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Visits, warnings and little legal action: Enforcing COVID-19 restrictions in Kane County has proved challenging

By SARAH FREISHTAT

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Diners in Kane County on Oct. 27. (Zbigniew Bzdak / Chicago Tribune)

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Five days after the governor's latest prohibition on indoor dining took effect in Kane County, a sheriff's deputy visited a Sugar Grove restaurant and found patrons sitting inside.

"I advised I was not here to enforce anything other than I was required to document, and educate on current guidelines," the deputy wrote in an Oct. 28 report.

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The next week, the deputy returned to the restaurant and again saw people dining indoors. This time, the deputy didn't enter the restaurant "due to the upset nature of the last compliance check," because "I did not want to further make any situation worse by entering," according to the report. Again, the deputy was not there to enforce, but rather to document and educate on current guidelines, the report states.

The restaurant, Fireside Grille, also received a call from the county health department, general manager Dan Ferrusquia said.

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Like at Fireside, much of the enforcement of Gov. J.B. Pritzker's COVID-19 rules in Kane County has consisted of visits, phone calls and letters or warnings to businesses, documents and interviews show. Little action has been taken through the courts, according to the state's attorney's office, and officials in the county's two

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Instead, some city and county agencies say they lack authority to take legal action to enforce the governor's rules or point the finger of responsibility at each other. Enforcement is patchwork, at best, leaving businesses on their own to interpret local guidance.

Despite the health department call and sheriff's office visits, Fireside Grille remains open for indoor dining. The restaurant is taking COVID-19 precautions, including requiring masks, but it would likely take a stronger, legal measure to shut down the indoor portion, Ferrusquia said.

"If we close down completely for business, we would probably go under," he said. "So we figured that it's more of a deterrent of us losing our jobs, than these one or two visits."

Since July, authorities found instances where at least 20 businesses or organizations failed to follow rules requiring masks, capping gathering sizes or, most recently, prohibiting indoor service at bars and restaurants, sheriff's reports and health department notices show. While documents show many businesses were already complying with the rules when deputies visited, and some restaurants began complying after a visit or talk with the health department, in at least three instances during that time, including at Fireside Grille, deputies found violations on repeated visits.

Pritzker has placed the onus for enforcing those violations on local city officials, police, state's attorneys and health departments, highlighting the limited number of state police.

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Aurora city officials said at a recent public meeting [jurisdiction to enforce the rules](#) lies with county sheriffs offices, county health departments or state authorities.

Kane County Sheriff Ron Hain said he has been told by the state's attorney's office that under the current round of restrictions he has no means to make an arrest or write a ticket. It is the responsibility of the health department to escalate any violations it chooses and seek a business closure order through the court, he said.

The health department, in response to a Beacon-News public records request for warnings or other enforcement notices, provided seven letters sent to four locations, the county fairgrounds and several groups affiliated with events at the fairgrounds. Six were notices of noncompliance and one was an order of dispersal, directing the businesses to comply with either gathering size limits or mask requirements.

No county police departments have sought criminal charges against businesses for violations of the rules, according to the Kane County State's Attorney's Office. The county health department has sought one closure order through the courts — for [COVID-19 concerns at a St. Charles meat processing plant](#) in April, according to the state's attorney's office.

The health department did not respond to repeated requests for comment for this story. Hain said the department likely would have difficulty obtaining more binding business closure orders from a judge because of the high burden of proof required.

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"It's just a terrible situation that we're in." Aurora Ald. Patty Smith recently told the

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and we don't have resources for our police or for anyone else to go and knock on the doors of these places and say, 'you're supposed to shut down.' And then they don't want to walk in and shut down a business that a guy might not be able to pay his mortgage next month if he gets shut down."

No jurisdiction

In Aurora, where city officials said they have limited authority to enforce the rules, Mayor Richard Irvin has said the city relies on the sheriffs and health departments in the city's four counties and they have taken varying approaches. Irvin [sent a letter to Pritzker](#) in late October asking for "more consistent and uniform enforcement" of the restrictions.



