

IN THE COURT OF COMMON PLEAS,
CHAMPAIGN COUNTY, OHIO

In Re:

Case No. 2020 MS 007

Temporary Emergency Order
Resulting from the Declared
COVID-19 Public Health Emergency

Judge Nick A. Selvaggio

2020 MAR 20 AM 8:58
JENNIFER S. UNDERWOOD
CLERK OF COMMON PLEAS COURT
CHAMPAIGN COUNTY, OHIO

FILED

JOURNAL ENTRY

The Champaign County Court of Common Pleas, General Division makes the following Findings of Fact:

1. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D "Declaring a State of Emergency" in response to the growing COVID-19 public health crisis (Executive Order 2020-01D attached hereto).
2. On March 11, 2020, the World Health Organization officially declared COVID-19 to be a global "pandemic" requiring "urgent and aggressive action" to control the spread of the virus.
3. On March 11, 2020, the first "community transfer" positive case of COVID-19 in the State of Ohio was confirmed to be in Stark County.
4. On March 13, 2020, President Donald J. Trump declared the COVID-19 virus pandemic a "national emergency beginning March 1, 2020" (Presidential Proclamation attached hereto).
5. From March 13, 2020 through the filing of this entry, Ohio Governor DeWine, after consultation with the Ohio Department of Health, has issued an number of additional executive orders (copies of Executive Orders 2020-02D, 2020-03D and 2020-04D attached hereto), and mandated the closure of schools, private businesses and public agencies such as the Bureau of Motor Vehicles in order to protect the health of all Ohioans. Through televised news conferences, Ohio

Governor DeWine has also encouraged Ohio's public and private sector employers to monitor its workforce and enact protocols to reduce the possibility of the "public spread."

6. On March 13, 2020, the Champaign County Common Pleas Court, General Division and the Champaign County Municipal Court issued a joint press release noting that in order to preserve the public health all upcoming jury trials would be postponed and rescheduled to late April, 2020. *See, Urbana Daily Citizen*, publication date March 14, 2020.
7. On March 16, 2020, the Champaign County Common Pleas Court, General Division, the Champaign County Common Pleas Court, Family Court Division and the Champaign County Municipal Court issued a joint press release noting that the courts would remain open in order to maintain essential court functions while modifying individual court operations in order to promote the public health, prioritize public safety and uphold the rule of law. *See, Urbana Daily Citizen*, publication date March 17, 2020.
8. On March 16, 2020, Ohio Department of Health Director Amy Acton issued a Director's Order that mandated the closure of polling locations in the State of Ohio on March 17, 2020 "to avoid the imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number [of persons]", thus effectively postponing the scheduled March 17, 2020 Ohio Primary Election (Director's Order attached hereto).
9. The Centers for Disease Control and Prevention (CDC) and other national and State of Ohio health authorities have advised people to take precautions to reduce the possibility of exposure to the COVID-19 virus.
10. Specifically, the CDC and Ohio health officials are recommending that people attempt to keep physical distance between themselves and other people. This technique, known as social distancing, is especially important for people who have a higher health risk should they contract the disease.

11. The CDC is also recommending employers try to minimize exposure between employees and the public and to consider the public health and safety when scheduling group or public events.

THEREFORE, in order to protect the public health and reduce the size of public gatherings and unnecessary travel, while maintaining essential court functions and operations, the Champaign County Court of Common Pleas, General Division issues the following temporary orders:

1. The Court is committed to remaining open and being accessible to the public in order for it and its criminal justice partners to receive the necessary filings and hold the court hearings needed to promote the rule of law, protect public safety, and receive challenges to public health emergency orders. The Office of the Clerk of Courts shall remain open, subject to further order of the Court.
2. The Court will have lawful authority, within constitutional limits, to do and direct to be done all things necessary to ensure the orderly and efficient administration of justice for the duration of the above referenced public health emergency.
3. The Champaign General Division Local Rules of Court may be temporarily adapted to allow Court flexibility, within constitutional limits, for the duration of the above referenced public health emergency.
 - a. Champaign G.D.L.R. 5.6 was previously suspended by journal entry issued on March 17, 2020 – *See, In Re: Temporary Suspension of Champaign G.D.L.R. 5.6*, Champaign 2020 MS 006 (copy attached hereto);
4. The security policies of the Champaign County Courthouse may be temporarily amended or supplemented to protect public health while maintaining essential court functions.
 - a. The Champaign County Sheriff's Office, Court Services Division, is authorized to prohibit any party to a case or member of the public from entering the County Courthouse for purposes of conducting or attending General Division business if that person(s) are exhibiting symptoms

consistent with the COVID-19 virus or have communicated direct or indirect exposure to the COVID-19 virus;

