STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 JUL 17 PM 3:01

EXECUTIVE ORDER

No. 2020-153

Masks

Rescission of Executive Order 2020-147

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v. Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On June 18, 2020, I issued Executive Order 2020-127, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it was reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, 2020-77, 2020-92, 2020-96, and 2020-110, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by these executive orders have been effective. Although the virus remains aggressive and persistent—on July 16, Michigan reported a total of 71,842 confirmed cases and 6,101 deaths—the strain on our health care system has relented, even as our testing capacity has increased. Where Michigan was once among the states most heavily hit, our per-capita case rate is now roughly equivalent to the national average.

Our progress in suppressing COVID-19, however, appears to have stalled. Over the past two weeks, every region in Michigan has seen an uptick in new cases, and daily case counts now exceed 20 cases per million in all but one region in the state. Research confirms that a big part of the reason is spotty compliance with my requirement, issued in prior orders, that individuals wear face coverings in public spaces. A study on different regions in

Germany, for example, suggests that the adoption of mandatory mask ordinances decreased the daily growth rate of COVID-19 infections by 40%. Modeling from the University of Washington similarly indicates that more than 40,000 lives would be spared nationwide if 95% of the population wore a mask while in public. And a study conducted by Goldman Sachs concluded that a federal mask mandate could save the U.S. economy from taking a 5% hit to GDP.

Wearing a mask is an effective and low-cost way to protect ourselves and our families from a deadly disease. It should be—and is—the responsibility of every Michigander. Last week, I issued a mask order requiring individuals to wear a face covering whenever they are in an indoor public space or in a crowded outdoor space. As significantly, the order required any business that is open to the public to refuse entry and service to people who refuse to wear a face covering. No shirts, no shoes, no mask—no service.

This order reissues the original order and makes several minor changes. First, it provides that wearing a mask at a polling place for purposes of voting in an election is not required, though wearing a mask to protect yourself and others is strongly encouraged. Second, the order clarifies that businesses may not assume that an unmasked customer cannot medically tolerate a face covering, though they may accept a customer's verbal representation to that effect. Third, the order addresses the interaction between the mask order and prior Safe Start orders that also required face coverings in indoor public spaces. Finally, the order clarifies that public safety officers must wear a face covering unless doing so would seriously interfere in the performance of their responsibilities.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Any individual who leaves their home or place of residence must wear a face covering over their nose and mouth:

   (a) When in any indoor public space;

   (b) When outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household; and

   (c) When waiting for or riding on public transportation, while in a taxi or ride-sharing vehicle, or when using a private car service as a means of hired transportation.

2. Although a face covering is strongly encouraged even for individuals not required to wear one, the requirement to wear a face covering does not apply to individuals who:

   (a) Are younger than five years old (and, per guidance from the Centers for Disease Control and Prevention ("CDC"), children under the age of two should not wear a mask);

   (b) Cannot medically tolerate a face covering;

   (c) Are eating or drinking while seated at a food service establishment;

(d) Are exercising when wearing a face covering would interfere with the activity;

(e) Are receiving a service for which temporary removal of the face covering is necessary;

(f) Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;

(g) Are communicating with someone who is deaf, deafblind, or hard of hearing and where the ability to see the mouth is essential to communication;

(h) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a mask would seriously interfere in the performance of their public safety responsibilities;

(i) Are at a polling place for purposes of voting in an election;

(j) Are officiating at a religious service; or

(k) Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker.

3. To protect workers, shoppers, and the community, no business, government office, or operation that is open to the public may provide service to a customer or allow a customer to enter its premises, unless the customer is wearing a face covering as required by this order.

(a) Businesses that are open to the public must post signs at entrance(s) instructing customers of their legal obligation to wear a face covering while inside. The Michigan Department of Labor and Economic Opportunity may, in its discretion, require such businesses to post signs developed and made available by the Department, or conforming to requirements established by the Department.

(b) A department or agency that learns that a licensee is in violation of this section will consider whether the public health, safety or welfare requires summary, temporary suspension of the business's license to operate (including but not limited to a liquor license) under section 92 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.292(2).

(c) A business may not assume that someone who enters the business without a face covering falls in one of the exceptions specified in section 2 of this order, including the exception for individuals who cannot medically tolerate a face covering. A business may, however, accept a customer's verbal representation that they are not wearing a face covering because they fall within a specified exception.

4. For purposes of this order, neither child care centers nor day, residential, travel, or troop camps, as defined by Rule 400.11101 of the Michigan Administrative Code, are considered public spaces.

5. The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.

6. Nothing in this order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances, and no individual is subject to penalty under section 8 of this order for removing a mask while engaging in religious worship at a house of religious worship. Consistent with guidance from the CDC, congregants are strongly encouraged to wear face coverings during religious services.

7. This order takes effect immediately and Executive Order 2020-147 is rescinded. This order also rescinds:

   (a) The portions of Executive Orders 2020-110 and 2020-115 pertaining to face coverings; and

   (b) Section 16 of Executive Order 2020-110 and section 12 of Executive Order 2020-115, but only to the extent they provide that failure to comply with the requirement to wear a face covering is not a misdemeanor.

8. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor, but no term of confinement may be imposed for a violation of section 1 of this order.

Given under my hand and the Great Seal of the State of Michigan.

Date: July 17, 2020

Time: 1:19 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE