

**SENATE POLITICAL SUBDIVISIONS COMMITTEE  
SENATOR RANDY A. BURCKHARD, CHAIRMAN  
APRIL 1, 2021**

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**JOHN J. HAGAN, MD, STATE CORRECTIONAL HEALTH AUTHORITY  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY IN OPPOSITION TO HOUSE BILL 1323**

My name is John Hagan, and I am the Correctional Health Authority for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the DOCR in opposition to House Bill 1323.

House Bill 1323 prohibits a state or local official, the state, or any political subdivision from mandating the use of a face mask, face shield, or any other face covering. The bill further prevents the use of a face mask, shield, or covering as a condition for entry, education, employment, or services.

Across the US, jails and prisons have suffered high rates of illness and death due to COVID-19 compared to their surrounding communities. DOCR residents are at high risk of developing COVID-19 illness due to close quarters living conditions, congregate sleeping conditions, group dining in dining halls, group classroom and treatment group models, and shared recreation spaces. DOCR residents are also at higher risk of severe illness and death when they do develop COVID-19 pneumonia due to high rates of hypertension, heart disease, diabetes, chronic hepatitis C and HIV.

The DOCR successfully uses several strategies to mitigate the spread of COVID-19 within DOCR facilities. All DOCR staff wear personal protective equipment continuously while on site, including masks, eye protection, and gloves. These are provided by the DOCR. Fit testing of respirators has been performed for all staff members

likely to work with patients known or suspected of having COVID infection. Residents are cohorted together in small groups to minimize risk of cross-infection, and all residents wear a mask whenever they leave their cell. Classes and treatment meetings have been adapted to virtual meetings or small groups. Residents assist in frequent cleaning with bleach, and they have access to hand sanitizer. Surveillance testing of all staff and residents is performed on a regular basis, and any individual who is symptomatic is quarantined and tested immediately. In short, everyone at DOCR works hard every day to control the spread of this illness.

The appropriate use of masks has been central to the DOCR's success in protecting the health and well-being of staff and residents. The DOCR COVID mitigation program is supported by strong scientific evidence. OSHA FIT testing of 12 different types of consumer-grade and improvised masks proves that these masks have a 25% to 80% filtration efficiency for reducing passage of virus-sized aerosol droplets (Clapp et al, JAMA Internal Medicine 2020). A recent review of more than a dozen published studies demonstrates that community mask-wearing substantially reduces the transmission of the virus that causes COVID-19 infection (Brooks & Butler, JAMA 2021).

Removing the DOCR's ability to require appropriate mask use in DOCR facilities will lead to predictable increase in the rates of illness and death among staff and residents and may even impact the broader community. For example, in Joliet, Illinois, a prison outbreak overwhelmed community hospital resources, which prevented the hospitals from addressing emergent situations among those in the community. This risk applies not only in COVID infection, but also in tuberculosis infection, which is common in prison.

Because the State of North Dakota is required to provide necessary healthcare, increases in illness among residents directly leads to increased costs in caring for

residents. Additionally, prisons have an established legal duty to protect residents in their facilities and masks are a standard mitigation practice implemented in prisons across the county. If DOCR is forced to allow individuals to live, work, and visit DOCR facilities without masks, it is opening itself up to expensive lawsuits and possibly large legal liability.

Lastly, preventing the DOCR from enforcing appropriate mask and face shield usage will cause certain injury to our residents who train in our vocational programs, including carpentry and welding, and who work in Rough Rider Industries, our prison manufacturing enterprise. Many of the participants in these programs have long sentences. Again, because the DOCR must provide necessary healthcare, it will lead not only to increases in short-term medical costs, but also increases in long-term DOCR medical costs as these individuals.

Chairman Burckhard and members of the committee, I ask you to oppose this bill.  
I thank you for your time and attention.

