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Can He Do That? The Governor's Authority to Suspend or Modify Statutes in an Emergency Like the Covid-19 Pandemic

Like many Governors, Connecticut Governor Ned Lamont has responded to the COVID-19 pandemic with a series of executive orders implementing a variety of emergency measures, including prohibiting large gatherings, closing schools and nonessential businesses, and mobilizing the state's healthcare response. [1] One feature of these Executive Orders that many may find surprising is that the orders suspend or modify numerous statutes governing matters ranging from the patients' bill of rights to the date of the Presidential primary election to statutes of limitations to the start of fishing season. [2] Can the Governor do this?

There is a statute that appears to answer this question: Connecticut General Statutes § 28-9(b)(1) states that, if the Governor declares a civil preparedness or public health emergency, he "may modify or suspend in whole or in part … any statute, regulation or requirement" that he finds to be "in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health." But assuming it applies here, this statute simply pushes the question further back a step. The Connecticut Constitution gives the General Assembly the legislative power to enact, amend and repeal statutes. Can the Assembly instead authorize the Governor to temporarily repeal or rewrite any statute on the books because there is an emergency?

This article provides some background on § 28-9, assesses whether the Governor's executive orders comply with the statute, analyzes the constitutionality of the statute and concludes with some suggestions for addressing doubts about the statute's constitutionality.

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