- b. Court Staff is authorized to exclude or minimize unnecessary public contacts within the second floor hallway and within the courtrooms depending on the given circumstances;
5. Consideration will be given to the Court's use of video technology and telecommunication devices in order to conduct any hearing, proceeding and other related court function.
 - a. The decision to utilize video technology and telecommunications shall be considered in order to minimize the risk of COVID-19 virus exposure to litigants, attorneys, and Tri-County Regional Jail inmates;
 - b. Recognizing that many out-of-custody accused offenders have no support system during times of personal crisis, the Court's Pretrial Services Program and the Adult Parole Authority are granted discretion to continue face-to-face contact with an accused offender if, in the opinion of the Pretrial Services Program or the Adult Parole Authority, such contact is necessary to reduce the risk of fatal overdose, reduce the likelihood of a severe mental health crisis incident or promote general public safety;
6. The Court finds that the above referenced public health emergency may be considered the basis for a finding of "good cause" by the Court for continuances deemed necessary to prevent the spread of the COVID-19 virus;
7. The Court has presently postponed and rescheduled jury trials to April 21-22, 2020. The Court will re-evaluate the need for further postponement by considering the latest COVID-19 pandemic information from state health officials.
8. The Court finds that the above referenced public health emergency may be considered to be the basis for a finding of "reasonable continuance" to extend the time within which an accused must be brought to trial in order to prevent the

spread of the COVID-19 virus. See, *R.C. 2945.72(H)*; *2020 Op. Atty. Gen. No. 2020-002* attached hereto;

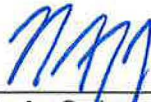
9. Grand Jury is authorized to meet, subject to the Court's ability to continue to maintain appropriate "social distancing" spacing protocols in its largest courtroom and subject to further order of the Court.
10. The Court will prioritize decisions to confine offenders at the Tri-County Regional Jail or incarcerate offenders at the Ohio Department of Rehabilitation and Correction after giving consideration to maintaining the public health, protecting the public safety, and determining whether the offender is amenable to other least restrictive alternatives;
11. Non-case related meetings and events scheduled to occur in the General Division courtrooms prior to May 8, 2020 shall be rescheduled to a later date.
12. To reduce the need to come to Court offices, the Court will mail copies of journal entries to attorneys and deliver copies of journal entries to the Prosecutor's Office located one floor below the Court. Attorneys may still come to Court offices to deliver courtesy copies of pleadings to the Court and review pre-sentence reports;
13. The Court may temporarily adjust employee functions, workload and work locations deemed critical to maintaining essential court operations and functions while giving consideration to protecting the public health.
14. The Court will continue to evaluate and monitor the severity of the COVID-19 pandemic and health orders and recommendations made by national and state officials in determining whether additional protective measures need to be taken by the Court.

Court Staff shall serve this *Journal Entry* to the Champaign County Bar Association, the Champaign County Prosecutor's Office, the Assigned Counsel Appointment List, the Champaign County Sheriff's Office, the Tri-County Regional Jail, the local unit of the Adult Parole Authority and the Champaign County Health District.

A copy of this Journal Entry will be posted on the Court's website,
www.champaigncourt.org.

This **ORDER** takes effect immediately and shall remain in full force and effect, subject to further order of the Court and after knowledge that the public health emergency no longer exists as determined by the Ohio Director of Health in consultation with the Ohio Governor.

IT IS SO ORDERED.



Nick A. Selvaggio,
General Division Administrative Judge
Champaign County Court of Common Pleas



MIKE DEWINE

**GOVERNOR
STATE OF OHIO**

Executive Order 2020-01D

Declaring a State of Emergency

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes; and

WHEREAS, currently, the Centers for Disease Control and Prevention (CDC) lists over 79 countries with confirmed cases of COVID-19. The CDC reports over 98,000 diagnosed cases worldwide with 3,380 deaths reported worldwide. The CDC has announced 164 confirmed and presumptive positive cases, with eleven deaths reported from the disease in the United States; and

WHEREAS, on January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio; and

WHEREAS, on January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern; and

WHEREAS, on January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria; and

WHEREAS, on February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed; and

WHEREAS, on February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday; and

WHEREAS, on February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting; and

WHEREAS, on February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19; and

WHEREAS, on February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio; and

WHEREAS, on February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University; and

WHEREAS, on February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center; and

WHEREAS, on February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments; and

WHEREAS, on March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications; and

WHEREAS, on March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff; and

WHEREAS, on March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19; and

WHEREAS, on March 09, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio, creating a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio; and

WHEREAS, on March 09, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center; and

WHEREAS, in accordance with Ohio Revised Code section 5502.22, this Executive Order is necessary to authorize previously-alerted state departments and agencies to prepare to respond to this public health emergency as needed;

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution, the laws of this State and in accordance with Section 5502.22 of the Ohio Revised Code do hereby order and direct that:

1. A state of emergency is declared for the entire State to protect the well-being of the citizens of the Ohio from the dangerous effects of COVID-19, to justify the authorization of personnel of State departments and agencies as are necessary, to coordinate the State response to COVID-19, and to assist in protecting the lives, safety, and health of the citizens of Ohio.
2. I hereby further request the Department of Administrative Services and other departments and agencies of the State to suspend purchasing and contracting requirements contained in Chapters 125 and 153 of the Revised Code, pursuant to Section 125.061 of the Revised Code, during the period of the emergency for the Ohio Emergency Management Agency and any other State agency participating in emergency assistance under this declaration, in order to procure any necessary resources or supplies to protect the health, safety, and welfare of the citizens of Ohio.
3. After consultation with the appropriate medical experts, the Department of Health shall create and require the use of diagnostic and treatment guidelines and provide those guidelines to health care providers, institutions and providers.
4. The Department of Health issue guidelines for private businesses regarding appropriate work and travel restrictions, if necessary.
5. State agencies shall develop and implement procedures, including suspending or adopting temporary rules within an agency's authority, consistent with recommendations from the Department of Health designed to prevent or alleviate this public health threat.
6. This Proclamation does not require the implementation of the Department of Administrative Services Directive HR-D-11. Accordingly, State employees' obligations to travel to and from work is not to be limited as a result of this proclamation.
7. All citizens are urged to heed the advice of the Department of Health and other emergency officials regarding this public health emergency in order to protect their health and safety.

