

N.C. Isolation and Quarantine Law

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Summary of North Carolina Law

In North Carolina, both local health directors and the state health director are empowered to exercise isolation and quarantine authority. G.S. 130A-145(a). “Isolation authority” is the authority to limit the freedom of movement or action of a person or animal who *has* (or is suspected of having) a communicable disease or condition. G.S. 130A-2(3a). “Quarantine authority” most often refers to the authority to limit the freedom of movement or action of a person or animal that has been *exposed* (or is suspected of having been exposed) to a communicable disease or condition. However, quarantine authority may also be exercised to limit access by any person or animal to an area or facility that is contaminated with an infectious agent (such as anthrax spores), or to limit the freedom of movement or action of unimmunized persons during an outbreak. G.S. 130A-2(7a).¹

Quarantine and isolation authority may be exercised *only* when and for so long as the public health is endangered. Furthermore, isolation and quarantine authority should not be exercised unless all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. G.S. 130A-145(a).

Quarantine or isolation orders cannot exceed 30 days if they limit freedom of *movement*, or if they limit *access* to persons or animals whose freedom of movement has been limited. Note that this restriction does not apply to orders limiting freedom of *action*. If the 30-day period is inadequate to protect the public health, the local health director or state health director must seek an order extending the time period from the superior court. If the court determines by a preponderance of the evidence that the limitation of freedom of movement is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition, the court shall continue the limitation for a period of up to 30 days (or up to 1 year in the case of tuberculosis). When necessary, the state health director or local health director may return to court and ask the court to continue the limitation for additional periods of up to 30 days each (or up to 1 year for tuberculosis). G.S. 130A-145(d).

¹ Before applying isolation or quarantine authority to livestock or poultry, the state health director or local health director must first consult with the state veterinarian in the Department of Agriculture and Consumer Services. G.S. 130A-145(c).

A person who is affected by a limitation on freedom of movement or access may ask a superior court to review the limitation and the court must respond by conducting a hearing within 72 hours (excluding Saturdays and Sundays). The person is entitled to representation by counsel and will receive appointed representation if indigent. The court must terminate or reduce the limitation if it determines by a preponderance of the evidence that the limitation is not reasonably necessary to prevent or limit the conveyance of the communicable disease or condition to others. G.S. 130A-145(d).

Questions and Answers

1. What is the key difference between isolation and quarantine?

Isolation limits the freedom of movement or action of a person or animal who *is infected with* (or is reasonably suspected of being infected with) a communicable disease or condition. G.S. 130A-2(3a). Quarantine limits the freedom of movement or action of a person or animal who *has been exposed* (or is reasonably suspected of having been exposed) to a communicable disease or condition. Under North Carolina law, quarantine also can be used in two additional circumstances: (1) to limit access by a person or animal to an area or facility that may be contaminated with an infectious agent; or (2) to limit the freedom of movement or action of unimmunized persons in an outbreak. G.S. 130A-2(7a).

2. What is the difference between an order limiting freedom of movement and an order limiting freedom of action?

An order limiting freedom of movement essentially prohibits an individual from going somewhere. It may confine the person to a particular place, such as his home or a health care facility. Or it may prohibit the person from entering a particular place—for example, it may prevent a person from returning to school or work during the period of communicability. In contrast, an order limiting freedom of action limits specific behaviors, but not the ability to move freely in society. For example, a person who is required to refrain from sexual activity during the course of treatment for gonorrhea has had his or her freedom of action restricted.

3. In North Carolina, who has the authority to order isolation or quarantine?

Either the state health director or a local health director may order isolation or quarantine. G.S. 130A-145(a).

4. When may isolation or quarantine be ordered?

Isolation may be ordered to prevent the spread of an infectious agent by a person or animal that is infected with (or is reasonably suspected of being infected with) a communicable disease or condition. G.S. 130A-2(3a).

