Check the chart!

Please use the chart to understand your approach and enforcement options for an unlawful gathering, food service, or open business. Wisely, police in Massachusetts and nationally arrest as a last resort. Some examples include a Maryland man who, after being warned by police, held a bonfire at his house for 60 guests; a New York City tavern owner who repeatedly served customers; and a Florida pastor who encouraged hundreds to flock to his church service. They ended up in cuffs.

Consider COVID crimes

Scams continue. Stay vigilant. Last week, AP reported an FBI arrest of a California man who claimed to have a “patent-pending cure” for COVID-19. He took the undercover cash. Whoops!

Impostor vehicle stops. NBC news reported offenders in Colorado pulled over motorists, saying they were conducting compliance checks for the state’s stay-at-home order. One had equipped his van with police lights.1 Remember 268, § 33 — impersonation of a police officer — which is a 1 year misdemeanor arrestable in presence as a breach of peace. If red or blue lights are involved, add a citation for 90, § 7E — a CMVI of $305.

Domestic violence. Many have predicted an increase in domestic violence due to “stay at home” orders. The problem may be compounded when victims, in close quarters with their abusers, are less able to report and/or safely leave. We’ll all see how this plays out. If dispatched to a home on a seemingly “minor” issue, please remain alert to the possibility of domestic violence.

- The violation of a domestic violence or harassment prevention order must result in arrest. 209A, § 6. 258, § 8. COVID-19 also does not affect obtaining an emergency restraining order.

- At the same time, arrest for domestic violence or harassment is the “preferred response” if no order exists. Id. Given that COVID-19 is potentially dangerous to arrestees, other citizens, police, and court personnel, officers on scene may reasonably decide that a different intervention makes more sense. For example, instead of an arrest, officers might counsel and warn the suspect, and/or persuade him to go to a different, safe location. They may also choose to grant a complainant’s request to go to another location, and inform the suspect they will file a criminal complaint, etc.

1 Fortunately, no one was hurt or sexually assaulted.

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**Hate crimes.** While thankfully rare, there have been reports of individuals targeting Asian Americans under the absurd belief that COVID-19 somehow originates with them. Consider using 265, §§ 37 and 39 against these “hate crime” perpetrators whose assaults are motivated by their bias against this group.

A clever police officer in India wears this coronavirus helmet to encourage people to stay inside and observe social distance! Can you come up with ways to enlist your citizens in the cause?

**Police Executive Research Forum (PERF) does an excellent, daily COVID-19 email.** Sign up at [https://www.policeforum.org/coronavirus](https://www.policeforum.org/coronavirus).

**Simple “stay safe” advice.** Specifically on March 31, PERF mentioned an hour-long video by Dr. David Price of Cornell Medical Center entitled, “How to Protect Your Family.” The doctor’s bottom line: “The overwhelming majority of people are getting [COVID-19] through physically touching someone who has this disease — or will develop it in the next one to two days — and then touching their face.”

The risk of inhaling the virus after an infected person sneezes, or picking it up from a door handle or other object, is far lower. Manage risk by: (1) self-quarantine; (2) hand sanitizer and disinfectant wipes when you must leave your home, and (3) a mask to remind yourself not to touch your face. Dr. Price optimistically concludes that this simple understanding “is incredibly empowering . . . [and] makes me smile . . . because I know how to protect myself.”

### Positive Approach & Police Enforcement of COVID-19 Improper Gathering, Food Service, or Open Business

<table>
<thead>
<tr>
<th>Prohibited Behavior</th>
<th>Exemptions</th>
<th>Enforcement</th>
</tr>
</thead>
</table>
| **DPH Guideline ¶ 1**  
*Gatherings of 10 or more people in confined indoor or outdoor space* — covers any leisure, business, social, or religious activities in an indoor or outdoor space | • Public, outdoor, unenclosed space like a park or parking lot *only if social distancing occurs*  
• Airport, bus, train stations  
• Locations providing food & groceries  
• Banks  
• Pharmacies  
• Places of “essential services”  
• Healthcare facilities  
• Homeless shelters  
• Locations for isolation or quarantine  
• Residential treatment programs  
• Emergency child care programs  
Exemptions in DPH Guidelines ¶¶ 2-6, 9-13. | **Informal**  
• **Mindset**: This is an important, critical part of your public safety role! Be vigilant.  
• **Positive presence**: Disperse, remind about social distancing, emphasize “civic responsibility.” |

| **DPH Guideline ¶ 8**  
*Athletic activities of any size, either indoor or outdoor* — that “bring people into close physical contact” | None. | **Formal**  
Enforcement in DPH Guideline ¶ 17 and SOE Order 13, § 5  
• **Local BOH** (and their agents) *primary enforcer* who may enlist state or local police assistance.  
• **1st offense**: *Warning*. [Officer should document.]  
• **2nd offense**: *Municipal ticket for $300*. [List offense on ordinance/bylaw ticket as “COVID-19 Guideline (add ¶ number from chart)” Write brief report or CAD entry.]  
• **3rd or subsequent “willful” violation**: *Criminal complaint application or arrest* [Also see Chapter 639, § 8. Violators subject to arrest for breach of peace in presence. *Gorman*, 288 Mass. 294, 298 (1934)]. |

