

GUIDANCE FOR KENOSHA COUNTY LAW ENFORCEMENT AND PUBLIC HEALTH OFFICIALS

Kenosha County District Attorney's Office

DA Mike Graveley

I've been asked by various law enforcement agencies to provide guidance during the current crisis. All Kenosha law enforcement agencies are united in our commitment to uphold existing public health orders. Please act responsibly so that enforcement isn't required. In these unprecedented times, we need to come together as a community and take care of one another by following difficult practices aimed at minimizing the spread of this virus. The goal here is to ensure that no violations make their way to the District Attorney's Office and that all public health orders are voluntarily complied with. This is how we keep each other safe.

ENFORCEMENT GUIDELINES

ARREST, REFERRAL, AND CHARGING

- As a general rule, any Law Enforcement Officer or Public Health Officer initiated enforcement action during the time of a declared emergency will be predicated on the authority derived from the Governor's Executive Order #72 and all following directives. The order declaring a public health emergency delegates authority to address the crisis through the Department of Health Services and all local health departments and officers are empowered to enforce those laws. **Health officials have broad enforcement powers under §252.25, which proscribes an unclassified misdemeanor with penalties of 30 days incarceration and a \$500.00 fine.** Note that the Public Health Officer may decide to quarantine the offender and request the assistance of a law enforcement officer.
- Law enforcement officers may refer a case to the District Attorney for prosecution. A Public Health Officer may also ask law enforcement to refer a case through normal channels. Regardless of whether the case is referred, law enforcement agencies must inform the District Attorney about the arrest. The purpose of the contact is to keep a list of cases for the entire county for data tracking.
- A Public Health Officer may also petition a circuit court for enforcement, however, due to the rapid spread of COVID-19 and the limited access to the courts due to the Wisconsin State of Emergency, Kenosha County will use the law enforcement systems already in place to handle violations of §252.25 through the criminal justice system. The Public Health Officer will seek the assistance of the law enforcement agency ***in the municipality in which the violation occurred.***

GENERAL CONSIDERATIONS FOR LAW ENFORCEMENT OFFICERS

- The overriding goal of these crimes is not to punish offenders but to foster voluntary compliance with public health actions such as quarantine and isolation orders. Voluntary compliance, in turn, mitigates against the spread of COVID-19 so that the health care system will not be overwhelmed.
- COVID-19 is a serious infectious disease that poses great risk to vulnerable populations, but it is neither infectious nor deadly enough to justify strict punishment and criminal enforcement for every infraction against public health law.
- Strongly consider recommendations of public health officials when evaluating the necessity of arrest or prosecution.
- Understand that an offender may be quarantined by public health officials before decisions are made whether to arrest or charge.
- Consider risk to public by virtue of offender's actions. An offender who is "caught" inside the quarantine premises poses less risk than an offender who returns to the community and risks spreading the disease.
- General deterrence may be a compelling prosecution goal if there exists a widespread non-compliance with public health orders.
- Report all suspected violations to public health officials and be aware whether violations are trending. If violations are trending upward, a prosecution for general deterrence may be warranted.
- Special circumstances.
 - Some offenders may be family members. Section 252.06 excepts immediate family members of the quarantined individual from this crime. Show empathy for the offender and isolated/quarantined individuals.
 - Attorneys for confined individual. An individual has a right to challenge his confinement and may have an attorney.

Before arresting any offenders falling into these special circumstances categories, please consult with the District Attorney.

- **Law enforcement still retains all other traditional means of enforcement. The nature of this emergency makes it difficult to quickly adopt local ordinances that conform with §252 public health violations, it is still possible to cite individuals for the violations of Disorderly Conduct and Obstructing an Officer, as all jurisdictions currently have the power to issue citations for those offenses.**

- **As always, please contact the Kenosha County District Attorney's Office for any questions and guidance.**

SPECIFIC VIOLATIONS OF §252.25

1. UNAUTHORIZED ENTRY INTO ISOLATION OR QUARANTINE PREMISES — § 252.06(4)(b)

Upon conviction for this offense, a misdemeanor, the defendant is subject to a fine not to exceed ten thousand dollars (\$10,000) or imprisonment not to exceed nine (9) months, or both.

Statutory Definition of the Crime

Unauthorized Entry Into Isolation or Quarantine Premises, as defined in § 252.06(4)(b) of the Criminal Code of Wisconsin, is committed by one who enters into an isolation or quarantine premises without the authorization of the public health authority during public health emergency declared under Wis. Stat s. 323.10.

EXCEPTIONS: local health officer, his or her representative, attending physicians and nurses, members of the clergy, **members of the immediate family of the quarantined individual**, and any other person having a special written permit from the local health officer. Wis. Stat. s. 252.06(4)(a).

