

# Reviewing the Legal Framework for Rabies Control

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## 1. What are the local health director's legal duties with respect to rabies control?

In all counties, the local health director has several direct statutory responsibilities related to rabies control. Specifically:

- **CRVs:** The health director has responsibility for appointing certified rabies vaccinators (G.S. 130A-186);
- **Rabies clinics:** The health director must organize or help organize one rabies vaccination clinic per year (G.S. 130A-187);
- **Geographic quarantine:** The health director may declare a geographic rabies quarantine (G.S. 130A-194);
- **Reports:** The health director must receive reports from
  - Any person who has been bitten by a dog, cat, or ferret (G.S. 130A-196);
  - The owner or possessor of a dog/cat/ferret who bites a person (G.S. 130A-196);
  - A physician who attends a person who was bitten by an animal that is a potential carrier of rabies [NOTE: this not only dogs/cats/ferrets](G.S. 130A-196); and
  - The owner or possessor of an animal that is suspected of having rabies [NOTE: this is not limited to dogs/cats/ferrets; report may go to animal control instead of health director] (G.S. 130A-198).
- **Euthanasia of stray or feral dogs/cats/ferrets that bite a person:** If the owner of a stray or feral dog/cat/ferret is not identified within 72 hours of having bitten a person, the local health director may authorize euthanasia. (G.S. 130A-196).
- **Determining exposure:** The health director must determine whether it is “reasonable” to “suspect” that an animal has been “exposed to the saliva or nervous tissue of” either:
  - a proven rabid animal or
  - an animal reasonably suspected of having rabies that is not available for laboratory diagnosis.

There are often disputes about whether it was “reasonable” to suspect exposure in different fact situations. The state has developed algorithms to assist in these determinations and is available to consult with the director. Ultimately, the health director is the person who will exercise discretion and make this determination.

- **Location of confinement**
  - **Biting:** When a dog/cat/ferret bites a person, it must be immediately confined for 10 days in a place designated by the local health director. The health director may allow the owner to confine the animal on the owner's property. (G.S. 130A-196)
  - **Exposed:** A dog/cat/ferret that has been exposed to rabies and is not current on its rabies vaccination, may either be destroyed or quarantined. For quarantines, the health director (1) approves the facility, (2) designates the period of quarantine, up to six months, and (3) imposes any other “reasonable conditions” on the quarantine. (G.S. 130A-197)
  - **Suspected:** Any animal that is suspected of having rabies must be securely confined. The health director must designate the place for the confinement. (G.S. 130A-198)
- **Seizure:** If an owner or possessor of a biting animal refuses to confine the animal, the health director may order seizure of the animal and require confinement for 10 days at the expense of the owner. Implication is that the confinement would be at a location designated by the health director. (G.S. 130A-196)
- **Rabies emergency:** A health director may petition the State Health Director to declare a rabies emergency in the county or district in some circumstances. (G.S. 130A-201)

In many counties, a department other than the health department is responsible for administering the animal control program and is therefore required to coordinate with the local health department on work related to rabies control. In some counties, however, the local health director also oversees and administers the entire animal control program. In those counties, the rabies law imposes additional duties, including:

- **Receive certificates:** When a dog, cat, or ferret is vaccinated, a copy of the vaccination certificate must be provided to “the county agency responsible for animal control.” The information may not be used for commercial purposes. (G.S. 130A-189).
- **Canvass:** Animal control officers must “canvass the county” to find any dogs, cats, or ferrets that are not wearing rabies tags. (G.S. 130A-192). Note that a local ordinance may exempt cats and ferrets from the tag requirement. The term “animal control officer” is defined broadly as “a city or county employee whose responsibility includes animal control.” (G.S. 130A-184(1)).

- **Locate and contact owners of dogs/cats/ferrets**
  - **Not wearing tag/known owner:** Animal control officers must notify owner in writing to have the animal vaccinated and produce the certificate within three days. (G.S. 130A-192).
  - **Not wearing tag/unknown owner:** Animal control officers may impound the animal but must make “a reasonable effort to locate the owner of the animal.” (G.S. 130A-192).
  - **Biting animals:** If an animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. (G.S. 130A-196).
  
