

**DISTRICT ATTORNEY HOUCK'S STATEMENT ON THE ENFORCEMENT
OF GOVERNOR WOLF'S ORDERS RELATING TO THE OPERATION OF
BUSINESSES DURING THE COVID-19 PANDEMIC**

There have been no criminal prosecutions (yet) that I am aware of in NORCO.

I am treating this pandemic like the crisis it is. I recognize the need for people to get back to work. Many people are suffering and I get it. I have friends and family that are out of work; I also have friends and family that have contracted this virus. With that said, I believe some people are attempting to make this a political opportunity, and I will not be part of that.

In mid-March, Governor Wolf ordered all non-life sustaining businesses to close in response to COVID-19 and public safety concerns. To enforce this order, law enforcement can issue citations to business owners under 35 P.S. § 521.20(a) (Disease Prevent and Control Law of 1955) and/or 71 P.S. § 1409 (Administrative Code of 1929). Both of these provisions are summary offenses, punishable by a fine and/or incarceration. As you know, these offenses are handled by Magisterial District Judges, as they are courts of final authority in these matters. Summary matters do not need District Attorney approval.

PSP was given guidance, which was then shared with local law enforcement agencies, which recommends that when law enforcement receives a complaint, it obtains pertinent information relating to the business and then verifies whether the business qualifies as "life sustaining." If the business does not qualify, law enforcement is to verify whether the business is open to the public. If the business is open in violation of Governor Wolf's order, the business is to be contacted and advised of the requirements of the order. At that time, the business should also be warned that future violations may result in a citation. If the business again fails to comply, the business

should be warned that continued violations of Governor Wolf's order will result in enforcement action. Subsequent violations will result in the issuance of citation(s). In sum, businesses who are in violation of Governor Wolf's order should receive two warnings prior to a citation being issued.

Approximately a month after this order was issued, Governor Wolf issued another order that outlines the protocol that life-sustaining businesses that remain open are required to follow. This includes requiring employees and customers to wear masks, setting forth cleaning procedures, staggering work schedules, limiting the number of employees in common areas, holding meetings virtually if possible, and limiting occupancy, among other requirements. These requirements are also enforceable under the statutes discussed above.

Today, Governor Wolf held a press conference addressing the issue of reopening business and counties. Governor Wolf stated that he has no plans to sue counties who defy his orders or to ask the Attorney General's Office to step in and prosecute violations where local District Attorney's Offices refuse to do so. However, he made several threats during his press conference to both local counties and businesses. First, he said that discretionary funding may be withheld from counties who operate "illegally" during the pandemic. He also threatened that businesses who reopen early are jeopardizing their insurance, certificates of occupancy, liquor licenses, and health department certificates. He also stated that local DA's who are instructing police not to enforce his orders are hurting everyone in Pennsylvania and noted again that even if those businesses avoid prosecution by local police, they are risking their occupancy and health certificates.

It is worth noting that, as of Sunday, May 10, 2020, PSP had issued 312 warnings related to Governor Wolf's business-related COVID-19 orders and only one citation had been issued.

Given the lack of citations across the state, prosecuting businesses who re-open does not seem like a particularly pressing issue at this time. While I believe that the guidance provided by the Governor seems to be frequently changing and not entirely clear, I am not sure that a blanket prohibition on citations is wise. I think that multiple warnings should be the first approach. Further, I think our Office is within its purview if we chose not to prosecute businesses simply for reopening. However, I do not think it would be smart to prohibit local police from issuing citations entirely. While I am less concerned about businesses simply being open, I do have concerns about them not following the proper protocols, such as properly cleaning and requiring masks to be worn. If a business is truly operating in a way to jeopardize public safety, law enforcement should have some authority to take action (if warnings do not remedy the problem).

Another important issue of note given today's press conference by Governor Wolf is that, if our Office decides not to issue any citations, it should be made clear we (Office of the District Attorney) do not have control over the Liquor Control Board, the Department of Health, or other state agencies. Given Governor Wolf's threats about pulling health and occupancy certificates as well as liquor licenses, I think we should be careful about businesses thinking we are guaranteeing that there will be no repercussions should they reopen. While our office can decline to prosecute citations issued by the police, we have no authority in the other areas mentioned by Governor Wolf.