

# CLIENT ALERTS

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## What Happens If You Violate Or Are Accused of Violating the Stay-Home Order?

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On May 7, 2020, Governor Whitmer extended Michigan's Stay-Home Order through May 28th. Under the extended stay-home Order, residents must continue to stay home unless they're running "critical errands" such as getting healthcare or groceries, exercise, or going to "essential" jobs or certain businesses that have been allowed to open.

But what happens if you violate or are accused of violating the Stay-Home Order? Will you be arrested and go to jail? Will you be charged with a crime?

The short answer is it depends. MCL 10.33 and 30.405(3) provide that it is a crime – specifically a misdemeanor – to violate the Order. So law enforcement does have the authority to arrest and charge someone who is violating the Order. However, enforcement of the Order has largely been tasked to the local authorities. Law enforcement in some cities appear to be enforcing the Order more strictly than others. Even in those areas where the authorities are being more active investigating and enforcing potential violations, rather than an immediate arrest, the more likely scenario is that the first time you are contacted you will likely be provided a "warning" or a more formal "cease and desist" letter or "order" advising of the infraction and a direction to cease that activity (especially for businesses). The "cease and desist" letters often have the name of a person to contact to discuss the matter. If the business (or individual) believes it is not in violation of the Order, it can explain its position and, hopefully, receive permission to continue its activity once the facts are understood, or, conversely, decide to either cease or modify the actions at issue. That is the goal. Like the most common examples of regulatory schemes, e.g. speed limits, it is not the goal to arrest people, it is to control speed. It is not the purpose of the misdemeanor provisions here to expend law enforcement resources to charge

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and arrest people who, perhaps mistakenly, run afoul of the provisions of the Order, but to control behavior. That is why it is important to point out that MCL 30.405 provides, "A person who **willfully** disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of a misdemeanor." Although "willfully" does not appear in MCL 10.33, it likely provides some guidance on the type of behavior that could lead to an arrest or charge. If an individual (or business) willfully or egregiously violates the Order, or refuses to comply with a "cease and desist letter" or with warnings or directions from law enforcement officers, they do run the risk of being charged with a misdemeanor under the Michigan Laws. A violation of the Order can also result in a civil penalty of up to \$1,000 and businesses could find themselves with a Court ordering them to close or facing penalties from their relevant licensing agencies.

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