8. Persons who believe that they have been subjected to excessive prices for essential consumer goods during this public health emergency should contact the office of the Ohio Attorney General at 800-282-0515.

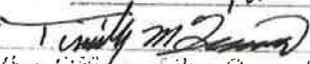
I signed this Executive Order on March 09, 2020, in Columbus, Ohio, and it shall take effect immediately and remain in full force and effect until the emergency no longer exists, such time to be determined by the Director of Health and the Executive Director of the Emergency Management Agency in consultation with the Governor, who will coordinate State response efforts and terminate the emergency upon the recommendation of appropriate officials of the other responding State departments and agencies.


Mike DeWine, Governor

ATTEST:


Frank LaRose, Secretary of State



Filed on MARCH 10, 2020
Per 
In the Office of the Secretary
of State at Columbus, OH
FRANK LaROSE
Secretary of State



PROCLAMATIONS

Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

Issued on: March 13, 2020



In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.

I have taken sweeping action to control the spread of the virus in the United States, including by suspending entry of foreign nationals seeking entry who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 outbreaks have occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area of Europe. The Federal Government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and treat those affected, including by instituting Federal quarantines for individuals evacuated from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), and releasing policies to accelerate the acquisition of personal protective equipment and streamline bringing new diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a

pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

The spread of COVID-19 within our Nation's communities threatens to strain our Nation's healthcare systems. As of March 12, 2020, 1,645 people from 47 States have been infected with the virus that causes COVID-19. It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and be prepared to surge capacity and capability. Additional measures, however, are needed to successfully contain and combat the virus in the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), do hereby find and proclaim that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. Pursuant to this declaration, I direct as follows:

Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).

Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP



MIKE DEWINE

**GOVERNOR
STATE OF OHIO**

Executive Order 2020-02D

The Emergency Amendment of Rules 5101:2-12-18, 5101:2-13-18 and 5101:2-16-10 of the Ohio Administrative Code by the Ohio Department of Job and Family Services

WHEREAS, a need for emergency changes in child care rules exists to respond to the public health crisis of the pandemic COVID-19; and

WHEREAS, on January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. Since then, two (2) additional patients have tested positive. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio; and

WHEREAS, on March 9, 2020, I Declared a State of Emergency in Executive Order 2020-01D; and

WHEREAS, currently, the Centers for Disease Control and Prevention (CDC) lists over 110 countries with confirmed cases of COVID-19. The World Health Organization reports over 118,000 diagnosed cases worldwide with 4,200 deaths reported worldwide. The CDC has announced 1,215 confirmed and presumptive positive cases, with 36 deaths reported from the disease in the United States; and

WHEREAS, Sections 5104.015, 5104.016, 5104.017, 5104.018, 5104.30, 5104.34, 5104.38 5104.39, 5104.42, and 5104.0111 of the Ohio Revised Code authorize the Ohio Department of Job and Family Services (ODJFS) to promulgate rules relating to the administration of the publicly funded child care program; and

WHEREAS, Section 119.03 (G) of the Ohio Revised Code authorizes the Governor, on the request of a State agency, to suspend the normal rule making procedures with respect to specific rules when an emergency exists necessitating the immediate adoption, amendment or rescission of such rules. When such a determination is made, the agency may immediately adopt, amend or rescind such rules, but the rules are only valid for one hundred and twenty (120) days; and

WHEREAS, ODJFS has requested a determination whether an emergency exists that requires the amendment of rules 5101:2-12-18, 5101:2-13-18 and 5101:2-16-10 of the OAC on an emergency basis and that would therefore permit ODJFS, pursuant to Sections 5104.015, 5104.016, 5104.017, 5104.018, 5104.30, 5104.34, 5104.38, 5104.39, 5104.42, and 5104.0111 of the Ohio Revised Code to make immediate and necessary changes to the rules;

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, have determined, upon the request of ODJFS, that an emergency exists requiring the immediate amendment of rules 5101:2-12-18, 5101:2-13-18 and 5101:2-16-10 of the Ohio Administrative Code.

Further, I hereby order that the procedures prescribed by section 119.03 of the Ohio Revised Code with respect to the adoption or amendment of the specified rules be suspended and that the Ohio Department of Job and Family Services be permitted to amend the rules immediately by filing them electronically with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review ("JCARR").

Furthermore, I hereby order that this Executive Order be filed in electronic form with the Ohio Department of Job and Family Services, the Secretary of State, the Director of the Legislative Service Commission and JCARR.

I signed this Executive Order on March 13, 2020, in Columbus, Ohio, and it will expire one hundred twenty days (120) from the effective date of the emergency rules, or upon the adoption of the rules through the normal JCARR process, whichever is sooner.