Quarantine may ordered in any of three circumstances:

1. To prevent the spread of disease by a person or animal that has been exposed (or is reasonably suspected of having been exposed) to a communicable disease or condition,
2. To limit access by any person or animal to an area or facility that may be contaminated with an infectious agent, or
3. When the State Health Director or a local health director determines that immunizations are required to control the spread of a communicable disease in an outbreak,² a person who has not been immunized against the disease may be quarantined. (Note: A person who has a medical or religious exemption³ to immunization may be quarantined under these circumstances. The exemptions only permit a person to avoid immunizations; they do not permit the person to avoid quarantine in an outbreak.) G.S. 130A-2(7a).

G.S. 130A-145 adds to this that the isolation or quarantine authority can be exercised only:

- When and for so long as the public health is endangered,
- When all other reasonable means for correcting the problem have been exhausted, and
- When no less restrictive alternative exists.

5. How can you determine if “all other reasonable means have been exhausted” and “no less restrictive alternative exists”?

There is no law in North Carolina that interprets these terms or explains what the parameters are. The plain words of the statute make clear that, if there are other reasonable means of controlling the public health threat, short of isolation or quarantine, those means should be tried first. But what constitutes “reasonable” means? The word “reasonable” could be interpreted to mean at least a couple of different things:

1. It almost certainly should be interpreted to mean that the only other methods that must be tried are those that are likely to be effective at controlling the public health threat. (It may be in some cases that there are no other known effective means.)
2. It could also be interpreted to mean that public health need not try means that might be effective but that are unduly expensive or burdensome compared to isolation or quarantine.

Assuming other reasonable means have been exhausted, when is isolation or quarantine the least restrictive alternative? There is no guidance on this issue in North Carolina law, but the issue has been addressed by the courts of other states. Some conclusions those courts have reached include:

² “Outbreak” means an occurrence of a case or cases of a disease in a locale that is in excess of the usual number of cases of the disease. G.S. 130A-2(6a).

³ See G.S. 130A-156 (medical exemption) and 130A-157 (religious exemption).

- Isolation or quarantine *limiting freedom of movement* should not be ordered if there is something else, such as directly observed therapy, that could protect the public health as effectively.⁴
- Isolation or quarantine should not be ordered if voluntary compliance can be obtained.⁵
- Isolation or quarantine should not be ordered unless the person poses an actual danger to others.⁶ (This is consistent with G.S. 130A-145(a), which states that isolation or quarantine authority can only be exercised when and so long as the public health is endangered.)

If a North Carolina court were called upon to determine when isolation or quarantine is the least restrictive alternative, it is likely the court would consider other states' conclusions—but whether it would reach the same conclusions cannot be predicted.

6. Can isolation or quarantine be ordered if the communicable disease or condition is not reportable in North Carolina?

Yes. G.S. 130A-145 empowers the state health director and local health directors to exercise “isolation authority” and “quarantine authority,” as those terms are defined in G.S. 130A-2. The definition of isolation authority refers to persons or animals who have (or are suspected of having) communicable diseases or conditions, and the definition of quarantine authority to persons or animals who have been exposed (or are suspected of having been exposed) to communicable diseases or conditions. The definitions are not limited to reportable communicable diseases and conditions, but appear to embrace any disease or condition that meets the statutory definition of either “communicable disease” or “communicable condition,” regardless of whether the disease or condition is on the Commission’s list of reportable diseases or conditions. This makes practical sense, because the rulemaking process takes time—perhaps more time than public health would have to control the spread of disease in the event of an emerging illness.

7. Are there any limitations on what can be included in an isolation or quarantine order?

Yes. The Commission for Health Services has imposed restrictions on isolation and quarantine orders “for communicable diseases and conditions for which control measures have been established.” 10A N.C.A.C. 41A.0201(d). The diseases and conditions with specific control measures in the N.C.A.C. are HIV,⁷ Hepatitis B,⁸ sexually transmitted diseases,⁹ and tuberculosis.¹⁰ For those diseases and conditions, isolation and quarantine orders may be no more restrictive than the control measures in the N.C.A.C.

⁴ See, e.g., *City of Newark v. J.S.*, 652 A.2d 265 (N.J. 1993).

