The Tangled Issue of Masking Enforcement: What are States and Cities Trying?

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There is now strong evidence that wearing masks reduces COVID-19 transmission. While many factors can affect the spread of the virus, preliminary findings show that states and counties with mask mandates are seeing lower transmission than those that have only recommended mask wearing. However, these mandates have incited controversy, and government officials have struggled to determine whether and how to enforce them.

For the past seven weeks, I have helped contextualize the projections coming out of PolicyLab's COVID-19 forecasting model, COVID-Lab, by surveying state and local masking and social distancing mandates. I continually review policies in all 50 states, and in 31 major metropolitan areas, using a combination of state-level policy tracking resources, reviews of relevant executive and agency orders and scans of local media coverage.

Even though state and local governments generally have the legal authority to issue such mandates, there are still many barriers to effective enforcement. I've compiled just some of the strategies I've found that state and local governments are exploring to bolster compliance.

Why is enforcement so challenging?

Generally, there have been two approaches to enforcing the wearing of masks. Media coverage has largely focused on whether and how to enforce mask mandates for individuals. However, in practice, most enforcement is happening through businesses. Both types of enforcement present challenges.

In terms of individual masking mandates, it can be difficult to know when someone has a true medical exemption, such as difficulty breathing. Mask mandates also raise concerns for communities of color. Many Black men have expressed fears that wearing masks could make them more susceptible to racial profiling and police violence. At the same time, communities of color may experience disproportionate effects from social distancing enforcement. In addition, for reasons ranging from ideological opposition to limited time and capacity,

law enforcement officials and agencies across the country are openly refusing to enforce state mask mandates.

Penalties enacted through businesses pose their own concerns. While certain safety precautions are clearly in the control of business owners, it may be difficult to enforce the behavior of their customers, and employees may be endangered by trying to enforce social distancing rules. Both news stories and survey data highlight how employees are experiencing assaults from anti-mask customers.

Enforcement through businesses is also challenging for regulatory reasons. Different businesses may fall under the purview of different agencies, making coordination difficult and risking that some businesses will fall through the cracks. Agencies may also lack the capacity and staff to carry out enforcement.

Finally, confusing or ambiguous legal definitions may further complicate efforts by enforcing agencies. For instance, in an effort to reduce transmission in bars and clubs, Michigan passed an order to prohibit indoor dining in establishments that "earn more than 70% of their gross receipts from sales of alcoholic beverages." However, without access to sales data, health officials reported difficulty knowing which businesses fell under the order. In Virginia, health officials have struggled to impose targeted restrictions on bars because the state classifies them as restaurants.

What are states and localities trying?

Across the country, state and local officials are trying a range of approaches when it comes to enforcing masking. While the effects of these efforts (both positive and negative) have yet to be determined, we encourage policymakers to watch developments in these locations closely.

Individual enforcement/ticketing

- Many states and municipalities list potential fines in their mask mandates, but in practice, few places have been issuing citations. There are exceptions. Miami is using progressively harsher penalties for those who repeatedly violate masking orders, escalating from warnings to fines to arrest. Miami's Mayor Francis Suarez specifically called for stronger enforcement of mask mandates in an opinion piece. As of early August, Denver had issued relatively few citations, but more than 12,000 warnings. In California, Santa Monica has begun targeted enforcement, and in Hermosa Beach, officials have actually hired private contractors to issue warnings and citations. Time will tell whether these approaches are more effective than voluntary orders, and also whether they lead to problems surrounding discriminatory policing and/or infringement on rights.

Centralized reports about violations

- Some authorities are trying to streamline reports of violations; for instance, several counties in Wisconsin have online reporting systems, and the Virginia Department of Health is aggregating complaints from a phone hotline and online survey into a centralized database.
- Systematically collecting and analyzing this data could allow for more strategic enforcement, though staff would still need to sort through reports to determine which are legitimate. (For instance, in Virginia, there have been some joke reports as well as public confusion over what counts as a violation.)

Interagency task forces to coordinate enforcement of COVID-19-related mandates

- Interagency task forces could help coordinate enforcement and ensure that reports of violations reach the appropriate regulatory body. For instance, Baltimore County has had a six-agency social distancing task force since March, and Massachusetts recently organized a 10-agency COVID Enforcement and Intervention Team.

Shifting enforcement of customers who refuse to comply from businesses to law enforcement

- Rather than penalizing businesses for the actions of their customers, Louisiana's executive order states that businesses are responsible for *trying* to stop unmasked customers from entering. However, if customers refuse to obey, businesses are encouraged to call the police (who can then cite these patrons for violations such as trespassing). In Washington D.C., Mayor Muriel Browser gave similar instructions to businesses. This approach may help relieve the burden of policing from businesses and their employees, while simultaneously allowing for targeted use of law enforcement against the most determined offenders.

"Compliance ambassadors" and education campaigns

- States and localities that have resisted mask mandates often state that they prefer "education." However, if education is to be effective, it will require actual investment and action. Charlotte's enforcement plan uses both enforcement actions and education for businesses, with the latter conducted mostly through environmental health inspectors and part-time ambassadors. Las Vegas has also mobilized 100 "compliance ambassadors." In both cities ambassadors can report violations in businesses, but they do not undertake any enforcement actions themselves. In terms of individual mandates, in DeKalb County, Ga., first-time offenders receive a warning, while second-time offenders can attend a COVID-19 education class instead of receiving a fine. Many states and localities have also implemented public awareness campaigns surrounding masking. While health departments may have limited funds and capacity for evaluation of these campaigns, we encourage data-driven approaches wherever possible. Localities that are able to partner with researchers or private firms can share their results broadly to help inform campaigns throughout the country.

Loosening red tape and working cooperatively with businesses

- In interviews with local media, many business owners express support for mask mandates and a sincere dedication to reopening safely. Given this, many states and local governments are striving to work cooperatively with businesses. For instance, Florida state officials recently met with bar owners to brainstorm solutions for reopening. Many states are now allowing bars to serve cocktails to go, and in New Mexico, an executive order temporarily reclassified wineries and distilleries as restaurants (a designation that may more accurately reflect their level of transmission risk). In Texas, many bars that serve food are reopening as restaurants. Birmingham is now allowing restaurants and bars to use sidewalks and parking lots for service, and New Orleans is even offering grants to restaurants to help them expand their outdoor service. Efforts to support, rather than simply penalize, businesses may help them stay afloat while simultaneously improving compliance.

Enforcement of mask mandates will likely continue to be challenging, and for many of these interventions, the effects are not yet known. However, we hope that by highlighting some innovative or unique approaches, policymakers can monitor which interventions may be a fit for their communities. As we continue our work surveilling policies around enforcement, we hope that evidence will emerge surrounding their effects to allow for more specific recommendations.

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