Mike DeWine, Governor

ATTEST:


Frank LaRose, Secretary of State

Filed on MARCH 13, 2020
Per [Signature]
In the Office of the Secretary
of State at Columbus, OH
FRANK LaROSE
Secretary of State



MIKE DEWINE

**GOVERNOR
STATE OF OHIO**

Executive Order 2020-03D

Lifting Certain Unemployment Compensation Benefit Restrictions During an Emergency

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes; and

WHEREAS, on January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio; and

WHEREAS, on January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern; and

WHEREAS, on January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria; and

WHEREAS, on February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed; and

WHEREAS, on February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday; and

WHEREAS, on February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting; and

WHEREAS, on February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19; and

WHEREAS, on February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio; and

WHEREAS, on February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University; and

WHEREAS, on February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center; and

WHEREAS, on February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments; and

WHEREAS, on March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications; and

WHEREAS, on March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff; and

WHEREAS, on March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19; and

WHEREAS, on March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio, creating a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio; and

WHEREAS, on March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center; and

WHEREAS, on March 9, 2020, I declared a state of emergency in the State of Ohio to blunt the spread of COVID-19; and

WHEREAS, on March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio; and

WHEREAS, on March 12, 2020, the Ohio Department of Health issued a Director's Order to prohibit mass gatherings in the State of Ohio; and

WHEREAS, on March 12, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio; and

WHEREAS, on March 13, 2020, the Ohio Department of Health issued an amended Director's Order to Limit Access to Ohio's nursing homes and similar facilities; and

WHEREAS, on March 14, 2020, the Ohio Department of Health issued an amended Director's Order to require health screening for admission to state operated psychiatric hospitals and Ohio Department of Youth Services facilities; and

WHEREAS, on March 14, 2020, the Ohio Department of Health issued a Director's Order to close all K-12 schools in the State of Ohio; and

WHEREAS, multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread; and

WHEREAS, previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic for up to 4-5 days. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251; and

WHEREAS, Michael Osterholm, PhD, MPH, director of the Center for Infectious Disease Research and Policy at the University of Minnesota, said that research findings confirm that COVID-19 is spread simply through breathing, even without coughing. <http://www.cidrap.umn.edu/news-perspective/2020/03/study-highlights-ease-spread-covid-19-viruses>; and

WHEREAS, the CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads; and

WHEREAS, I have since that declaration of emergency, ordered restrictions on certain activities affecting commerce in this state to prevent the spread of COVID-19, such as restrictions on bars and restaurants, along with mass gatherings; and

WHEREAS, I will likely continue to order further restrictions on certain activities affecting commerce to prevent the spread of COVID-19; and

WHEREAS, many Ohio workers have and will continue to lose wages and employment due to the spread of COVID-19; and

WHEREAS, Ohio workers that have and will continue to lose wages and employment due to the spread of COVID-19 have and will apply for unemployment compensation benefits through the Ohio Department of Job and Family Services ("OJFS"); and

WHEREAS, workers with such lost wages have not been considered eligible for unemployment compensation benefits.

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution of the United States, specifically the implied police powers of the Tenth Amendment, the Constitution of the State of Ohio, Article III, Section 5, and the laws of this State, do hereby order and direct that:

1. Unemployed workers will include individuals requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COV-19; and
2. Individuals totally or partially unemployed, or who are participating in the SharedWork Ohio Program will not be required to serve a waiting period before receiving unemployment insurance or SharedWork benefits; and
3. Any benefit paid on these unemployment claims shall not be charged to the account of the employer who otherwise would have been charged but instead shall be charged to the mutualized account, except reimbursing employers; and
4. Waiver of work search requirements shall include those individuals requested by a medical professional, local health authority or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COV-19; and
5. Penalties for late reporting and payments will be waived for employers affected by COVID-19.

The above orders apply only to those workers that do not have access to leave benefits from their employer(s).


I signed this Executive Order on March 16, 2020, in Columbus, Ohio, and it shall take effect immediately and remain in full force and effect until the emergency no longer exists, such time to be determined by the Director of Health and the Executive Director of the Emergency Management Agency in consultation with the Governor, who will coordinate State response efforts and terminate the emergency upon the recommendation of appropriate officials of the other responding State departments and agencies.




Mike DeWine, Governor

ATTEST:


Frank LaRose, Secretary of State

Filed on MARCH 16, 2020
Per 
In the Office of the Secretary
of State at Columbus, OH
FRANK LaROSE
Secretary of State



MIKE DEWINE
GOVERNOR
STATE OF OHIO

Executive Order 2020-04D

Establishing a Temporary Pandemic Child Care License and Emergency Adoption of Rule 5101:2-12-02.1 of the Ohio Administrative Code by the Ohio Department of Job and Family Services

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes; and

WHEREAS, on January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirmed the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio; and

WHEREAS, on March 9, 2020, I declared a State of Emergency in Executive Order 2020-01D; and

WHEREAS, on March 13, 2020, the Department of Job and Family Services issued emergency child care rules in accordance with Executive Order 2020-02D; and

WHEREAS, on March 14, 2020, the Ohio Department of Health Director signed a Public Health Order closing all kindergarten through grade 12 schools in Ohio, impacting more than 1.7 million school-aged children; and