⁵ See, e.g., *City of New York City v. Doe*, 614 N.Y.S.2d 8 (App. Div. 1994) (confinement in hospital for treatment of tuberculosis upheld when the evidence showed that the patient had a history of refusing to cooperate with voluntary directly observed therapy).

⁶ See *City of Newark v. J.S.*, 652 A.2d 265 (N.J. 1993).

⁷ 10A N.C.A.C. 41A.0202.

⁸ 10A N.C.A.C. 41A.0203.

⁹ 10A N.C.A.C. 41A.0204.

For all other communicable diseases and conditions, isolation or quarantine orders should be consistent with the control measures for those diseases that are issued by the CDC or established in the *Control of Communicable Diseases Manual*.¹¹

8. How is isolation or quarantine ordered? What should be in the order?

There is no North Carolina statute or rule that sets forth specific steps to follow in ordering isolation or quarantine, but considering all the various laws together, we can reach a few conclusions:

- First, a local health director or the state health director should ensure that he or she is authorized to exercise isolation or quarantine authority in the particular situation. Specifically:
 - the person or animal who is to be isolated or quarantined must be infected or reasonably suspected of being infected, or exposed or reasonably suspected of having been exposed, to a communicable disease or condition,¹²
 - the public health must be endangered as a result,
 - all other reasonable means must have been exhausted, and
 - there must be no less restrictive alternative to protect the public health.
- If the order applies to HIV, Hepatitis B, an STD, or tuberculosis, the health director may order only those limitations on freedom of movement or action that are specifically contained in the control measures for those diseases that appear in the N.C. Administrative Code. If the order applies to any other communicable disease, it may order limitations on freedom of movement or action that are consistent with the recommendations and guidelines issued by the CDC (if any) or the control measures established in the *Control of Communicable Diseases Manual*.
- Although the law does not state that an isolation or quarantine order must be in writing, it would not be a good idea to rely solely on an oral order. (It may be reasonable in some circumstances to issue an oral order and then follow it up with

¹⁰ 10A N.C.A.C. 41A.0205. Smallpox, vaccinia disease, and SARS are not included in this list, even though there are separate provisions in the Administrative Code that specifically address control measures for those diseases. See 10A N.C.A.C. 41A.0208 (smallpox and vaccinia disease) and 10A N.C.A.C. 41A.0213 (SARS). Those sections do not specifically establish the control measures—instead, they incorporate by reference any control measures that may be adopted by the CDC.

¹¹ 10A N.C.A.C. 41A.0201(a) incorporates by reference the guidelines and recommended actions of the CDC or the control measures contained in David L. Heymann, Editor, *Control of Communicable Diseases Manual*, 18th ed. (American Public Health Association, 2005). If CDC guidelines and recommended actions are available, they supercede the control measures contained in the *Control of Communicable Diseases Manual*.

¹² This applies to the most typical situation in which quarantine is ordered, but quarantine may also be ordered in two additional circumstances: to limit access to an area or facility that may be contaminated by an infectious agent, or to limit the freedom of movement of unimmunized persons in an outbreak.

a written order as soon as practicable.) An individual who is isolated or quarantined has a right to have notice that he or she is being isolated or quarantined, and the clearest and most direct way to do this is to put it in writing. The written order will also be an important piece of evidence if you must go to court to enforce, defend, or extend the order.

- The order should include:
 - The name of the person who is subject to the order,
 - The identity of the health department and the health director issuing the order,
 - A statement of the control measures the person is subject to,
 - A statement that the control measures have been explained to the person,
 - A statement of the penalties that may be imposed if the person fails to comply with the order,¹³
 - The health director's signature, and
 - The date and time the order was issued.

9. How long can a person be isolated or quarantined?

The basic limitation on the duration of an isolation or quarantine order is contained in G.S. 130A-145(a), which states that isolation and quarantine may be ordered only when *and for so long* as the public health is endangered. The period of time is therefore likely to vary depending upon the communicable disease or condition and possibly other circumstances. For example, an order directing a person with HIV to refrain from donating blood could endure for years,¹⁴ but an order directing a person with gonorrhea to refrain from sexual intercourse would apply only until treatment was completed and any lesions healed.¹⁵ Note that both of those examples involve orders limiting freedom of action.

