

PUBLIC SAFETY

How police, prosecutors decide whether to cite for violating Indiana's stay-at-home order



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Hoosiers are supposed to stay home. If you don't, there could be consequences.

But deciding exactly who is punished for violating Gov. Eric Holcomb's stay-at-home order is complicated. Law enforcement agencies and prosecutors cited a need for discretion and judgment on each case.

To learn more about when officers are more likely to cite someone with violating the order and when prosecutors are more likely to file charges for violating the order, IndyStar spoke with police agencies, local prosecutors and a criminal defense attorney.

Here's what we learned:

How police decide whether to cite

You should not be pulled over just for driving down an Indiana road during the stay-at-home order.

Indiana State Police Superintendent Douglas Carter told the state's law enforcement this in a March 23 letter about carrying out the governor's order to slow the coronavirus pandemic.

The letter is instruction for State Police and Capitol Police and guidance for other state law enforcement agencies that do not fall under the his purview, such as the Indianapolis Metropolitan Police Department.

It says anyone "knowingly, intentionally, or recklessly" violating the governor's stay-at-home order and anyone who "knowingly refuses to comply with your lawful order to return

home" may be charged with a Class B misdemeanor, which is punishable by no more than 180 days in prison and no more than a \$1,000 fine.

Charges have been referred to as disobeying a declaration of disaster emergency, failure to comply with an emergency travel warning and violation of local travel advisory — which all go back to the governor's order.

While State Police have instruction to not pull people over just for driving, you can still be pulled over for other offenses, like speeding. What happens next may depend on where you were going.

Carter said this involves discretion, which representatives of both state and Indianapolis police echoed.

Can they pull me over? Driving during Indiana's stay-at-home order

Ron Galaviz, a public information officer for State Police, said troopers have the discretion to cite a driver for violating the governor's order.

The police superintendent's letter said arrests for violating the order should only be made in "extraordinary" circumstances. Galaviz noted two such cases.

A Bloomington man arrested on suspicion of operating a vehicle while intoxicated before crashing his truck and a Chicago man arrested on suspicion of operating a vehicle while intoxicated and of leading troopers on a pursuit were both preliminarily charged with violating the stay-at-home order in addition to other charges.

Between March 25 and April 1, troopers issued 21 tickets statewide for violation of the stay-at-home order, Galaviz said. In each case, the tickets were in addition to other alleged criminal offenses.

Still, Galaviz emphasized judgment, as did IMPD's Chief Communications Officer, Aliya Wishner.

IMPD had not issued a citation or made an arrest related to the stay-at-home order as of Friday morning.

When asked if an IMPD officer would be more likely to cite someone with violating the stay-at-home order if they're already being cited for other alleged crimes, Wishner said "As always, IMPD officers will be tasked with exercising sound discretion. Any citations issued would be based on the specific facts confronting the officer."

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How prosecutors decide whether to charge

While officers and troopers cite or arrest individuals for allegedly violating the governor's order, it's up to prosecutors to file formal charges.

On March 27, Indiana State Police arrested a Kentucky man in Noblesville. While he did not initially face charges for violating the order, the Hamilton County prosecutor later added and then dismissed them.

State Police say troopers found a gun and illegal drugs in the 24-year-old's vehicle after pulling him over for speeding. He was preliminarily charged with gun and drug offenses.

Four days later, State Police announced that the Hamilton County prosecutor had filed an additional charge against the man: disobeying a declaration of disaster emergency.

"This is a circumstance where the stay at home order issued by the Governor was enforced as an additional charge to a crime," Sgt. John Perrine with State Police wrote in the news release.

Three days after that, the Hamilton County prosecutor's office filed a motion to dismiss that extra charge.

"Governor Holcomb's Executive Order required 'all individuals currently living in the State of Indiana ... to stay at home or their place of residence,' and the State does not believe it will be able to prove that the Defendant was living in the State of Indiana at the time," Andre Miksha, chief deputy prosecuting attorney, told IndyStar in an email.

Miksha stressed that each case must be looked at individually.

"With these offense we're talking about here, the governor's order has many exceptions and some categorical exclusions," Miksha wrote in an email to IndyStar. "So, we would have to study the evidence to determine whether we could prove that the activity the person was engaged in at the time was clearly subject to that general order to stay home."

He also noted that the offense requires the violation be done "knowingly, intentionally, or recklessly."

"Each of those terms are defined by Indiana statute and require a certain level of awareness," Miksha wrote. "Proving that culpability element then can be difficult in some

circumstances, too, so each case would need to be looked at carefully."

He provided an example.

"Consider this hypothetical situation: a drunk driver who is transporting food to their family," Miksha wrote. "That is likely a misdemeanor OWI; however, being away from home in order to transport food likely falls under an exception to the governor's order, and the additional charge would not be appropriate."

Marion County filed its first charges for violating the governor's order on Thursday.

The prosecutor charged a 36-year-old man with violating the order in addition to operating a vehicle while intoxicated, resisting law enforcement and other charges, according to court documents.

Lawrence police arrested the man on Tuesday after he rolled his truck and struck a utility pole, a probable cause affidavit says. He refused a breath test and was taken to Eskenazi Hospital, where police say he had to be held down by officers to have his blood drawn.

The man "did not state that he was traveling for any essential means while he was operating while intoxicated nor was he traveling to/from work," the arresting officer wrote in court documents. "Officers did not locate any food or grocery items inside the vehicle during inventory."

The document also said the man forced officers and medical staff to come in close contact with him unnecessarily. "Additionally, his behavior in the hospital unnecessarily increased the workload of already busy medical personnel," the officer wrote.

When asked to comment on why the prosecutor's office chose to file the additional charge of violating the order, spokesperson Michael Leffler said, "These matters will be reviewed on a case by case basis."

A defense attorney's view

Criminal defense attorney Mario Massillamany spent eight years with the prosecutor offices in Marion and Hamilton counties. He explained why violating the governor's order would be used as an addition to other charges.

"I think the public backlash would be astronomical if police were pulling people over solely for this offense," Massillamany said.

He said it would be very difficult for a prosecutor to prove someone was violating the order as a standalone offense.

"As a standalone charge, I don't see any prosecutor being able to win that, either in a jury or bench trial." The standard of proof is beyond a reasonable doubt, Massillamany said.

"If someone pulled me over and said where are you going, I would say to the grocery store," he said. "Right there, that shuts it down."

"There's no way you can prove you're going to a grocery store or not beyond a reasonable doubt," Massillamany said.

But if someone were arrested on suspicion of drunk driving or another charge, it would be possible to prove the additional charge, he said. It could be tacked on to charges for drugs, speeding, traffic infractions and more.

If convicted of the Class B misdemeanor, prosecutors could seek between 0 and 180 days of imprisonment, but Massillamany expected prosecutors to seek probation more than jail time for this offense.

While police superintendent Carter has previously said there is no need for Hoosiers to carry a document "explaining that you're essential or not," Massillamany recommended it.

"If you're an employer, make sure you have a letter on your letterhead for your employees who are traveling from home to work so they can carry it with them," he said. "Just to protect your employees and yourself."

Still, he emphasized that he's not trying to help people violate the governor's order.

"This is not some law that is being applied on a wide basis but rather in a manner that is done and highlighted in such a way that makes people think twice before getting in the car and just driving around."

Galaviz with State Police said he wants Hoosiers to follow the governor's order.

"At the end of the day, we want people to stay home."

IndyStar reporters Holly V. Hays, Vic Ryckaert, Crystal Hill and Ryan Martin contributed.

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