#### References:

Brooks, J. T., & Butler, J. C. (2021). Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2. *JAMA: The Journal of the American Medical Association*.  
<https://doi.org/10.1001/jama.2021.1505>

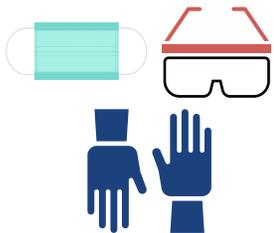
Clapp, P. W., Sickbert-Bennett, E. E., Samet, J. M., Berntsen, J., Zeman, K. L., Anderson, D. J., Weber, D. J., Bennett, W. D., & US Centers for Disease Control and Prevention Epicenters Program. (2020). Evaluation of Cloth Masks and Modified Procedure Masks as Personal Protective Equipment for the Public During the COVID-19 Pandemic. *JAMA Internal Medicine*.  
<https://doi.org/10.1001/jamainternmed.2020.8168>

## HB 1323 - Limitations on mask wearing requirements

### BACKGROUND

Across the US, jails and prisons have suffered high rates of illness and death due to COVID-19 compared to their surrounding communities. ND DOCR residents are at high risk of developing COVID-19 illness due to close quarters living conditions, congregate sleeping conditions, group dining in dining halls, group classroom and treatment group models and shared recreation spaces. Our residents are also at higher risk of severe illness and death when they do develop COVID-19 pneumonia due to high rates of hypertension, heart disease, diabetes, chronic hepatitis C and HIV.

### CURRENTLY



All our team members wear DOCR-provided personal protective equipment continuously while on site, including masks, eye protection and gloves



Fit testing of respirators has been performed for all team members likely to work with patients known or suspected of having COVID infection



Residents are cohorted together in small groups to minimize risk of cross-infection and all residents wear a mask whenever they leave their cell.



Classes and treatment meetings have been adapted to virtual meetings or small groups.

### IMPACTS

Removing the ability of the DOCR to require appropriate mask use in our facilities will harm our residents and our staff.



Lead to a predictable increase of illness, including COVID-19 and tuberculosis, and possibly death not only among residents, but our team members and potentially the broader community



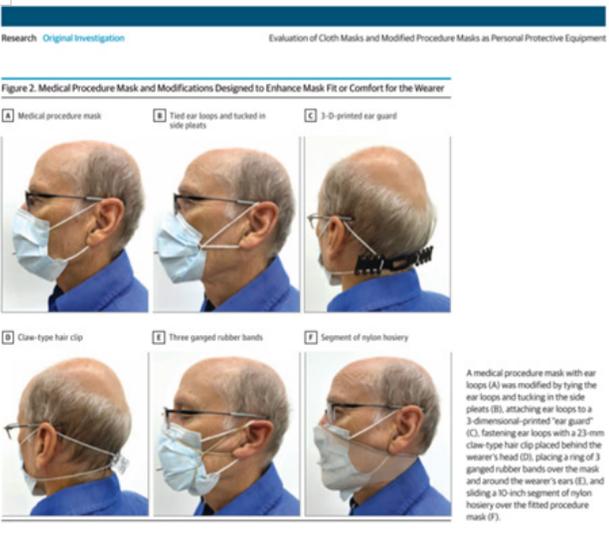
Increases in illness among residents directly leads to increased costs in caring for residents. If DOCR is forced to allow individuals to live, work, and visit DOCR facilities without masks, it is opening itself up to expensive lawsuits and possibly large legal liability.



Lead to injury in vocational programs (such as carpentry and welding) and workers at Rough Rider Industries

The appropriate use of masks has been central to our success in protecting the health and well-being of our staff and our residents. The DOCR COVID mitigation program is supported by strong scientific evidence. OSHA FIT testing of 12 different types of consumer-grade and improvised masks proves that these masks have a 25% to 80% filtration efficiency for reducing passage of virus-sized aerosol droplets (Clapp et al, JAMA Internal Medicine 2020). A recent review of more than a dozen published studies demonstrates that community mask-wearing substantially reduces the transmission of the virus that causes COVID-19 infection (Brooks & Butler, JAMA 2021).