Aurora Mayor Richard Irvin (City of Aurora / HANDOUT)

Aurora can take action against a liquor license, such as levying fines or suspending or revoking a license, but has faced difficulty doing so over the governor's rules because city code doesn't address liquor licensing in a pandemic, Assistant Corporation Counsel Deb Lang told the council. Rather, city code covers steps after the health department takes action, she said.

Chief Management Officer Alex Alexandrou said he has also heard some communities were advised if they were sued over enforcement

measures their insurance would not pay out.

"But at the end of the day, is that really going to force the closure of a place, to comply with a health order that comes from others, not us?" Alexandrou said. "And

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the stark reality is, we have to figure out a way, as a state, let alone a city, how to keep our restaurants open and survive the winter that's coming."

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Elgin, by contrast, has its own health department, which has conducted visits to businesses. In many cases, businesses were already in compliance by the time inspectors arrived or came into compliance shortly after, city spokeswoman Molly Gillespie said in a statement.

"Right now is an extremely challenging time for businesses and they have a vested interest in protecting the health of their patrons," Gillespie said.

The Kane County State's Attorney's Office has encouraged local agencies to use repeated efforts to gain voluntary compliance with the governor's orders, she said, and the Elgin health department relies on education, verbal counseling and written notices. In the most extreme cases the city could impose fines through the liquor commission or take other enforcement allowed under city code, but it has not done so, she said.

Repeated violations

Elsewhere in Kane County, sheriff's deputies conduct business checks, mostly following complaints fielded by the Kane County Health Department.

In many cases, when the deputies arrive they see no violations, sheriff's reports show. When they do see violations, often a deputy informs a manager or an owner of the COVID-19 rules, documents show.

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In some cases, like at Fireside, deputies return to a business after speaking with a manager and note violations on their second visit as well. At one such restaurant,

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Kane County Sheriff Ron Hain (Kane County Sheriffs Office / HANDOUT)

visited three times, owner Greg Shannon said, but he is keeping indoor dining open.

He said he takes COVID-19 precautions and seeks to protect his customers and staff, and a sheriff's report noted some measures in place. But Shannon said he would have to be cited and brought before a judge — which he says wouldn't be appropriate anyway, since he doesn't view the governor's orders as law — before he halts indoor dining.

“We're pushing our curbside, we're pushing our deliveries,” Shannon said. “But like I said, it doesn't pay the bills. I have rent to pay.”

Hain said his office received an opinion from the state's attorney's office that his deputies have no enforcement mechanism, such as writing a ticket or making an arrest, for the most recent COVID-19 rules. If the health department seeks a closure order through the courts, and a judge signs an order, his office would execute it, he said.

In the meantime, following up on complaints helps the health department, which doesn't have the staff to do it, he said.

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“This is a public health issue, not a police issue, so that's why we're very open and honest about what we can and can't do in these circumstances,” Hain said.

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The Kane County Health Department, for its part, has issued six notices of noncompliance since August. Two of those have been to the Kane County Fairgrounds and related organizations for scheduled events that would violate 50-person gathering limits.

In early November the health department issued a third notice to the fairgrounds, this time an order of dispersal due to repeated complaints about large events. The order noted the health department had repeatedly contacted the fairgrounds to seek compliance with crowd size limits and ordered the venue to disperse patrons. Like the earlier notices of noncompliance, it warned of action the department might take and directed the venue to comply with gathering size limits.

Officials from the fairgrounds could not be reached for comment.

County agencies continue to discuss enforcement. A new state's attorney took office Tuesday, and she and her office are reviewing the governor's rules, her office said. In Aurora, city council members suggested that businesses not in compliance with the COVID-19 rules should not benefit from any future city financial relief

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In the meantime, Ald. Robert O'Connor told the council the city faces an agonizing situation.

"If we can't figure out, either at the state level or lower at the county, how to better enforce the requirements, and it keeps spreading ... to other establishments, we know that the balance is going to start tipping the other way," he said.

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