WHEREAS, Ohio is reliant upon its healthcare professionals, first responders and other individuals providing health, safety, and essential services to Ohio's communities to maintain safety, emergency response and to prevent and treat those diagnosed with COVID-19; and

WHEREAS, an estimated 30 to 50 percent of healthcare professionals in Ohio have school-aged or younger children; and

WHEREAS, Sections 5104.016 and 5104.03 of the Ohio Revised Code authorize the Ohio Department of Job and Family Services to promulgate rules relating to the administration of child daycare in Ohio; and

WHEREAS, Section 119.03 (G) of the Ohio Revised Code authorizes the Governor, on the request of a State agency, to suspend the normal rule making procedures with respect to specific rules when an emergency exists necessitating the immediate adoption, amendment or rescission of such rules. When such a determination is made, the agency may immediately adopt, amend or rescind such rules, but the rules are only valid for one hundred and twenty (120) days; and

WHEREAS, the Ohio Department of Job and Family Services has requested a determination whether an emergency exists that requires the adoption of rule 5101:2-12-02.1 on an emergency basis and that would therefore permit the Ohio Department of Job and Family Services, pursuant to Sections 5104.016 and 5104.03 of the Ohio Revised Code, to make an immediate and necessary adoption of the rule;

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution of the United States, specifically the implied police powers of the Tenth Amendment, the Constitution of the State of Ohio, Article III, Section 5, and the laws of this State do hereby order and direct that the Ohio Department of Job and Family Services issue a new, temporary license for Temporary Pandemic Child Care during the extent of the declared state of emergency to provide child care services to children of parents employed providing health, safety, and other essential services as defined by the Director of the Ohio Department of Job and Family Services in consultation with the Director of the Ohio Emergency Management Agency. The Director of Jobs and Family Services has discretion regarding the number of licenses issued based on need and pandemic health concerns.

Further, I have determined, upon the request of the Ohio Department of Job and Family Services, that an emergency exists requiring the immediate adoption of rule 5101:2-12-02.1 of the Ohio Administrative Code.

I hereby order that the procedures prescribed by section 119.03 of the Ohio Revised Code with respect to the adoption of the specified rule be suspended and that the Ohio Department of Job and Family Services be permitted to adopt the rule immediately by filing it electronically with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review ("JCARR").

Furthermore, I hereby order that this Executive Order be filed in electronic form with the Ohio Department of Job and Family Services, the Secretary of State, the Director of the Legislative Service Commission and JCARR.

I signed this Executive Order on March 17, 2020, in Columbus, Ohio, and it will expire one hundred twenty days (120) from the effective date of the emergency rules, or upon the adoption of the rules through the normal JCARR process, whichever is sooner.


Mike DeWine, Governor

ATTEST:

Frank LaRose, Secretary of State





**Department
of Health**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S ORDER

In Re: Closure of the Polling Locations in the State of Ohio on Tuesday March 17, 2020

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the polling locations in the State of Ohio **closed** on March 17, 2020. I make this Order to avoid the imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of the people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions. Further, it is clear from history and experience that large number of people gather at polling locations which increases the risk of transmission of COVID-19.

To conduct an election at this time would force poll workers and voters to face an unacceptable risk of contracting COVID-19.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes. The World Health Organization has declared COVID-19 a pandemic.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

246 North High Street
Columbus, Ohio 43215 U.S.A.

614 | 466-3543
www.odh.ohio.gov

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

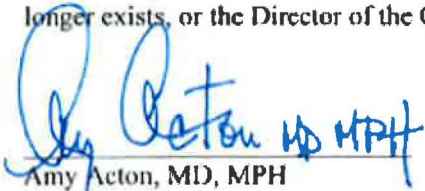
As of March 16, 2020, Ohio has confirmed fifty (50) cases of COVID-19 in thirteen (13) counties throughout the state.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (50 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all polling locations in the State of Ohio closed on March 17, 2020. This Order shall take effect immediately and remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.


Amy Acton, MD, MPH
Director of Health

March 16, 2020

IN THE COURT OF COMMON PLEAS,
CHAMPAIGN COUNTY, OHIO

In Re:

Case No. 2020 MS 006

Temporary Suspension of
Champaign G.D.L.R. 5.6

Judge Nick A. Selvaggio

TERESA S. UNDERWOOD
COMMON PLEAS COURT
CHAMPAIGN COUNTY, OHIO

2020 MAR 17 AM 8:13

FILED

JOURNAL ENTRY

The Champaign County Court of Common Pleas, General Division makes the following Findings of Fact:

1. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D "Declaring a State of Emergency" in response to the growing COVID-19 public health crisis.
2. On March 11, 2020, the World Health Organization officially declared COVID-19 to be a global "pandemic" requiring "urgent and aggressive action" to control the spread of the virus.
3. On March 11, 2020, the first "community transfer" positive case of COVID-19 in the State of Ohio was confirmed to be in Stark County.
4. The Centers for Disease Control and Prevention (CDC) and other health authorities have advised people to take precautions to reduce the possibility of exposure to the COVID-19 virus.
5. Specifically, the CDC is recommending that people attempt to keep physical distance between themselves and other people. This technique, known as social distancing, is especially important for people who have a higher health risk should they contract the disease.

6. The CDC is also recommending employers try to minimize exposure between employees and the public and to consider the public health and safety when scheduling group or public events.