# HB 1323 - Limitations on mask wearing requirements



Consumer-grade face masks	Condition	% FFE (SD) <sup>a</sup>
<b>2-Layer nylon mask with ear loops</b>		
Without aluminum nose bridge	New	44.7 (6.4)
With aluminum nose bridge	New	56.3 (6.5)
With aluminum nose bridge and 1 insert	New	74.4 (4.8)
With aluminum nose bridge, washed (no insert)	Washed 1 time	79.0 (4.3)
<b>Cotton bandana</b>		
Folded surgeon general style	New	49.9 (5.8)
Folded "bandit" style	New	49.0 (6.2)
Single-layer polyester gaiter/neck cover (balaclava bandana)	New	37.8 (5.2)
Single-layer polyester/nylon mask with ties	New	39.3 (7.2)
Polypropylene mask with fixed ear loops	New	28.6 (13.9)
3-Layer cotton mask with ear loops	New	26.5 (10.5)
<b>Medical face masks and modifications</b>		
3M 9210 NIOSH-approved N95 respirator	New	98.4 (0.5)
Surgical mask with ties	New	71.5 (5.5)
Procedure mask with ear loops	New	38.5 (11.2)
<b>Procedure mask with ear loops</b>		
Loops tied and corners tucked in	New	60.3 (11.1)
Ear guard	New	61.7 (6.5)
23-mm Claw hair clip	New	64.8 (5.1)
Fix-the-mask (3 rubber bands)	New	78.2 (3.3)
Nylon hosiery sleeve	New	80.2 (3.1)

Evaluation of Cloth Masks and Modified Procedure Masks as Personal Protective Equipment for the Public During the COVID-19 Pandemic – Clapp et al. JAMA Internal Med 2020

## HB 1323 - Limitations on mask wearing requirements

### Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2.

Source	Location	Population studied	Intervention	Outcome
Hendrix et al	Hair salon in Springfield, Missouri	139 Patrons at a salon with 2 infected and symptomatic stylists	Universal mask wearing in salon (by local ordinance and company policy)	No COVID-19 infections among 67 patrons who were available for follow-up
Payne et al	USS Theodore Roosevelt, Guam	382 US Navy service members	Self-reported mask wearing	Mask wearing reduced risk of infection by 70% (unadjusted odds ratio, 0.30 [95% CI, 0.17-0.52])
Wang Y et al	Households in Beijing, China	124 Households of diagnosed cases comprising 335 people	Self-reported mask wearing by index cases or ≥1 household member prior to index case's diagnosis	Mask wearing reduced risk of secondary infection by 79% (adjusted odds ratio, 0.21 [95% CI, 0.06-0.79])
Doung-ngern et al	Bangkok, Thailand	839 Close contacts of 211 index cases	Self-reported mask wearing by contact at time of high-risk exposure to case	Always having used a mask reduced infection risk by 77% (adjusted odds ratio, 0.23 [95% CI, 0.09-0.60])
Gallaway et al	Arizona	State population	Mandatory mask wearing in public	Temporal association between institution of mask wearing policy and subsequent decline in new diagnoses
Rader et al	US	374 021 Persons who completed web-based surveys	Self-reported mask wearing in grocery stores and in the homes of family or friends	A 10% increase in mask wearing tripled the likelihood of stopping community transmission (adjusted odds ratio, 3.53 [95% CI, 2.03-6.43])
Wang X et al	Boston, Massachusetts	9850 Health care workers (HCWs)	Universal masking of HCWs and patients in the Mass General Brigham health care system	Estimated weekly decline in new diagnoses among HCWs of 3.4% after full implementation of the mask wearing policy
Mitze et al	Jena (Thuringia), Germany	City population aged ≥15 y	Mandatory mask wearing in public spaces (eg, public transport, shops)	Estimated daily decline in new diagnoses of 1.32% after implementation of the mask mandate
Van Dyke et al	Kansas	State population	Mandatory mask wearing in public spaces	Estimated case rate per 100 000 persons decreased by 0.08 in counties with mask mandates but increased by 0.11 in those without
Lyu and Wehby	15 US states and Washington, DC	State populations	Mandatory mask wearing in public	Estimated overall initial daily decline in new diagnoses of 0.9% grew to 2.0% at 21 days following mandates
Karaivanov et al	Canada	Country population	Mandatory mask wearing indoors	Estimated weekly 25%-40% decline in new diagnoses following mask mandates

Brooks & Butler.  
 JAMA 2021