



**Empowering People to Lead Systemic Change**

1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

DisabilityRightsMD.org

**Senate Judicial Proceedings Committee**

**Senate Bill 709: Criminal Law - Masked Intimidation - Prohibition (Unmask Hate Act)**

**Wednesday, February 26, 2025**

**Position: Oppose**

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Many people with disabilities use masks to mitigate the impacts of a disability and fully participate in community life. DRM opposes SB 709 because it would stigmatize this critical disability aid and put people with disabilities at increased risk of criminalization.

While SB 709 does not all out ban the use of masks, it would require people with disabilities to prove that their need to wear a mask is legitimate if they are perceived to be intimidating or harassing. Importantly, disabled people are at increased risk of criminalization and police violence because strangers may misperceive certain disability-related behavior as harassing or intimidating, even though the individual with a disability may not intend this or even be aware that their behavior is perceived this way. To address these types of concerns, Maryland's existing criminal harassment laws require communication of a reasonable warning or request to cease the perceived harassing behavior before an individual can be put at risk of criminal prosecution. Yet, SB 709 would authorize prosecution for masked intimidation without any warning or request to cease the alleged harassing behavior. DRM is concerned that the absence of any requirement to communicate at least a reasonable warning along with the element of specifically targeting masks, risks creating a criminal statute that would uniquely target the disability community and put people with disabilities at increased risk of criminalization.

DRM is also concerned that SB 709 would require an individual with a disability to prove their need for a mask is for health-related reasons as an affirmative defense. An affirmative defense shifts the burden of proof to the defendant to prove that their conduct lacked criminal intent. In this case, SB 709 would require a disabled defendant to prove that their use of a mask was not for the purpose of concealing identity and instead was for the purpose of mitigating a disability. This framework is likely violative of the Americans with Disabilities Act (ADA), the First Amendment to the United States Constitution, and Article 40 of the Maryland Declaration of Rights by infringing on one's rights to be free from discrimination along with one's rights to privacy, anonymity,<sup>1</sup> and free association<sup>2</sup> by compelling disclosure of both identity and disability status.

Disabilities are often not apparent, so if law enforcement is permitted to assume that the use of a mask is to conceal identity, unless and until proven otherwise, people with disabilities will be at risk of arrest merely for utilizing a disability related aid. Such an assumption likely constitutes impermissible stereotyping in violation of the ADA. To assert an affirmative defense under the proposed masked intimidation law, people with disabilities would ostensibly then be forced to obtain documentation of

---

<sup>1</sup> *Independent Newspapers, Inc. v. Brodie*, 966 A.2d 432 (Md. 2009) (right to anonymous speech protected under Article 40 of the Md. Declaration of Rights).

<sup>2</sup> *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)(compelling disclosure of members' identities violated their rights to free association).

their need to mask and disclose this private health information to police or prosecutors after having already experienced the harm of arrest and detention. DRM is concerned that SB 709's presumption that masking is for nefarious purposes could also inadvertently cause masks to be further stigmatized for those who need them and could potentially put disabled constituents who use masks at greater risk of harassment.

Fear is frequently weaponized to justify exclusion, as various disability aids are deemed to be intimidating or fear inducing. For example, businesses often attempt to use fear to justify the exclusion of disabled Marylanders who rely on service animals to navigate public spaces. However, the Americans with Disabilities Act doesn't allow service animals or other disability aids to be excluded from public spaces based on fear or stereotypical assumptions. Masks are no different; mere fear of an individual with a disability who is wearing a mask, cannot be used to justify criminalizing masks. Historically, "ugly laws" weaponized similar fears to criminalize disability, excluding disabled people from public life, as disability was deemed "unsightly." MacArthur Fellow and disability justice activist, Alice Wong states, "Today, the mask is the unsightly marker of deviant individuals: the sick, the immunocompromised, the disabled, and the protester who wishes to keep their identity anonymous.... We're told such masked individuals threaten the moral order of society, and these bans are meant to keep the public "safe.""<sup>3</sup> SB 709 would create a modern day "ugly law" by stigmatizing masks and associating them with criminal conduct, despite the ADA's purpose of preventing this exact type of discrimination from recurring.

DRM urges the committee to oppose SB 709 so that people with disabilities can continue to use masks to mitigate disabilities without harassment, stigmatization, or criminalization. If society is conditioned to believe that masks are a threat, then seeing someone wearing a mask is likely to be perceived as threatening, leading to a self-reinforcing cycle that will inevitably cause people with disabilities who require masks to be segregated and criminalized.

Please contact Courtney Bergan, Disability Rights Maryland's Equal Justice Works Fellow for more information at [CourtneyB@DisabilityRightsMd.org](mailto:CourtneyB@DisabilityRightsMd.org) or 443-692-2477.

---

<sup>3</sup> Alice Wong, *Mask Bans Insult Disabled People, Endanger Our Health, and Threaten Our Ability to Protest*, TEEN VOGUE (July 25, 2024).