Executive Order Violations Have Become A Focus Of Law Enforcement And "Knuckleheads"

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In the midst of the COVID-19 pandemic, New Jerseyans have heard almost daily references to Executive Orders, and people being arrested and charged for violating those Orders. Those violators, or “knuckleheads” as they have been commonly referred to, are at times becoming the scorn of the public, and at other times leaving many to question how this conduct has resulted in such harsh consequences. When we think about criminal law, arrests, handcuffs, police, etc. we don’t think of State emergencies and Executive Orders. But times have changed. And though we have seen a dramatic decrease in the overall amount of crime that is being committed, detected and prosecuted throughout the State, we are seeing an increase in the enforcement of Executive Orders.

So what are these Orders? And more importantly, how are they being enforced?

In March of 2020, New Jersey Governor Phil Murphy signed several Executive Orders related to the COVID-19 health crisis. As the Chief Executive of the State, there are a number of laws providing the Governor with emergency powers. Governor Murphy utilized this authority to issue these Executive Orders.

First, Executive Order (EO) 103 declared a Public Health Emergency and a State of Emergency. Then, on March 16, 2020, Executive Order 104 deemed certain businesses “essential” and made other rules for social gatherings, and also closed schools, casinos, racetracks, movie theaters, gyms, bars and restaurants (except for take-out or delivery), and other businesses. EO 104 also provided the penalties for violations of the Order, pursuant to a set of laws not commonly used, which we will touch on below.
On March 21, 2020, Executive Order 107 raised the stakes, authorizing more stringent restrictions than before. EO 107 required everyone in New Jersey to stay at home, pending certain exceptions, with provisions for social distancing, the cancellations of all social events, and an outline of what businesses are “essential” and rules about their operation. EO 107 also mandated working remotely and closed non-essential business.

More Executive Orders followed - prohibiting elective surgeries (109); closing day care facilities (110); closing state parks (118); prohibiting non-essential construction projects (122); limiting transportation and business operations (125) and so on. Executive Order 108 invalidated any municipal or county restrictions that conflicted with Executive Order 107. A list of all Executive Order signed by Governor Murphy can be located here.

So what happens if a person defies an Executive Order? Who is handling these cases? What are the penalties? Can a person be arrested? Or is law enforcement simply warning people to stop whatever it is that they are doing and go home?

As with the violation of other state laws, law enforcement is tasked with enforcing these Executive Orders. However, a change seems to appear in the prosecution of these alleged violations. Not only are violators finding that they are referenced at the Governor’s daily news briefing, but they may also be prosecuted by members of the New Jersey Attorney General’s Office. That is not the normal operating procedure in this State. Typically, criminal law is enforced by local municipal police departments, with the prosecution handled on the local level by municipal prosecutors, and at the State level by the respective County Prosecutor’s Offices. This apparent change shows the severity in which the government is taking this conduct.

The most critical question surrounding Executive Orders is not what are they, or who is prosecuting them, but what are the penalties. There are a number of possible sanctions for a violation of an Executive Order. And these penalties may be in addition to a violation of other relevant criminal laws. Let’s go through that and then discuss some examples.

The penalties for a violation of an Executive Order are outlined in N.J.S.A. App. A:9-49 and -50. Just for some context here, these are specific laws that are under the “Emergency Powers and Temporary
Acts,” in a chapter that deals with “National Defense” and a sub-article that is entitled “Emergency Powers of Governor.” Not exactly something you would equate to a social gathering of friends or a walk in a State park. But that’s where we find ourselves now. These laws make violations of Executive Orders a disorderly persons offense, punishable by a fine not to exceed $1,000 and/or imprisonment in the county jail for a period not to exceed six months. These penalties are left to the discretion of municipal courts, which have jurisdiction over these matters. Like other criminal laws or offenses, the State must prove all the elements of this offense beyond a reasonable doubt. Interestingly, there is also a provision for group activities, or those who “aid” or “abet” the violation of an EO. This is somewhat novel because this language is similar to a conspiracy/accomplice charge for a disorderly persons offense, which has been traditionally prohibited under our more commonly used criminal code.

There is no question that law enforcement agencies have been targeting individuals and businesses that violate Executive Orders. There have been violators charged across New Jersey. Charges have related to business activities (salons, bars, restaurants, recording studios) that were operating in violation of the Executive Orders. However, individuals have also been charged with violating the Orders for conduct such as violating social distancing, having social gatherings, traveling outside restricted times, and the like.

In addition to being charged with a violation of an Executive Order, there are also a number of other laws that a “knucklehead” can find themselves charged with. For example, if a person is in violation of an Executive Order while in the process of committing other unlawful conduct, the police will not hesitate to charge a person with the violation of any and all applicable laws.

For example, municipalities may have taken some matters into their own hands by closing local parks, school grounds, playgrounds, etc. Each municipality has a municipal code, and someone in violation of that code provision(s) can be charged with both that and a violation of an applicable Executive Order. Local ordinances carry a variety of penalties, which range from fines to community service to jail.

The more traditional criminal laws can also be utilized by law enforcement. Police have a host of criminal laws at their disposal to combat what they view as unlawful conduct. For example, police
can charge individuals who enter a closed areas with a violation of an Executive Order, as well as the relevant criminal law related to trespass. This can result in a range of penalties dependent on the degree of the crime or offense.

The fact that we are in this state of emergency can also lead to the authorization of more serious charges. Because of the times we live in, the severity of certain crimes may be increased. For example, if someone commits a Terroristic Threat “during a declared period of national, State or county emergency” the degree of crime is increased. Such a violation not during this period would likely result in probation, but if it occurs during these times a person will have serious exposure to State Prison. In addition, the law does not care that you may not be unaware of this emergency. A person is “strictly liable” for if the crime occurs during these emergency periods.

Being in a park closed due to the Executive Order can be both a violation of Executive Order and a trespass. Defying an order of the police can be both a violation of Executive Order, as well as Resisting Arrest, Obstruction of a Governmental Function, or Hindering Apprehension. These laws range from petty disorderly persons offenses to more severe crimes. How about the “knucklehead” who intentionally coughs or sneezes at a cop? Because COVID-19 will almost certainly be viewed as a communicable disease, if an individual claims they have the virus, whether it is true or not, and spits, coughs or otherwise throws bodily fluids on a law enforcement officer, that will be considered an Aggravated Assault, which could land the person in jail or prison.

No matter what the level of offense you or your business is charged with, it is important to have experienced, reliable and reputable defense attorneys at your side to protect your rights if you’re yourself charged with a violation of one of these Executive Orders or worse. Please review the profiles of Matthew Troiano, Esq. and Brian Kenney, Esq. and contact us with any questions.