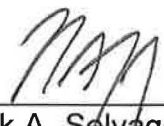
THEREFORE, in order to protect public health, and in order to reduce the size of public gatherings and unnecessary travel, while maintaining essential court functions, the Champaign County Court of Common Pleas, General Division issues the following order to **TEMPORARILY SUSPEND** the application of Criminal Rule 43 and Champaign G.D.L.R. 5.6 to the Criminal Case Scheduling Conference docket and to hold the Criminal Case Scheduling Conference by telephone with the Prosecutor and Defense Counsel and without the presence of the Defendant.

In the absence of the Defendant, the Court will only address procedural scheduling matters and decline to engage in substantive case discussion. Any other issues shall be raised by filing a motion with the Court.

Court Staff shall serve this *Journal Entry* to the Champaign County Bar Association, the Champaign County Prosecutor's Office, the Assigned Counsel Appointment List, the Champaign County Sheriff's Office and the Tri-County Regional Jail. A copy of this *Journal Entry* shall be attached to the *Journal Entry of Case Scheduling Conference* in every criminal case.

This **ORDER** is in effect until further order of the Court.

IT IS SO ORDERED.



Nick A. Selvaggio, Administrative Judge
General Division
Champaign County Court of Common Pleas

March 18, 2020

The Honorable S. Forrest Thompson
Medina County Prosecuting Attorney
60 Public Square
Medina, Ohio 44256

SYLLABUS:

2020-002

1. Courts may suspend jury trials to prevent the spread of the novel coronavirus, and they may do so consistent with state and federal speedy-trial obligations.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 26th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

March 18, 2020

OPINION NO. 2020-002

The Honorable S. Forrest Thompson
Medina County Prosecuting Attorney
60 Public Square
Medina, Ohio 44256

Dear Prosecutor Thompson:

This opinion addresses your question whether courts may, due to the current emergency pandemic concerns, suspend jury trial activity consistent with speedy-trial obligations. The answer is yes; courts may suspend jury trials to prevent the spread of the novel coronavirus, and they may do so consistent with state and federal speedy-trial obligations. Although tolling speedy-trial time by suspending jury trial activity is an extraordinary step, it is lawful—and responsible—to do so during a pandemic emergency. To protect future convictions, prosecutors who request a continuance should ask the court to issue an order explaining in detail why a trial delay is reasonable and prudent. (When a court continues a jury trial *sua sponte*, prosecutors should request an order along these lines, if the court does not issue one on its own.) In any given case, the prosecutor should argue to the court, and ask the court to explain in detail, why delaying a jury trial during a pandemic does not prejudice a defendant's right to a defense.

*

The Ohio and federal constitutions both guarantee criminal defendants a right to a speedy trial. Ohio Const., Art. I §10; U.S. Const., Amend. VI; *see also*

State v. MacDonald, 48 Ohio St.2d 66, 68 (1976). The U.S. Supreme Court has not identified a precise number of days within which the Sixth Amendment requires a defendant to be brought to trial. It has instead left it up to the States to “prescribe a reasonable period of time consistent with constitutional standards.” *Barker v. Wingo*, 407 U.S. 514, 523 (1972).

In Ohio, defendants’ speedy-trial rights have been codified in R.C. 2945.71 *et seq.* These statutes were “implemented to incorporate the constitutional protection of the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article I of the Ohio Constitution.” *State v. Parker*, 113 Ohio St. 3d 207, 2007-Ohio-1534 ¶13. Three are worth highlighting here. First, there is R.C. 2945.71, which sets the period of time within which a trial must be held. Second, R.C. 2945.72 creates exceptions that allow that time to be extended. Finally, R.C. 2945.73 provides a remedy if the statutory speedy trial deadlines are not met.

The answer to your question turns on two separate issues. *First*, is there a statutory basis to toll the speedy-trial requirements of R.C. 2945.71 during a pandemic emergency? *Second*, if those requirements may be tolled under statute, would doing so violate a defendant’s constitutional speedy-trial rights? *See State v. Davis*, 46 Ohio St. 2d 444 (1976) (discussing statutory and constitutional speedy trial guarantees separately). I address these issues in turn.

State Statutory Law

R.C. 2945.71 provides default rules regarding the number of days in which trials must be held. But those defaults are just that, defaults—the timeframes they call for are not absolute. *State v. Lee*, 48 Ohio St. 2d 208, syl. (1976). The reason is R.C. 2945.72. The General Assembly enacted that statute, which gives courts flexibility to extend the limits of R.C. 2945.71 where necessary, because it recognized that delay is the prudent

course in some situations. Relevant here, R.C. 2945.72 includes a catch-all provision that allows delay during “the period of any reasonable continuance granted other than upon the accused’s own motion.” R.C. 2945.72(H). For ease of reference, I will call this simply “subsection (H).”

The broad language of subsection (H) permits prosecutors to seek, and courts to grant, reasonable continuances. And the Ohio Supreme Court has held that it permits courts to *sua sponte* grant such continuances as well, though “only when reasonable and only when the continuances are made by journal entry prior to the expiration of the time limit.” *State v. King*, 70 Ohio St. 3d 158, 162 (1994); *see also State v. Mincy*, 2 Ohio St. 3d 6, 7–8 (1982). Whether granted on a motion or *sua sponte*, the key consideration is whether the basis for a continuance beyond the time limit is “reasonable.”

