



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.ALABAMA.GOV

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GUIDANCE FOR LAW ENFORCEMENT

FROM: Steve Marshall *SM*
Attorney General
SUBJECT: Enforcement of State Health Order

On Thursday, March 19th, the State Public Health Officer issued an order suspending certain public gatherings to prevent the spread of COVID-19. That order was amended on Friday, March 20th to clarify the intended application of the order for businesses and their employees. In response to changing conditions, a new state health order was issued on March 27, 2020 and supersedes all previous orders.

The March 27th order was also adopted as an emergency rule by the State Health Officer, pursuant to the authority granted by regulation 420-1-2-.07(e) of the Alabama Administrative Code (the State Health Officer may adopt an emergency rule without notice or hearing if there is an immediate danger to public health), and in accordance with Sections 22-2-2(6) (empowering the agency to adopt rules and giving those rules the force of law) and 22-2-8 (the State Health Officer may act on behalf of the State Committee of Public Health when it is not in session) of the Code of Alabama. ALA. ADMIN. CODE 420-1-2-.07(e); ALA. CODE §§ 22-2-2(6), -8.

The effect of the order and the promulgation of the emergency rule is that the March 27th order is now enforceable under Section 22-2-14, which states:

Any person who knowingly violates or fails or refuses to obey or comply with any rule or regulation adopted and promulgated by the State Board of Health of this state shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25.00 nor more than \$500.00 and, if the violation or failure or refusal to obey or comply with such rule or regulation is a continuing one, each day's violation, or failure or refusal shall constitute a separate offense and shall be punished accordingly.

ALA. CODE § 22-2-14. Given the criminal nature of a violation of Section 22-2-14, prosecutors and law enforcement should be aware of their authority to act as

needed to enforce the state health order. While the unprecedented nature of this pandemic and the government's evolving response seem to demand some restraint related to criminal enforcement of this order, **if a violator has been made aware of the state health order and the refusal to comply presents a threat to public health and safety, the penalties of Section 22-2-14 are available as an enforcement tool.**

NOTE: Following the issuance of the March 20th amended state health order, the Attorney General's Office received questions related to enforcement of the order's provision on "elective" medical procedures. [Section 7 of the March 27th order](#) provides greater detail for healthcare providers and the general public on procedures that must be halted during the state of emergency. **Be advised that this order applies to all healthcare facilities and providers, without exception.** The order does not offer a total exemption for any specific type of provider or clinic, but instead provides exemptions from mandatory postponement only for two distinct classes of procedures: a) those necessary to treat an "emergency medical condition"; and b) those necessary to avoid serious harm from an underlying condition or disease, or are necessary as part of a patient's ongoing and active treatment. Violations of this order are enforceable under Section 22-2-14.