



# **Madison County State's Attorney Thomas Haine: Governor's Orders Not Criminally Enforceable**

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EDWARDSVILLE — On Thursday, Madison County State’s Attorney Tom Haine released a two-page legal opinion analyzing the enforceability of the Executive Orders issued by Governor JB Pritzker and the Emergency Rule issued by the Illinois Department of Public Health, concluding that violations of either will not result in the filing of criminal charges by his office.

“Since taking office earlier this month as Madison County State’s Attorney I have directed a close review of all the various legal issues regarding the various applicable COVID-19 mandates,” said Haine. “I am now making these legal opinions public to provide a clear reference point for both public officials and private citizens relating to COVID-19 enforcement in Madison County, and to alleviate the concerns of many individuals who rightly feel an obligation to follow the law but are confused as to what

the law actually is regarding the many COVID-19 mitigation protocols issued over the past months.”

In summary, Haine concluded that “an individual would not be committing a crime if he or she were to violate the Emergency Rule issued by the Illinois Department of Public Health or any of the Governor’s COVID-19 Executive Orders, as these mandates do not contain a legal basis for prosecution against an individual citizen. Accordingly, my office is neither able nor willing to file criminal charges against anyone suspected of violating these directives from the State of Illinois.”

Haine’s legal opinion went on to analyze other applicable legal rules and considerations relating to COVID19, and provide guidance to businesses on how to navigate customers’ individual rights while requiring basic COVID-19 precautions.

“While my office cannot charge any individual with a crime for not following these COVID-19-related state directives, we can prosecute individuals for trespass or disorderly conduct if someone refuses to leave an establishment after being asked by the business owner,” Haine noted in an accompanying press release. “Just as individual citizens have rights, businesses also have rights which will be protected. Businesses must be given discretion on how and when to operate in accordance with applicable guidelines and subject to their own risk management.”

Haine acknowledged that the Madison County Health Department may seek a court order requiring isolation or quarantine, or a business to close, based on COVID outbreak or infection, which his office will handle on a case by case basis. Haine also stated that his office has no involvement and no legal authority to prosecute anyone suspected of violating Edwardsville’s recently adopted mask mandate.

“In exercising the discretion of my office, we will protect the rights of individuals and businesses. Our Constitutional rights are not suspended during a pandemic,” Haine said.

### **Legal Opinion regarding criminal enforcement of COVID-19 mandates in Madison County.**

"Since taking office as Madison County State's Attorney, I have directed a close legal review of all the various legal issues regarding COVID-19 that possibly concern this office," Haine said.

"I am now making these legal opinions public to provide a clear reference point for both public officials and private citizens relating to COVID-19 enforcement in Madison

County, and to alleviate the concerns of many individuals who rightly feel an obligation to follow the law but are confused as to what the law actually is regarding the many COVID-19 mitigation protocols issued over the past months.

"That question ultimately comes down to which of the various rules and proclamations issued by Governmental authorities provide for criminal enforcement, which in Madison County, is the responsibility of the State's Attorney's Office."

## **Executive Summary**

"It is the legal opinion of the Madison County State's Attorney's Office that an individual would not be committing a crime if he or she were to violate the Emergency Rule issued by the Illinois Department of Public Health or any of the Governor's COVID-19 Executive Orders, as these mandates do not contain a legal basis for prosecution against an individual citizen," Haine said.

"Accordingly, my office is neither able nor willing to file criminal charges against anyone suspected of violating these directives from the State of Illinois. However, other statutes do authorize criminal prosecutions against an individual for certain conduct related to the pandemic.

"Of course, the duty of a public prosecutor is to seek justice, not merely convict. Therefore, the State's Attorney is granted absolute discretion regarding whether or not to prosecute a particular case. In exercising that discretion, my office is cognizant that citizens' Constitutional rights are not suspended during this pandemic and must not be violated.

## **Further Analysis From Thomas Haine:**

1. There is no legal basis to criminally prosecute any individual, business, church, or any other entity for only a violation of any of the Governor's Executive Orders relating to COVID-19. These Executive Orders contain no criminal enforcement mechanisms. Even if they are amended to contain such a provision, the statute upon which these Executive Orders are based (the Emergency Management Agency Act) specifically places the responsibility for enforcement solely upon the Emergency Agencies established by that Act-not State's Attorneys.

2. There may be a legal basis to criminally prosecute persons for actions peripherally related to the COVID-19 pandemic but that also violate existing criminal statutes. For example, a business is within its rights to request an individual leave the premises if they refuse to wear a mask or comply with other COVID-19-related rules. Failure to leave after this request may result in a criminal trespass charge. Other criminal statutes

may be violated by acting recklessly or without regard for the health and safety of others. These include, but may not be limited to, disorderly conduct and/or reckless conduct. Finally, law enforcement officers can, subject to the discretion of each individual law enforcement agency and within their community caretaking role, issue lawful dispersal orders. Violating such orders could provide the legal basis for criminal prosecution.

3. There may be a legal basis to criminally prosecute businesses or other similar entities who violate the Emergency Rule issued by the Illinois Department of Public Health relating to COVID.

However, this Emergency Rule, which has not changed since August, cannot be the basis of the arrest or citation of any individual (the rule can only be enforced against businesses and similar entities) and has no bearing on whether any business establishment may provide indoor dining. Further, my office's enforcement of this Emergency Rule will be on a case by case basis and will not be prioritized over more serious offenses.

**This is a link for the Governor's Emergency Rule:**

[file.cfm \(iml.org\)](https://www.iml.org/file.cfm)

4. The Madison County Health Department may seek a court order requiring a person to isolate or quarantine, or a business to close, based on a known or suspected COVID-19 infection or outbreak. If this occurs, the State's Attorney's Office will abide by the dictates of the Illinois Department of Public Health Act, which prescribes a detailed process through which such orders are obtained and by which criminal liability may attach.

5. My office will continue to enforce the Madison County Code and violations of that Code, such as operating a business without a business license. However, in the unlikely event that a business license is revoked due only to an alleged failure to abide by the aforementioned COVID-19 mandates and that the business nonetheless continues to operate in a manner otherwise in compliance with applicable rules and regulations, my office will strictly scrutinize any request for prosecution against an individual license holder. After all, those same COVID-19 mandates specifically exclude the criminal prosecution of individuals for their violation.

6. My office is not involved in the prosecution of the Edwardsville mask mandate, which is a city ordinance and not a criminal matter.

7. Local governmental authorities are reminded that they could incur serious civil liability if they take actions that burden Constitutional rights - such as the freedom to worship - without a compelling and legally justified need to act in each specific circumstance. Finally, it is imperative to note that these are legal opinions only with regard to the criminal enforceability by the State's Attorney's Office of the aforementioned COVID-19 mandates. Operating in a manner that is inconsistent with these COVID-19 mandates may contain other risks, such as civil liability, loss of insurance coverage, and/or business licensure penalties, all of which are unrelated to the actions and discretion of the State's Attorney's Office. As such, any business or other organization should seek legal counsel prior to taking any actions related to these issues.

**- Tom Haine, Madison County State's Attorney**