



ASSESSING IMPACT of Tolling Legislation and Supreme Court Order upon Specific Time Requirements

The following step-by-step analysis provides courts with guidance in determining the precise impact of the tolling provisions of Am. Sub. H.B. 197 and the Supreme Court's March 27, 2020, order upon specific situations. It concludes with a decision tree summarizing these steps.

STEP 1: DETERMINE THE APPLICABLE AUTHORITY.

Summary. The first step is to determine if the applicable authority related to the “time requirement” is the legislation or the Supreme Court order. The answer to this question depends on whether it is the Ohio Revised Code, the Ohio Administrative Code, or a Supreme Court rule that establishes the time requirement.

Legislation. The legislation applies to any criminal, civil, or administrative time limitations imposed by the Ohio Revised Code or the Ohio Administrative Code. The legislation provides the following specific examples:

- Statutes of limitation for civil, criminal, and administrative actions and proceedings;
- The time to return a bill of indictment or to bring a matter before a grand jury;
- The time to bring an accused to trial or a preliminary hearing;
- Juvenile-related deadlines and requirements;
- The time to hold a commitment hearing;
- The time to issue a warrant;
- The time to complete discovery or an aspect of discovery;
- The time to serve a party;
- The time to appear for a dissolution of marriage.

Supreme Court Order. The Supreme Court order was designed to complement the legislation, applying to all time requirements imposed by Supreme Court rules. The order provides the following specific examples:

- Filing for pleadings, appeals, and all other filings;
- Time limitations;
- Deadlines;
- All other directives related to time.

STEP 2: DETERMINE WHETHER THE TIME REQUIREMENT IS TOLLED.

Summary. After determining the applicable authority, the next step is to determine whether it tolls the time requirement in question. The key factor in this determination is the effective period of the legislation and the Supreme Court order.

Emergency Period. The legislation and Supreme Court order are retroactive to March 9, 2020, the date of Governor Mike DeWine's Executive Order 2020-01D. Additionally, each expires on the earlier of the two following dates: (1) the date the Governor's declaration of emergency ends or (2) July 30, 2020. This time frame can be referred to as the “emergency period.”

The legislation and Supreme Court order toll only time requirements set to expire *during* the emergency period. Time requirements that are set to expire *after* the emergency period are not tolled.

Effect. Tolling effectively freezes time from March 9 until the expiration of the order. For example, if a deadline was set to expire on March 19 (10 days after the effective date of the order), then the deadline will now expire 10 days after the end of the emergency period. In contrast, if a time requirement expires on August 1, it still expires on August 1.

STEP 3: DETERMINE WHETHER THE TIME RESTRICTION CAN/SHOULD STILL BE APPLIED OR THE TOLLING SUPERSEDED.

Summary. Although the legislation or the Supreme Court order may toll a time requirement, it does not necessarily mean an action or case should or must completely cease during the emergency period. Rather, the tolling simply removes the time requirements.

Legislation. Nothing in the legislation *prohibits* a party or a local court from voluntarily complying with a time requirement that applies to the party or the local court. For example, although the statute of limitations may be tolled, a party still may file the action during the emergency period. A further example: If a statute requires a local court to issue a decision by a set date, even though the time requirement is tolled, the court still may decide to issue the decision.

Supreme Court Order. As with the legislation, nothing in the Supreme Court order *prohibits* a party or a local court from voluntarily complying with a time requirement that applies to the party or local court. In fact, the order specifically states that it does not preclude filings during the duration of the order if the local court is able to receive filings and it is a matter related to a situation requiring immediate attention.

The one exception to the Supreme Court order is that a local court can supersede the tolling of a Supreme Court-rule-established time requirement if the local court determines it is a situation that requires immediate attention. “A situation that requires immediate attention” is meant to refer to cases involving child safety, domestic violence, impaired operation of a motor vehicle, human trafficking, and any other matter that concerns the immediate safety

and welfare of a person. This is not a limitation or exhaustive list, but is given as guidance. Using this guidance, local courts can determine how to deal with cases. Note: This authority does not extend to time requirements established by the Revised Code or Administrative Code.

STEP 4: CAN/SHOULD A CASE STILL PROCEED, EVEN IF THE TIME REQUIREMENT IS TOLLED?

Summary. When a local court is deciding whether to voluntarily comply with a time requirement tolled by the legislation or the Supreme Court order, or when a local court is considering issuing an order superseding the Supreme Court order, there are a variety of important factors to consider and questions to ask.

Other Current Alternatives. Does other authority independent of the legislation and Supreme Court order exist allowing for a continuance in the case? The existence of such authority, whether in statute or rule, may give the local court an alternative means or additional reason to delay the case.¹ And when utilizing such authority, the court should be very clear on the basis and rationale for such.

Technology. The Supreme Court order provides that a local court may waive a requirement in Supreme Court rules that a party appear in person by using technology (e.g., appearing via video or phone) that guarantees the integrity of the proceedings and protects the parties’ interests and rights.² Utilizing technology may be a means of complying with a time requirement while ensuring the safety and health of the those involved.

Federal Laws and Regulations. A local court should determine whether there are applicable federal laws or regulations that impact compliance with a time requirement. Although the legislation or Supreme

1 An example is R.C. 2945.72(H), which allows a court to sua sponte grant a reasonable continuance in a criminal trial.

2 Courts should consider how using technology affects other legal requirements. For example, courts receiving VOCA or VAWA funds are subject to certain confidentiality requirements, which have not been relaxed to date. The court needs to consider if and how using technology as an alternative to in-person appearance impacts confidentiality requirements.

