

February 20, 2020
House Committee on Rules

As Oregonians, we share concerns about House Bill 4126 which would result in a felony enhancement for individuals fully or partially covering their face during a riot and creates a new aggravation factor for partially or fully covering one's face for all crimes.

It is our understanding that the bill sponsor intends to propose the adoption of an amendment that would remove the felony enhancement for a person who partially or fully conceals their face during a riot. Our organizations agree with this amendment; however, we still remain opposed to the bill. HB 4126 would still retain partially or fully covering one's face as an aggravating factor in ***all*** crimes.

Overly lengthy sentences have shown to be an ineffective public safety tool¹. House Bill 4126 will come at a greater expense to taxpayers but will not offer improvements to public safety. Oregon already has laws to prosecute people who engage in riot and other criminal activities—a mask does not change that. This bill will only serve to ramp up charges, frighten defendants into accepting plea agreements, and lead to longer prison sentences. **HB 4126 is counter to the meaningful reforms the Legislature has accomplished since 2013 to address over-incarceration and reduce recidivism in our state.**

Laws criminalizing face masks have concerning implications for our right to privacy and result in a chilling effect on our First Amendment rights. The presence of cameras operated by government agencies and private entities is ever-growing. By one estimate, there will be 45 billion cameras in the world by 2022, including smartphones and other personal devices². Regardless of the specific figures, there is no question that the number of cameras in public places is growing, the quality of the video is increasing, and storage capacity for such data is expanding.

Here in Oregon, legal observers have attended many protests over the last several years and have observed police and immigration authorities photograph and record people at these events. We also know that **police can arbitrarily and without notice to the crowd classify a protest as a “riot” based on alleged actions of demonstrators.** Under this proposed law, peaceful protesters at such an event risk facing criminal charges and tougher sentencing based on the fact that they are wearing a mask—even a bandanna designed to protect against tear gas or other facial coverings used to protect against the spread of germs or disease.

It gets even worse when we realize that **we can be identified that way repeatedly, with our presence recorded in databases and automated algorithms** used to flag repeat protest activity, associational patterns, or anything else the authorities might want to know. We only have to look at the recent reports of law enforcement in Coos County deploying drones and social media archiving software to monitor opponents of the LNG pipeline³. It should be noted that these types of

¹ <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>

² <https://www.fastcompany.com/40450867/in-less-than-five-years-45-billion-cameras-will-be-watching-us>

³ <https://theintercept.com/2020/02/12/jordan-cove-oregon-pembina-pipeline/>

surveillance tactics, “...occurred even though project opponents have mostly refrained from disruptive protests in favor of lobbying, public comment hearings, and peaceful demonstrations.”

And of course, it’s not just the authorities who can use facial recognition. Even if we restrict its use by the government, **private parties who have access to photographs of a controversial event will be able to use them to identify us and harass us, retaliate against us at work, or worse.**

Monitoring and surveillance in our public spaces is pervasive and **there are many legitimate and constitutionally protected reasons a person might want to wear a mask to a protest or in public spaces**, including religious and cultural garb or tradition, for health reasons, fear of retaliation from employers or landlords, fear of being spotted and tracked by a domestic abuser, to protect from the cold, or simply our right to privacy—just to name a few.

As previously stated, HB 4126 creates an aggravating factor for wearing a face mask for all crimes. It is not limited to riot. **This has far reaching implications across our criminal justice system and is being pushed in the short session without proper opportunity for input from communities of color and other stakeholders.**

Time and time again, communities of color have been disproportionately impacted by our state’s and country’s criminal justice policies. We have no reason to believe that HB 4126 will be any different, and our communities deserve a meaningful opportunity to weigh in on policies that will no doubt result in outsized impacts on people of color.

House Bill 4126 raises serious concerns for the right to privacy as the use of facial recognition technology is on the rise, will result in a chilling effect on our First Amendment Rights, is counter to recent criminal justice reform efforts passed by the Legislature, and has followed a process without meaningful opportunity for input from all stakeholders and communities that will be most-impacted by this policy. **For these reasons, our organizations oppose House Bill 4126.**

In Coalition,



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