

Local Sheriffs Are Pushing Back on Some of the Lockdown's Harsher Measures

The elected law enforcement officials aren't taking kindly to Democratic governors' unilateral edicts on public health.

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The limits of the government's power to follow through with some of its public-health orders are being tested as states impose new restrictions on private gatherings because of COVID-19.

"You have due process," said Sheriff Richard Giardino, of Fulton County, N.Y. "We can't just go into someone's home without a search warrant, their consent or an emergency."

Giardino, a Republican and former county judge, drew national attention when he spearheaded a group of several elected upstate sheriffs who publicly refused to enforce restrictions that Democratic Gov. Andrew Cuomo imposed on private gatherings ahead of the Thanksgiving holiday.

Along with their counterparts in California who oppose aspects of a recent order from Democratic Gov. Gavin Newsom, the sheriffs forced state officials to ask how much authority they have to compel individual citizens to follow public-health guidelines.

"I took [the position] that an executive order in New York without a sanction or a punishment to go into somebody's house or count how many people is unenforceable because it is not a law," Giardino said of Cuomo's order, which set a 10-person limit on gatherings in people's homes.

He also pointed to the widespread protests and debate about the role of police that occurred over the summer.

"There's been a message preached by many elected officials that police officers get up in the morning to shoot somebody, that police officers are all bad," said Giardino, "and then they turn around and they want police officers to enforce these ordinances in your home."

Cuomo initially called Giardino and the other sheriffs arrogant. "You have to enforce the law or don't call yourself a law enforcement official," a [dispatch](#) from Albany quoted him as saying.

By the end of the month, however, the governor had changed his tone, per an [AP report](#).

“Government is not capable of enforcing what you do in your home,” Cuomo said. “It’s about people being smart.”

Cuomo’s office didn’t respond to an inquiry about the evident contradiction.

Sheriffs’ offices are typically responsible for fewer arrests than other types of cops, like local police and federal agencies; however, their status as elected officials makes them more likely to protest state authority they see as overreaching. For example, sheriffs from small counties have been frequent critics of new gun-control laws.

In New York state, two of them [butted heads](#) with Cuomo back in 2013 when he signed into law the SAFE Act, which is among the strictest gun laws in the country.

At times, elected, sheriffs exercise a *de facto* power to veto—or dissent from—laws they see as contrary to the politics and interests of their constituents. Upstate sheriffs led opposition to the legislation, which enjoyed strong support in the state’s largest city but was unpopular in rural counties. In the wake of the law’s passage, [at least one](#) sheriff said outright that his deputies would not make arrests for violations.

In California, a group of sheriffs from the state’s southern counties recently said they wouldn’t enforce a regional order for citizens to stay at home. Among them was Orange County Sheriff Don Barnes, who said in a statement that following health orders is “a matter of personal responsibility and not a matter of law enforcement,” and his office would not be dispatched for complaints about social events or face masks. “The law does not allow us to go out and detain people over a public health order,” said Sgt. Dennis Breckner, a spokesman for Barnes’ department.

Whether law enforcement *could* do so is still an important question. Rising numbers of new cases are prompting officials in many states to tighten restrictions at a time of year when people would normally gather with friends and family for the holidays. At the same time, the onset of winter weather makes it harder for people to gather outdoors, as many did to maintain a semblance of normalcy during the warm months of this year.

Professor Seth Chandler of the University of Houston Law Center said that there are certain “exigent circumstances”—the Supreme Court has used the example of a fire that could spread to other property—when authorities have the right to enter private property without a warrant or consent from the owners. “My own opinion is that these days, in many places, hosting a party with 20 people is actually quite dangerous and it’s not that much different from a fire,” Chandler said.

At least some of those who would be tasked with enforcing the orders don’t see things that way. Breckner said that deputies have no ability to enforce an executive order, which he categorized as being different from a law, against private citizens. Similarly, Giardino said one portion of Cuomo’s order dealt with businesses like restaurants and bars, which are licensed by the state and can be fined or suspended.

“The [part] that set me off,” Giardino said, “was that people actually felt, or thought, that the governor was suggesting that we go to their houses and count how many people they had, so that sent a chilling effect.”

Chandler posited that if an arrest was made, the defense would be able to question both whether the substance of the order was lawful, as well as whether or not the governor had the authority to make the law by executive order. Even so, it's unlikely that anyone—neither those accused of holding an illicit party nor the cops who made the arrest—would like to be the first to go to court to figure out who was right.

Giardino proposed an alternative direction for mitigation efforts, citing the damage the pandemic and accompanying isolation are causing to people's mental health:

"So we really need to focus on that, and not adding stress to people's lives."

"One thing that has not happened—they don't ask the police to meet with any of the mental-health professionals and the medical professionals on how to enforce some of these rules," he added. "They just make an edict and tell you to enforce it."

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