



MEMORANDUM

To: All Law Enforcement Agencies Operating in Baraga County
From: Joseph P. O'Leary (P43349)
Baraga County Prosecuting Attorney
Date: March 27, 2020
Re: Enforcement of Emergency Executive Orders

Greetings,

First of all, I want to thank each and every one of you and your staff for exemplary service in this unprecedented national crisis. Like all crises, the "thin-blue-line" of law enforcement may well be the difference between coming through the other end of the COVID 19 Pandemic relatively unscathed, or allowing this health emergency to rise to catastrophic proportions. Many, many lives depend on all of us and I am grateful that we are in this fight together.

In the last two weeks the Governor has put out numerous Emergency Executive Orders (EEO's) on issues related to the COVID 19 Pandemic. These EEO's are authorized by the Michigan Constitution of 1963, Article 5, Section 1, by the Emergency Management Act of 1975, MCL 30.401 - 30.421 and by the Emergency Powers of the Governor Act of 1945, MCL 10.31 - 10.33 and therefore carry the force of law. Willful violation of these EEOs is a misdemeanor punishable by up to 90 days imprisonment and/or a fine of up to \$500.00. See, MCL 10.33, MCL 30.405(3), and MCL 750.504.

Initially, the Michigan Attorney General (AG) promised her office would address any and all violations of the EEOs and directed that complaints of the same should be reported to Lansing. However, after business hours on Tuesday the AG let us know that she would NOT be handling such cases and made local prosecutors responsible for most EEO enforcement actions. Although there might be a very natural tendency to want to punt such matters right back to Lansing, I think that in this time of emergency we must inform the general public of the legal requirements of the EEOs, and we should enforce clear violations of the EEOs when they come to our attention. If the public perceives that there is no legal penalty for ignoring the EEOs, then people may begin to take actions that defeat the very important purpose of the EEOs, that is, to slow the spread of COVID 19 and thereby save lives. Accordingly, I offer the following guidance for how my office would like to see such violations handled should you confront them.

First of all, unless absolutely necessary to protect human life, warrantless arrests should not be made based on EEO violations alone. Further, given the current restrictions imposed on court activities in Michigan, because you will not be arresting individuals for EEO violations alone, it is highly unlikely that any of these cases will be brought into court in the near future. I suggest the better practice when confronted with a violation of one of the EEOs is to issue a warning ticket and to explain to the offender that while the EEO restrictions may be a nuisance, they do serve an important purpose, which is to keep them and their loved ones safe and uninfected by COVID 19. This will also assist with the "willful" element of the crime, that is, if an individual persists in violating the EEO, I can go to court confident that the violation was intentional and not made in good faith or by accident.

Please note that, because the EEO violations are all 90-day misdemeanors, you can initiate court cases with an appearance ticket rather than making an arrest or seeking a warrant. If you need to issue a ticket, the tickets should reference the EEO number violated and instruct the individual to contact the 97th District Court for an appearance date. The charging statutes should be MCL 10.33 and MCL 30.405(3). While this practice may eventually create a backlog of such cases it will keep the court dockets smaller for now and my office will handle the backlog when the crisis has passed.

Because the actual wording of the EEOs themselves represent the law that we must follow when it comes to enforcement actions, it is important to be familiar with that language. The EEO violations you are most likely to encounter involve EEO 2020-20 and EEO 2020-21. I will briefly summarize each below. These summaries will be set forth on separate pages in the event you wish to provide those pages to your officers without the first portion of this memo.

The exact wording of all of the EEOs can be found on the Governor's website at:

https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705---,00.html

IF YOU HAVE QUESTIONS ABOUT ANY OF THESE REQUIREMENTS OR EXCEPTIONS PLEASE CONTACT MY OFFICE.

THANK YOU!

EMERGENCY EXECUTIVE ORDER 2020-20 (effective March 22, 2020):

This order closes many businesses and operations to the general public. I do not believe that some of these establishments even exist in Baraga County but I include them below in case I am wrong.¹

1. Restaurants, coffee houses and similar establishments for *on-premises* consumption of food and/or beverages;
2. Bars, taverns, clubs and other similar establishments which offer *on-premises* consumption of alcoholic beverages;
3. Hookah bars, cigar bars and vaping lounges offering their products for *on-premises* consumption.
4. Theaters, cinemas and indoor or outdoor performance venues;
5. Libraries and museums;
6. Gymnasiums, fitness centers, indoor sports facilities, indoor exercise facilities, and facilities offering non-essential personal care services (such as hair, nail, tanning, massage, spas, tattoos, body art, piercing and similar services where people have to be closer than 6 feet to each other);
7. Casinos, racetracks and "Millionaire Parties" licensed by the Michigan Gaming Control Board (this does NOT include the KBIC Casino);
8. Other places of public "amusement" where there might be close contact between people, such as golf courses, arcades, bingo halls, bowling alleys, skating rinks, etc..

Any of these places may offer food and beverages by delivery, window service, walk-up service, drive-through service or drive-up service. Up to 5 members of the public may be inside such a business at one time to pick up their food, provided they stay 6 feet apart.

NOT INCLUDED IN THE PROHIBITION are: (a) places offering food or beverage for *off-premises* consumption such as grocery stores, markets, convenience stores, pharmacies, drug stores and food pantries; (b) health care facilities, residential care facilities, congregate care facilities and juvenile justice facilities; (c) crisis shelters; (d) food courts inside secured areas of airports.

¹A business operating under tribal license is subject to the laws of the Keweenaw Bay Indian Community and not the EEOs. I believe that most if not all such tribal businesses have also been closed. If you encounter a business claiming KBIC authority to stay open please consult with the KBIC Tribal Police before issuing a ticket.

EMERGENCY EXECUTIVE ORDER 2020-21 (effective March 24, 2020):

Subject to the exceptions below, this order requires that all persons living in Michigan:

1. Stay at home. Public or private gatherings of any number of people not living in the same household are prohibited.
2. All individuals who leave home must remain 6 feet away from non-household members and practice "social distancing" measures recommended by the CDC.
3. Employees may be required to work if they are "critical infrastructure workers" necessary to sustain or protect life.

Examples include:

(a) health care, law enforcement, public safety, first responders, food and agriculture, energy, water and wastewater, transportation, public works, communications and information tech (including news media) community government operations, critical manufacturing, hazardous materials, financial services, chemical supply chains and safety, and defense industrial base;

(b) child care workers but only if they are serving children or dependents of "critical infrastructure workers";

(c) designated suppliers, distribution centers and service providers needed to support the work of "critical infrastructure workers";

(d) insurance (if unable to perform their work by telephone or remotely);

(e) operations (religious or secular) providing food, shelter, and other necessities to disadvantaged or disabled individuals;

(f) labor unions with critical functions (to the extent such functions cannot be done by telephone or remotely).

4. Workers may leave home to perform "minimum basic operations" necessary to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (such as payroll and employee benefits) or help other workers to work remotely. Such workers must be designated in writing by March 31, 2020.

EXCEPTIONS. People may leave their homes for: outdoor exercise (six feet from others); to go to work as "critical infrastructure workers"; to "conduct minimum basic operations"; to perform necessary governmental activities; to perform tasks necessary to their or their family's health or safety; to obtain necessary supplies or food; to care for pets in another location; to care for minors, elderly or disabled individuals in another location; to visit an individual at a health care facility; to attend court as ordered; to work or volunteer for entities providing food, shelter or necessities to disadvantaged or disabled persons; to return home from out of state, to leave the state for another home located elsewhere; to travel between residences located in this state; to travel as required by court order (such as transportation of a child pursuant to a custody agreement).