- **Destruction:** If an unvaccinated dog, cat, or ferret has been exposed to rabies and the owner is not willing or interested in confining it for up to six months, the animal “must be destroyed immediately by its owner, the county Animal Control Officer or a peace officer.” (G.S. 130A-197).

A health director responsible for animal control may assume other legal duties that are defined by the local ordinances or policies.

## 2. How can a health director enforce the rabies law?

If a person refuses to comply with one of the state statutes related to rabies, the health director may utilize the standard public health law remedies outlined in Chapter 130A, Article 1, Part 2. A health director may:

- **Enter property:** When a health director needs to enter property to enforce the rabies law, she will need one of the following:
  - Consent;
  - An imminent hazard (as defined in G.S. 130A-2); or
  - An administrative search and inspection warrant (pursuant to G.S. 15-27.2).
  
- **Seek an injunction:** A health director may ask a Superior Court judge to issue an injunction. (G.S. 130A-18).
  
- **Charge a misdemeanor:** A health director may seek a misdemeanor charge (G.S. 130A-25). It would be a Class 2 misdemeanor if the person is charged for failing to confine a biting dog, cat, or ferret for 10 days as required by the health director. For all other violations, it would be a Class 1 misdemeanor.

- **Seizure:** The health director does not have the authority to seize an animal using an administrative search and inspection warrant. In most cases, a health director will need to rely on a standard search warrant executed by a sworn law enforcement officer for seizure. If, however, the owner or possessor of a biting dog, cat, or ferret refuses to confine the animal for the 10 day period as required by the health director, the director may order seizure of the animal and confinement for 10 days at the owner's expense. (G.S. 130A-196).
- **Imminent hazard:** It is conceivable that the health director may conclude that a rabies related situation is an imminent hazard, as defined in G.S. 130A-2 (“a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects....”). If so, the director has the authority to order the person owning or controlling the property to abate the hazard. (G.S. 130A-20).

### 3. May the health director delegate rabies duties to others?

Yes, the health director may delegate rabies duties to others. G.S. 130A-6 provides: “whenever authority is granted by this Chapter upon a public official, the authority may be delegated to another person authorized by the public official.”<sup>1</sup>

Because of this broad authority to delegate, the health director – who is specifically named in many of the rabies statutes – may decide ask one or more local health department employees to carry out the day-to-day responsibilities related to rabies control. It is also possible that a health director will delegate some of the rabies duties to individuals outside the health department, such as an animal control department. Because the ultimate responsibility rests with the health director, it is important that the director she remain connected to the policies and decision-making related to rabies even if the work is managed outside the health department. For example, a health director would likely want to be closely involved with developing the county's policy and approach to deciding whether a biting dog/cat/ferret may be confined at home or in a facility for 10 days even if the policy is going to be implemented and enforced by another county department.

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<sup>1</sup> See Jill D. Moore, Delegating Local Health Director's Legal Powers and Duties, March 30, 2014, available at <http://canons.sog.unc.edu/?p=8051>.

#### 4. May the local board of health or the board of county commissioners adopt a local rabies law?

A local board of health could *probably* adopt a rabies rule and a board of county commissioners could *probably* adopt a rabies ordinance. There are, however, some key considerations to keep in mind:

- **Preemption:** It is possible that a court could conclude that the state has “occupied the field” to the exclusion of local laws. In order to reach this decision, the court would need to determine that in the area of rabies specifically, the state has clearly shown an intent to “provide a complete and integrated regulatory scheme to the exclusion of local regulation.” (G.S. 160A-174(b)(5); *King v. Town of Chapel Hill*, 367 N.C. 400 (2014); *Craig v. County of Chatham*, 356 N.C. 40 (2004)). While complete preemption is unlikely, it is conceivable that a court could conclude that some areas – such as the types of animals that must be vaccinated – are preempted. If a court determines that local laws are preempted in part, note that a board of health may still take action to adopt a more stringent local rule but it must be able to demonstrate the *local* need for that rule that makes the rabies risk in the county different or greater than in other areas of the state.
- **Repetition:** A local law should not be identical to state law. G.S. 160A-174(b)(6).
- **Conflicts:** A local law should not conflict with state law. G.S. 160A-174(b)(2) and (3). *Greene v. City of Winston-Salem*, 287 N.C. 66 (1975). For example, a county may not adopt an ordinance stating that ferrets do not need to be vaccinated. If there is a direct conflict between a state and a local ordinance, the state law will govern.
- **Territorial jurisdiction:** A board of health rule will apply in the entire county. G.S. 130A-39(c). A county ordinance will apply in the unincorporated areas of the county, unless a municipality elects to have it apply within the municipality.