So, turning to the facts at issue here, does the current pandemic emergency provide a “reasonable” basis for continuance? Yes, it does. Owing to the high risk of contagion and the danger presented by the novel coronavirus, especially to the elderly population, the Ohio Department of Health has recently banned gatherings of 50 or more people in a single room. Although smaller gatherings are not prohibited, the Department of Health “strongly recommend[s]” that Ohioans avoid unnecessary non-family social gatherings of more than 10 people. Even for those smaller gatherings, the Department of Health has encouraged people to remain approximately six feet away from one another. These steps have been deemed necessary to halt the community spread of the novel coronavirus that causes COVID-19. *See* Ohio Department of Health Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio, March 17, 2020.

The practicalities of jury service make it difficult, if not impossible, to adhere to these recommendations. That means going forward with a trial would endanger

jurors—and thus anyone else with whom those jurors might interact. As your request for an opinion indicates, the daily operation of the Medina County courthouse “has the potential of putting over one hundred citizens from all different levels of potential exposure in close proximity to one another for extended periods of time.”

The novel coronavirus also poses unique threats to *incarcerated defendants* and other individuals with whom they might be incarcerated. That is one reason that the Ohio Department of Rehabilitation and Correction has implemented measures prohibiting visitors and volunteers from entering Ohio correctional facilities and has limited transfers to only those that are mission critical. COVID-19 Updates, Ohio Department of Rehabilitation and Correction, *available at* <https://perma.cc/338M-GE96>. Continuing jury trials and extending Ohio’s speedy trial requirements will help address those threats by reducing the number of people to whom incarcerated defendants might be exposed. That, in turn, will reduce the risk that defendants might infect other jailed or incarcerated individuals while awaiting trial or upon being convicted.

Numerous other courts have suspended jury trials because of the current pandemic emergency. The specific statutes on which these courts have relied differ in meaningful ways from R.C. 2945.72. But even if those decisions are not directly applicable in Ohio, their reasoning further supports the conclusion that continuing a trial because of a pandemic emergency is “reasonable” under subsection (H).

First, the King County Superior Court in Washington State has been most explicit in discussing why the current pandemic emergency justifies a continuation of jury trials. That court issued a blanket order continuing all jury trials until April 27, 2020. King Cty. Emergency Order, p.9, online at <https://tinyurl.com/KingCtyOrder>. The court’s order highlighted the large number of citizens who are called to act as jurors, the close

proximity of those citizens throughout all stages of trial, and the inability to implement social-distancing practices. *Id.* at pp.6–7. And it determined that requiring citizens to appear for jury duty “will more probably than not transmit the COVID-19 disease.” *Id.* at p.7. For these reasons, it concluded that good cause existed to continue the trials. *Id.* at p.9. The Iowa Supreme Court recently followed suit, finding that the novel coronavirus created “good cause,” under Iowa procedural rules, for continuing all criminal jury trials to dates no earlier than April 20, 2020. *In the Matter of Ongoing Preparation for Coronavirus/COVID-19 Impact on Court Services*, March 14, 2020 Order, online at <https://tinyurl.com/IowaSCtOrder>.

As discussed above, concerns about the number of individuals involved in jury service, the inability to implement social-distancing practices, and the likelihood of transmitting the novel coronavirus are not unique to Washington courts. Thus, although Ohio’s speedy-trial statutes do not contain the same “good cause” exception that the Washington court relied on, the same considerations that justified the continuation of jury trials in King County also support a determination that the continuance of a jury trial because of a pandemic emergency is reasonable under subsection (H).

Second, federal courts—including the United States District Court for the Southern District of Ohio—have also suspended jury trials because of the current pandemic emergency. *In re: Court Operations Under the Exigent Circumstances Created by COVID-19*, General Order 20-02, online at <https://tinyurl.com/SDOHorder>. They have acted pursuant to a federal statute that specifically excludes from a speedy-trial calculation “[a]ny period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy

trial.” 18 U.S.C. §3161(h)(7)(A) (emphasis added). None of Ohio’s speedy trial statutes contain similar language. But if a pandemic emergency provides a reason to conclude that the “ends of justice” outweigh the interest of the public and a defendant in a speedy trial, then a continuance for the same reason ought to be regarded as “reasonable.”

Third, at least one California court held prior to the current emergency that when a defendant had been quarantined because of a pandemic illness (H1N1), his trial could be delayed without violating his speedy-trial rights. That court held that “[g]ood cause for the delay of trial exists when an incarcerated criminal defendant is under quarantine to prevent the spread of infectious disease. A contrary holding would require trial court personnel, jurors, and witnesses to be exposed to debilitating and perhaps life-threatening illness. Public-health concerns trump the right to a speedy trial.” *People v. Tucker*, 196 Cal. App. 4th 1313, 1314 (Cal. App. Ct. 2011). As was true of the other orders discussed above, the *Tucker* decision is not directly applicable in Ohio. The California statute provided that a “court, unless good cause to the contrary is shown, shall order [an] action to be dismissed” if a case was not brought to trial within the requisite period of time. *Tucker*, 196 Cal. App 4th at 1317 (quoting Cal Pen Code § 1382). And, as already noted, none of Ohio’s speedy trial statutes contain similar “good cause” language. Still, the California court’s conclusion that a quarantine provides “good cause” for a delay nevertheless supports the conclusion that a continuance because of a pandemic is “reasonable” under subsection (H). After all, if it is reasonable to delay trial to protect jurors from the defendant, then it is equally reasonable to delay trial to protect jurors and the defendant from one another, and from anyone else who might be in the court room.