Court order may toll a time requirement, federal law or regulation may require the local court to still proceed with the case. Alternatively, federal law or regulations, especially those that may be enacted in response to the coronavirus, may prohibit the case from proceeding.³

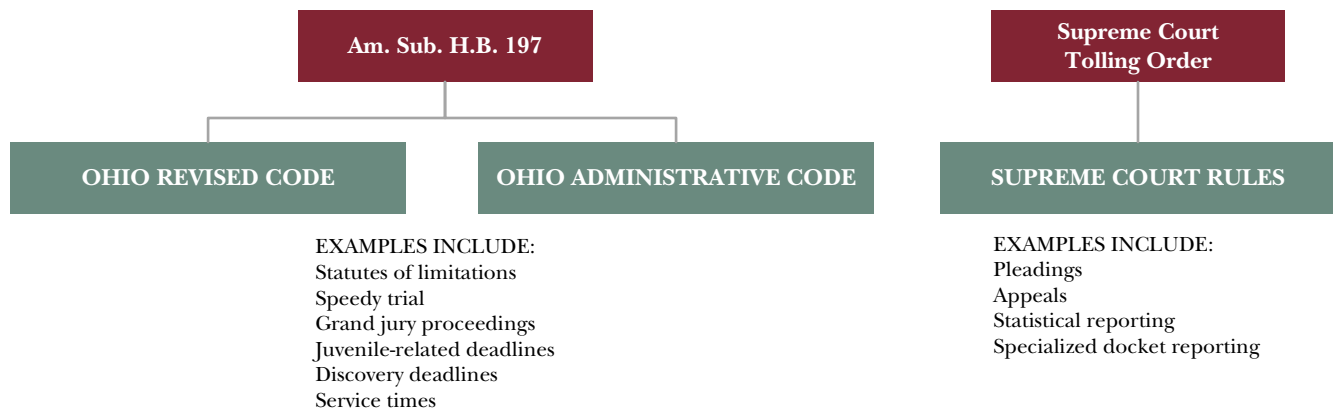
Health and Safety Concerns. Lastly, local courts must comply with all directives from the Director of the Ohio Department of Health. Examples of requirements that pertain to all Ohioans, businesses, and government include:

- Complying with the rules for social distancing;
- Limiting groups to no more than 10 people if the room or facility can accommodate 10 people that are correctly distanced;
- Denying entrance to a court if one is ill, maintaining a temperature, or exhibiting any signs of COVID-19;
- Asking for self-quarantining of persons who have interacted with people who tested positive for the virus;
- Taking all measures to minimize personal contact by using technology to conduct hearings, conferences, appearances.

3 For example, Sec. 4024(b) of the recently enacted federal Coronavirus Aid, Relief, and Economic Security (CARES) Act prevents lessors of dwellings from bringing legal causes of action to recover possession from a tenant for nonpayment of rent or other fees or charges for 120 days if the dwelling is a property insured, guaranteed, supplemented, protected, or assisted in any way by the U.S. Department of Housing, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994.

ASSESSING IMPACT OF TOLLING LEGISLATION AND SUPREME COURT ORDER UPON SPECIFIC TIME REQUIREMENTS

STEP 1: Determine whether it is the legislation or the Supreme Court order that applies. The legislation applies to statutorily established time requirements. The order applies to Supreme Court rule established time requirements.



STEP 2: Next, determine whether the legislation or the Supreme Court order, as applicable, tolls the time requirement in question.

EMERGENCY PERIOD: The legislation and order are **retroactive to March 9, 2020**, the date of Governor Mike DeWine’s Executive Order 2020-01D. Both the legislation and the order **expire** on the earlier of (1) the date the Governor’s declaration of emergency ends, or (2) July 30, 2020.

TOLLING FREEZES TIME: Time is effectively frozen between March 9, 2020 and the end of the emergency period. **Example:** if a deadline was set to expire on March 19 (10 days after the effective date), the deadline will now expire 10 days after the end of the emergency period.

STEP 3: Although the time requirement may be tolled, it does not necessarily mean the case should completely cease during the emergency.

TOLLING VS. CEASING ACTIVITY: Neither the legislation nor the order prohibit a party or a court from voluntarily complying with a time requirement. The order does not preclude filings if the court is able to receive them and it is a matter related to a **situation requiring immediate attention**.

EXCEPTION: The order allows a court to **supersede** the tolling of a Supreme Court-rule-established time requirement if the court determines it is a **situation requiring immediate attention**. This **does not** extend to time requirements in the Revised Code or Administrative Code. A “situation that requires immediate attention” is meant to refer to cases involving child safety, domestic violence, impaired operation of a motor vehicle, human trafficking, any other matter that concerns the immediate safety and welfare of a person. This is not a limitation or exhaustive list, but is given as guidance.

STEP 4: Although the court may still voluntarily comply with a time requirement or may supersede the Supreme Court's tolling order, the question is whether the court should do so.

FACTORS TO CONSIDER: When a court is deciding whether to voluntarily comply with a time requirement, or when a court is considering issuing an order superseding the Supreme Court order, factors to consider and questions to ask include:

- **Other Current Alternatives** – Is there other authority independent of the legislation or order allowing for a continuance?
- **Technology** – A rule-based requirement that a party appear in person may be waived by using technology.
- **Federal Law** – Federal law or regulations may require courts to proceed with a case, or, conversely, may prohibit proceeding with the case.
- **Health and Safety Concerns** – Courts must comply with directives from the Director of the Ohio Department of Health. Examples include: (1) complying with the rules for social distancing; (2) limiting groups to no more than 10 people, if the room or facility can accommodate 10 people that are correctly distanced; (3) denying entrance to a court if one is ill, maintaining a temperature, or exhibiting any signs of COVID-19; (4) asking for self-quarantining of persons who have interacted with people who tested positive for the virus; and (5) taking all measures to minimize personal contact by using technology to conduct hearings, conferences, appearances.