A county may be able to achieve its objectives related to rabies by adopting a policy or procedure, rather than a local law. For example, if a county wants to require that all confinements pursuant to G.S. 130A-197 will be for six months (no discretion for shorter duration) and will be at the county’s animal shelter, it could adopt a policy that will be binding on the employees and can be made available to the public. Having clear policies that are consistent with state law may help local health directors as they communicate with members of the public and animal owners.

**G.S. Chapter 130A**  
**Article 6, Part 6: Rabies**

**§ 130A-184. Definitions.**

The following definitions apply in this Part:

- (1) Animal Control Officer. - A city or county employee whose responsibility includes animal control. The term "Animal Control Officer" also includes agents of a private organization that is operating an animal shelter under contract with a city or county whenever those agents are performing animal control functions at the shelter.
- (2) Cat. - A domestic feline of the genus and species *Felis catus*.
- (3) Certified rabies vaccinator. - A person appointed and certified to administer rabies vaccine to animals in accordance with this Part.
- (4) Dog. - A domestic canine of the genus, species, and subspecies *Canis lupus familiaris*.
- (4a) Feral. - An animal that is not socialized.
- (4b) Ferret. - A domestic mammal of the genus, species, and subspecies *Mustela putorius furo*.
- (5) Rabies vaccine. - An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.
- (6) State Public Health Veterinarian. - A person appointed by the Secretary to direct the State public health veterinary program.
- (6a) Stray. - An animal that meets both of the following conditions:
  - a. Is beyond the limits of confinement or lost.
  - b. Is not wearing any tags, microchips, tattoos, or other methods of identification.
- (7) Vaccination. - The administration of rabies vaccine by a person authorized to administer it under G.S. 130A-185.

**§ 130A-185. Vaccination required.**

(a) Vaccination required. - The owner of an animal listed in this subsection over four months of age shall have the animal vaccinated against rabies:

- (1) Cat.
- (2) Dog.
- (3) Ferret.

(b) Vaccination. - Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. A rabies vaccine may only be administered by one or more of the following:

- (1) A licensed veterinarian.
- (2) A registered veterinary technician under the direct supervision of a licensed veterinarian.
- (3) A certified rabies vaccinator.

**§ 130A-186. Appointment and certification of certified rabies vaccinator.**

In those counties where licensed veterinarians are not available to participate in all scheduled county rabies control clinics, the local health director shall appoint one or more persons for the purpose of administering rabies vaccine to animals in that county. Whether or not licensed veterinarians are available, the local health director may appoint one or more persons for the purpose of administering rabies vaccine to animals in their county and these persons will make themselves available to participate in the county rabies control program. The State Public Health Veterinarian shall provide at least four hours of training to those persons appointed by the local health director to administer rabies vaccine. Upon satisfactory completion of the training, the State Public Health Veterinarian shall certify in writing that the appointee has demonstrated a knowledge and procedure acceptable for the administration of rabies vaccine to animals. A certified rabies vaccinator shall be authorized to administer rabies vaccine to animals in the county until the appointment by the local health director has been terminated.

**§ 130A-187. County rabies vaccination clinics.**

(a) Local Clinics. - The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year for the purpose of vaccinating animals required to be vaccinated under this Part. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area.

(b) Fee. - The county board of commissioners may establish a fee to be charged for a rabies vaccination given at a county rabies vaccination clinic. The fee amount may consist of the following:

(1) A charge for administering and storing the vaccine, not to exceed ten dollars (\$10.00).