Finally, if a court grants a motion for a continuance, or continues a jury trial *sua sponte*, I recommend that the prosecutor request an order providing explicit reasons

for the continuance. The Ohio Supreme Court has held that when granting a *sua sponte* continuance, “the trial court must enter the order of continuance and *the reasons therefor* by journal entry prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial.” *Mincy*, 2 Ohio St. 3d 6 at syl. (emphasis added). It has not applied the same requirement to other continuances. When a continuance is granted upon motion, the reasons for a continuance need only be discernable from the trial record. See *State v. Myers*, 97 Ohio St. 3d 335, 2002-Ohio-6658, ¶62; see also *State v. Martin*, 156 Ohio St. 3d 503, 2019-Ohio-2010, ¶19. But even though it may not be required, a clear statement from a court articulating its reasons for granting a continuance will be beneficial in light of the unique nature of present circumstances and the possibility that any such order may be challenged on appeal.

The King County Washington order provides a helpful model in this respect. It discusses in detail the on-going pandemic emergency, the circumstances surrounding jury trials and jury service in the county, and it explains why those circumstances are incompatible with the social-distancing practices that are currently required to protect public-health. The order also sets a date certain for its expiration, at which point trials will automatically resume unless the Court issues a second continuance.

Constitutional Requirements

Because state law will permit a continuance, the question becomes whether a continuance would comport with state and federal constitutional guarantees. It would.

The U.S. Supreme Court has identified four factors that courts should consider when determining whether a trial delay violates the Sixth Amendment’s speedy-trial guarantee. They include: “Length of delay, the reason for the delay, the defendant’s assertion of his

right, and prejudice to the defendant.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The Ohio Supreme Court has applied the same set of factors under the Ohio Constitution. *State v. Selvage*, 80 Ohio St.3d 465, 467, 1997-Ohio-287. There is no need to balance these factors, however, “[u]ntil there is some delay which is presumptively prejudicial.” *Barker*, 407 U.S. at 530–31; *State v. O'Brien*, 34 Ohio St. 3d 7, 10 (1987). “A delay becomes presumptively prejudicial as it approaches one year in length.” *State v. Adams*, 144 Ohio St. 3d 429, 2015-Ohio-3954¶90 (citing *Doggett v. United States*, 505 U.S. 647, 652, n.1 (1992)).

Although it is unknown how long the current pandemic emergency may last, in most cases it is unlikely that the cumulative delay (accounting for other reasons why a trial may have been continued) will approach one year. Even if in some cases it does, that means only that a court will need to consider the remaining *Barker* factors. Absent unusual circumstances, those factors will permit a delay.

While each of the *Baker* factors must be considered when determining whether a delay is constitutionally permissible, “[t]he flag all litigants seek to capture is the second factor, the reason for delay.” *United States v. Loud Hawk*, 474 U. S. 302, 315 (1986). As long as there is a “valid reason” for a delay, it should be justified. *Barker*, 407 U.S. at 531. When considering the reason for a delay, the U.S. Supreme Court has also examined which party should be held responsible for a delay. See *Doggett v. United States*, 505 U.S. 647, 651 (1992).

The question, then, is whether a pandemic emergency is a valid reason for a delay. For the reasons discussed above, it is. It poses a health threat to jurors, court personnel, and defendants themselves. As a result, it poses a public-health threat to the entire community in which jurors, court personnel, and anyone else in the courtroom live. The nature and requirements of jury service means that this threat cannot be mitigated or

reduced by implementing the social-distancing measures that health experts have recommended.

Additionally, any trial delays that are caused by a pandemic emergency are attributable to neither the State nor the defendant. In that respect, a nationwide pandemic emergency is akin to a natural disaster. *Cf. State v. Gibson*, 971 So. 2d 389, 393–94 (La. Ct. App. 2007) (Delays caused by Hurricane Katrina were not attributable to either party). Delaying a trial for that reason does not reflect the type of gamesmanship that would warrant “the unsatisfactorily severe remedy of dismissal of the indictment.” *See Barker*, 407 U.S. at 522, 531 (“A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government.”); *see also Doggett*, 505 U.S. at 656–58.

It is important to conclude by emphasizing an important point. The right to a speedy trial is a foundational guarantee. While the law, as summarized in this opinion, recognizes that the right is not always defined by a specific, absolute number of days, it is not infinitely elastic. Any tolling of time due to the current public health emergency must be limited by the actual duration of that emergency.

*

Based on the foregoing, it is my opinion, and you are hereby advised that, courts may suspend jury trials to prevent the spread of the novel coronavirus, and they may do so consistent with state and federal speedy-trial obligations.

The Honorable S. Forest Thompson

- 10 -

Respectfully,

A handwritten signature in black ink, reading "Dave Yost". The signature is written in a cursive, flowing style with a large, prominent "D" and "Y".

DAVE YOST
Ohio Attorney General