Orders limiting freedom of movement or access to persons or animals whose movement has been limited are treated differently. Orders limiting freedom of movement or access may not exceed 30 days. G.S. 130A-145(d). So, for example, a health director's order isolating a person with active pulmonary tuberculosis¹⁶ expires at the end of 30 days.

10. What if a health director determines that a person's freedom of movement needs to be restricted for more than 30 days to protect the public health? Can that be done?

Yes, but the health director will have to go to court. If the 30-day period is inadequate to protect the public health, the local health director or state health director must seek an

¹³ An order issued to a person with HIV, hepatitis B, an STD, or tuberculosis *must* state the penalties for failure to comply with the order. 10A N.C.A.C. 41A.0201(d). Although there is no statute or rule imposing this requirement on isolation or quarantine orders issued to persons with other illnesses, the best practice would be to do so.

¹⁴ 10A N.C.A.C. 41A.0202(a)(3) establishes this control measure.

¹⁵ 10A N.C.A.C. 41A.0204(b)(1) establishes this control measure.

¹⁶ 10A N.C.A.C. 41A.0205(f) establishes this control measure.

order extending the time period from the superior court. If the court determines by a preponderance of the evidence that the limitation of freedom of movement is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition, the court shall continue the limitation for a period of up to 30 days for any communicable disease or condition but tuberculosis. For tuberculosis, the court may extend the order for up to one year. Note that the burden of producing sufficient evidence to support the order will be on the health director. When necessary, the state health director or local health director may return to court and ask the court to continue the limitation for additional periods of up to 30 days each (or up to one year each if the person has tuberculosis). G.S. 130A-145(d).

Ordinarily, this action is instituted in the superior court in the county in which the limitation on freedom of movement was imposed. However, if the individual who is the subject of the order has already sought review of the order in Wake county superior court (see the next question), then the action must be instituted in Wake county.

11. Can a person object to being isolated or quarantined?

North Carolina law explains specifically how a person who is substantially affected by a limitation on freedom of movement or access may obtain a review of the order. The substantially affected person may institute an action in superior court seeking review of the limitation, and the court must respond by conducting a hearing within 72 hours (excluding Saturdays and Sundays). The person is entitled to an attorney and will receive appointed representation if he or she is indigent. The court must terminate or reduce the limitation if it determines by the preponderance of the evidence that the limitation is not reasonably necessary to prevent or limit the conveyance of the communicable disease or condition to others. In this case, the burden of producing sufficient evidence to show that the limitation is not reasonably necessary is on the substantially affected person. The person has a choice of where to institute this action: either in the superior court of the county where the limitation is imposed, or in the Wake county superior court. G.S. 130A-145(d).

What about a person who is subject to a limitation on freedom of action? Such an individual has a right to due process, which includes the opportunity for his or her objections to the order to be heard. However, North Carolina law does not spell out how a person subject to this kind of limitation can exercise this right. Most likely, the person would file an action in superior court seeking a declaratory judgment about the validity of the order, or an injunction barring enforcement of the order.

12. How is isolation or quarantine enforced?

Any violation of the state's public health laws—G.S. Chapter 130A, the rules of the Commission for Health Services, or the rules of a local board of health—is a misdemeanor. G.S. 130A-25(a). Thus, a person can be criminally prosecuted for violating quarantine or isolation orders. However, the arrest and detention of such a person creates

public health concerns, since the person may be infected with an agent that could cause illness in others.