Elements of the Crime That the State Must Prove

1. The defendant entered into an isolation or quarantine premises.

Isolation means the separation of a person or group of people known or reasonably believed to be infected with a communicable disease, and potentially infectious, from those who are not infected, in order to prevent spread of the communicable disease.

Quarantine means the separation of a person or group of people reasonably believed to have been exposed to a communicable disease but not yet symptomatic, from others who have not been so exposed, to prevent the possible spread of the communicable disease.

2. The defendant did so without the authorization of the public health authority.

Public health authority means the Wisconsin Department of Health Services. Wis. Stat. § 252.01(6g). *Public health authority* can also include a local health department, if the WDHS has designated the local health department as a WDHS agent during a state of emergency. Wis. Stat. § 252.0042(1).

3. The defendant did so during a public health emergency declared under Wis. Stat. s. 323.10.

If the defendant falsely claims to be a member of clergy or immediate family, the State may need to prove that the defendant was not a member of clergy, or a member of the immediate family of the quarantined individual. If the defendant is telling the truth, then he or she is excepted from the statute.

2. VIOLATE LAW RELATING TO HEALTH — § 252.25

Upon conviction for this offense, a misdemeanor, the defendant shall be imprisoned for not more than thirty (30) days or fined not more than five hundred dollars (\$500) or both.

Statutory Definition of the Crime

Violating a Law Relating to Health, as defined in § 252.25 of the Criminal Code of Wisconsin, is committed by one who willfully violates or obstructs the execution of any state statute or rule, any county, city or village ordinance, or any Wisconsin Department of Health Services order issued under Wis. Stat. Ch. 252, which is related to public health.

Elements of the Crime That the State Must Prove

1. The defendant willfully violated, or obstructed the execution of one of the following laws as they apply to WDHS Emergency Order # 5 (Prohibiting Mass Gatherings of 10 people or more) is an order issued under Wis. Stat. s. 252.02(3):

Wis. Stat. § 252.03(4), interfering with investigation by local health officers

“Wis. Stat. § 252.041(1)(a), Compulsory vaccination during state of emergency

Wis. Stat. § 252.05(1) *et seq.*, Failing to report communicable disease or death to health department. “If a violation of this section is reported to a district attorney by a local health officer or by the department, the district attorney shall forthwith prosecute the proper action, and upon request of the department, the attorney general shall assist.” *Id.* § 252.05(11).

Wis. Stat. § 252.19, willfully violating recommendations of the local health officer.

Wis. Stat. § 252.19 willfully subjecting others to danger of contracting disease.

Wis. Stat. § 252.19 knowingly and willfully taking, advising, or causing an infected person communicable disease into any public place or conveyance where the infected person would expose any other person to danger of contracting the disease.

Wis. Stat. § 252.21(1), Communicable diseases; schools; duties of teachers, parents, officers. (“If a teacher, school nurse, or principal of any school or child care center knows or suspects that a communicable disease is present in the school or center, he or she shall at once notify the local health officer.”)

Wis. Admin. Code § DHS 145.06(5), failure to comply with health official directive.

Wis. Admin. Code § DHS 145.06(5), failure to abate threat of transmission of communicable disease.

3. ADDITIONAL HEALTH LAWS THAT MAY BE PROSECUTED UNDER §252.25

Wis. Stat. § 252.03(4), interfering with investigation by local health officers (“No person may interfere with the investigation under this chapter of any place or its occupants by local health officers or their assistants.”)

Wis. Stat. § 252.041(1)(a), compulsory vaccination during state of emergency (“Order any individual to receive a vaccination unless the vaccination is reasonably likely to lead to serious harm to the individual or unless the individual, for reasons of religion or conscience, refuses to obtain the vaccination.”)

Wis. Stat. § 252.05(1) et seq., failing to report communicable disease or death to health department. “If a violation of this section is reported to a district attorney by a local health officer or by the department, the district attorney shall forthwith prosecute the proper action, and upon request of the department, the attorney general shall assist.” *Id.* § 252.05(11).

Wis. Stat. § 252.19, willfully violating recommendations of the local health officer.

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Wis. Stat. § 252.19 knowingly and willfully taking, advising, or causing an infected person communicable disease into any public place or conveyance where the

infected person would expose any other person to danger of contracting the disease.

Wis. Stat. § 252.21(1), failure to notify local health officer of communicable disease. (“If a teacher, school nurse, or principal of any school or child care center knows or suspects that a communicable disease is present in the school or center, he or she shall at once notify the local health officer.’)

Wis. Admin. Code § DHS 145.06(5), failure to comply with health official directive. But note that process calls for health official to petition for court order.

Wis. Admin. Code § DHS 145.06(6), failure to abate threat of transmission of communicable disease. But note that process calls for health official to petition for court order.