| **DPH Guideline ¶ 7**  
*On-premises consumption of food or beverage in bars, restaurants, or any food service operation* | • *Take-out and/or delivery only if social distancing occurs*  
• More than 10 on premises may prepare food | **Local BOH typically responds with “cease and desist” order** to business owner. Assist local BOH as requested, who may want a ticket issued or even arrest. |

| **SOE Order 13, § 2**  
*Non-essential business remains open at a “brick-and-mortar” premises* | • *Essential services*  
Note: Local BOH will need advice from counsel to determine whether services are essential. | None. This good behavior is “urged” on citizens. It is advisory, not enforceable. DPH Guideline ¶ 15. |

| **Recommendation**  
*Failure to “social distance” (6 feet), wash hands, or refrain from coughing* | Not applicable.  
Note: In rare event where coughing is purposely used to spread disease, crime of A&B may apply. | None. |

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1 There are two key documents referenced in this chart: (1) **SOE (State of Emergency) Order 13** entitled, “Order assuring continued operation of essential services in the Commonwealth, closing certain workplaces, and prohibiting gatherings of more than 10 people” (referred to by numbered section as, e.g., § 1); and (2) **DPH Guidelines** entitled, “Revised guidance extending the order by the Governor prohibiting assemblages of more than 10 people and on-premises consumption of food and beverages (issued March 31)” (referred to by numbered paragraph as, e.g., ¶ 1).

2 You currently use ordinance or bylaw tickets for things like leash law violations, littering, or any marijuana civil fine. See general procedure in 40, § 21D. In a COVID-19 case — e.g., people refuse to stop playing touch football at a local park — you would take out your ordinance/bylaw ticket and insert, for the offense, “COVID-19 Guideline 8.” List fine as $300. Then write a short report or have a CAD entry created. See example at Attachment A to this chart.

3 See example at Attachment B to this chart. Created by the Massachusetts Assoc. of Health Boards (MAHB) at www.mahb.org.
Sample police report narrative or CAD entry:

I, Officer Jane Doe, was on patrol in unit 43 at 2:04 p.m. when I received a report of a touch football game at Allen Park on Bishop Drive. There were 8 youths playing. I told them about the emergency order prohibiting “close contact” athletics. 7 youths agreed to stop and started to walk away, while John Jones continued to run close to people and push them and repeatedly yell, “This is bullshit.” I warned him several times and, when he continued, issued Jones ticket #209002 for violating DPH Guideline 8 to Governor’s state of emergency order 13.
Attachment B

[City/Town of ____________]
Board of Health
IMMEDIATE CEASE AND DESIST ORDER

This IMMEDIATE CEASE AND DESIST ORDER is issued to:
Name of Establishment -
Address -
Date -

WHEREAS, on March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic; and

WHEREAS, on March 10, 2020, the Governor of the Commonwealth of Massachusetts issued a Declaration of a State of Emergency to Respond to COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on [date of local emergency order], the [city/town] of [name of city/town], through the [Mayor, Town Manager, City Manager, Town Administrator, Board of Health, Health Director as agent of the Board of Health] [chose all that apply], has determined that COVID-19 poses a significant, immediate threat to the public health, safety, and welfare of people residing both within and outside the [city/town] of [name of city/town], and, as such, has declared a Local State of Emergency; and

WHEREAS, on March 23, 2020, the Governor of the Commonwealth of Massachusetts issued an Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People (COVID-19 Order No. 13); and

WHEREAS, on March 23, 2020, the Governor of the Commonwealth of Massachusetts attached Exhibit A to the abovementioned COVID-19 Order No. 13, and Exhibit A specifies which business are considered essential, a copy of which is attached hereto; and

WHEREAS, [Name of Establishment listed above] is not a business providing essential services pursuant to Exhibit A of COVID-19 Order No. 13; and
WHEREAS, on [date], [Name of Establishment listed above] was observed open for business in violation of COVID-19 Order No. 13.

WHEREBY, you are hereby ordered to immediately cease and desist from operating [name of Establishment listed above] until such time as the Governor rescinds COVID-19 Order No. 13.

This order is issued pursuant to the Board of Health’s emergency powers pursuant to Massachusetts General Laws, Chapter 111, Sections 30, 104, and 122; 105 CMR 400.200(B); and 310 CMR 11.05.

If you are aggrieved by this order, you have the right to request a hearing before the Board of Health. This request must be made by either the owner of [Name of Establishment listed above] or an authorized agent of [Name of Establishment listed above], in writing, and filed with the Board of Health within seven (7) days after the date this Order was served or actually received. Any affected party has the right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law, including but not limited to, the filing of a complaint in District or Superior Court and any emergency court order(s) issued pursuant to any such complaint.

Signed by:

________________________________  _________________________
Name:  Date:
As agent of the [city/town] [Health Department/Board of Health]

This was developed by the Massachusetts Assoc. of Health Boards (MAHB). Go to their website at www.mahb.org