To address these concerns, a 2002 law¹⁷ amended North Carolina's criminal procedure laws to allow for arrests and detentions that minimize the exposure of others to the arrested person. A law enforcement officer who arrests an individual for violating an order limiting freedom of movement or access under G.S. 130A-145 may detain the person in an area designated by the state health director or a local health director, until the individual's first appearance before a judicial official. G.S. 15A-401(b)(4). In other words, the person need not be taken to the jail if the state health director or local health director orders the person detained in a different place. At the first appearance, the judicial official must consider whether the person poses a threat to the health and safety of others. G.S. 15A-534.5. If the judicial official determines by clear and convincing evidence that the person does pose a threat, the official must deny pretrial release and order the person to be confined in an area the official designates after receiving recommendations from the state health director or local health director. The burden to produce sufficient evidence to support the determination that the person poses a threat is on the health director.

Isolation and quarantine orders may also be enforced through a civil action. G.S. 130A-18 provides that, if a person violates any of the public health laws or rules, a local health director may request an injunction from the superior court in the county in which the violation occurred.

13. Is an isolation or quarantine order issued by a local health director “portable”? That is, can it follow a person from one local health department's jurisdiction to another?

G.S. 130A-145 authorizes local health directors to issue isolation or quarantine orders. Although it does not specifically state that local health directors may issue these orders only in their own jurisdictions, that is undoubtedly the case. Since a local health director could not issue an isolation order outside of his or her own jurisdiction, then the order is probably not valid outside the local health director's jurisdiction. *This does not mean that a person who is subject to an order is relieved of the obligation to comply with the terms of the order—the control measures—when he or she crosses the county line.* G.S. 130A-144(f) requires all persons to comply with communicable disease control measures adopted by the Commission for Health Services. This law applies throughout the state. So, if a person is diagnosed with HIV in Orange county and told of the control measures while there, he is still obligated to comply with those control measures when he moves to Chatham county. Furthermore, if he violates control measures while in Chatham county, an Orange county isolation order could be used as evidence that he knew he had HIV and was subject to control measures. Thus, for practical purposes, whether the order is valid outside the jurisdiction in which it is issued may not matter much.

¹⁷ S.L. 2002-179.

14. Suppose the local health director is out of town. A case of probable SARS is identified in the county. The person resists being confined to home, so communicable disease staff decide an isolation order should be issued. Can anyone issue the order in the local health director's absence?

Yes. The local health director may delegate the authority to issue the order to a staff member. G.S. 130A-6 provides that any public official granted authority under G.S. Chapter 130A may delegate that authority to another person.

15. Suppose a communicable disease outbreak is believed to have been caused by a bioterrorist. Are there additional legal authorities in that case?

Yes. First, it is important to note that all the usual communicable disease laws still apply—infected or exposed persons must comply with control measures, the local health director or a state health director may exercise isolation or quarantine authority, etc. But there are some additional legal authorities that apply when the state health director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents. G.S. 130A-475. These additional authorities may be exercised only by the *state* health director. The additional authorities that are most likely to apply in a communicable disease outbreak that may have been caused by terrorism are these:

- The state health director may require any person or animal to submit to examinations and tests to determine possible exposure to nuclear, biological, or chemical agents.
- The state health director may limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a nuclear, biological, or chemical agent that may be conveyed to others. This sounds like isolation or quarantine authority, but it is different because it applies to persons or animals who are *contaminated* rather than persons who are infected or exposed to a communicable disease. (The distinction may not matter much in practice when the agent is one that causes communicable disease, because a person who is contaminated with such an agent probably has also been exposed to communicable disease, so quarantine authority would apply.)
- The state health director may limit access by any person or animal to an area or facility that is housing persons or animals whose freedom of movement or action has been limited because they are contaminated with a nuclear, biological or chemical agent. She may also limit access by any person or animal to an area or facility that is contaminated with such an agent.

All of these authorities may be exercised only when and for so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. There is a 30-day limitation on the period of time a person's freedom of movement or access to an area or facility may be

limited, that parallels the 30-day limitation on isolation or quarantine orders limiting freedom of movement or access. A person who is substantially affected by the state health director's order may institute an action for review of the order in superior court. If the state health director determines that additional time is needed, she may institute an action in superior court for an additional 30-day period (and additional 30-day extensions may be sought as needed).