particular in Article 27, and international human rights law.
3. In appropriate cases of research carried out on a group of persons or a community, additional agreement of the legal representatives of the group or community concerned may be sought. In no case should a collective community agreement or the consent of a community leader or other authority substitute for an individual's informed consent.

http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html

APPENDIX 5:

Brave Sheriff Speaks Out Against Unenforceable COVID Orders Cayuga County Sheriff: How the Governor and I Agree

By Brian Schenck, *The Citizen* (Auburn, NY)
November 23, 2020

Last week I released a statement confirming that members of our sheriff's office would not be enforcing the governor's recent order to limit the size of gatherings at private residences to 10 or less. My decision to confirm this came after numerous community residents and the media contacted me to determine how we would handle this order. I would like to further clarify why our sheriff's office will not be taking any enforcement action in this area.

But first, I would like to explain that I recognize the need for each and every one of us to limit the number of people we come into contact with. COVID-19 is real and I have seen just how difficult and dangerous it can be for those that contract the virus. Two people close to me have become very ill as a result of COVID and ultimately had to be hospitalized, one in intensive care. I am also aware that this virus can be deadly, especially to the elderly and those with underlying health issues. For those reasons we all need to do our part to limit our contact with others, wear face coverings when in close contact and wash our hands regularly. I personally recognize my responsibility and have taken personal steps to limit my contact with others, including reducing the number of people at my Thanksgiving celebration this year.

The Governor and I agree. We all should keep the size of our gatherings small, including those at private residences; however, his order for law enforcement to take enforcement action at private homes is not possible. **His order comes with no enforcement mechanism, no available charge or sanction**, no ability to enter one's home to count guests. **Unlike an actual law it does not provide the ability for the police to arrest or even obtain a warrant with probable cause** due to the number of people present. If our officers responded to an alleged gathering of 20 people in a home today, we could not obtain a warrant to enter, **there is no charge that could be brought against the host or occupants, and no path to prosecute and levy any penalty or fine**. The Constitution also clearly protects each and every one of us from search and seizure by the government, especially in our homes, absent a warrant obtained with probable cause that a crime has been committed. I stand committed to protecting the Constitutionally guaranteed right to privacy.

Finally, we do not have the resources to enforce gathering limits at private homes. Our deputy sheriffs are answering numerous calls for service each day and are often stretched thin. It would just not be possible for us to do this, even if we legally could.

I am also aware that our health care system is currently strained and lacking resources not only across the United States, but here at home, due to treatment and testing related to COVID-19. By reducing the spread, we keep our health care workers available for other urgent health needs.

I urge the Governor to stop implying that local law enforcement is not doing their job by refusing to "enforce" this order when it clearly is not legally or practically possible.

Instead, let's work together to send the right message that people should in fact limit gathering sizes and why, instead of trying to mandate the impossible. It is my hope that everyone we serve follows safe practices to protect not only ourselves, but others.

https://auburnpub.com/opinion/columnists/cayuga-county-sheriff-how-the-governor-and-i-agree/article_a9afabe2-4441-501f-ad48-4c458b6a25d0.html