(2) The actual cost of the rabies vaccine, the vaccination certificate, and the rabies vaccination tag.

**§ 130A-189. Rabies vaccination certificates.**

A person who administers a rabies vaccine shall complete a rabies vaccination certificate. The Commission shall adopt rules specifying the information that must be included on the certificate. An original rabies vaccination certificate shall be given to the owner of the animal that receives the rabies vaccine. A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. A copy shall also be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes.

**§ 130A-190. Rabies vaccination tags.**

(a) Issuance. - A person who administers a rabies vaccine shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs shall wear rabies vaccination tags at all times. Cats and ferrets must wear rabies vaccination tags unless they are exempt from wearing the tags by local ordinance.

(b) Fee. - Rabies vaccination tags, links, and rivets may be obtained from the Department of Health and Human Services. The Secretary is authorized to collect a fee for the rabies tags, links, and rivets in accordance with this subsection. The fee for each tag is the sum of the following:

- (1) The actual cost of the rabies tag, links, and rivets.
- (2) Transportation costs.
- (3) Fifteen cents (15¢). This portion of the fee shall be used to fund rabies education and prevention programs.
- (4) Repealed by Session Laws 2010-31, s. 11.4(h), effective October 1, 2010.

(c) Repealed by Session Laws 2007-487, s. 1, effective January 1, 2008.

**§ 130A-191. Possession and distribution of rabies vaccine.**

It shall be unlawful for persons other than licensed veterinarians, certified rabies vaccinators and persons engaged in the distribution of rabies vaccine to possess rabies vaccine. Persons engaged in the distribution of vaccines may distribute, sell and offer to sell rabies vaccine only to licensed veterinarians and certified rabies vaccinators.

**§ 130A-192. Animals not wearing required rabies vaccination tags.**

(a) The Animal Control Officer shall canvass the county to determine if there are any animals not wearing the required rabies vaccination tag. If an animal required to wear a tag is found not wearing one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer shall scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new



owner; or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be put to death, it shall be made available for adoption as provided in G.S. 19A-32.1.

(a2) Repealed by Session Laws 2013-377, s. 3, effective July 29, 2013.

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

(b) through (e) Repealed by Session Laws 2013-377, s. 3, effective July 29, 2013.

**§ 130A-193. Vaccination and confinement of animals brought into this State.**

(a) Vaccination Required. - An animal brought into this State that is required to be vaccinated under this Part shall immediately be securely confined and shall be vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(b) Exceptions. - The provisions of subsection (a) shall not apply to:

(1) An animal brought into this State for exhibition purposes if the animal is confined and not permitted to run at large.

(2) An animal brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the animal is apparently free from and has not been exposed to rabies and that the animal is currently vaccinated against rabies.

**§ 130A-194. Quarantine of districts infected with rabies.**

An area may be declared under quarantine against rabies by the local health director when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each animal in the area that is required to be vaccinated under this Part shall be confined on the premises of the owner or in a veterinary hospital unless the animal is on a leash or under the control and in the sight of a responsible adult.

**§ 130A-195. Destroying stray or feral animals in quarantine districts.**

When quarantine has been declared and stray or feral animals continue to run uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the stray or feral animals and properly dispose of their bodies.

**§ 130A-196. Notice and confinement of biting animals.**

(a) Notice. - When a person has been bitten by an animal required to be vaccinated under this Part, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event, the local health director may authorize the animal be euthanized, and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. If the event occurs on a weekend or State holiday the time period for owner identification shall be extended 24 hours.

A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age, and sex of the person.

(b) Confinement. - When an animal required to be vaccinated under this Part bites a person, the animal shall be immediately confined for 10 days in a place designated by the local health director. The local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine an animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses the animal that has bitten a person refuses to confine the animal as required by this subsection, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner.

**§ 130A-197. Infected animals to be destroyed; protection of vaccinated animals.**

When the local health director reasonably suspects that an animal required to be vaccinated under this Part has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the animal shall be considered to have been exposed to rabies. An animal exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the animal has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than 28 days prior to being exposed, and is given a booster dose of rabies vaccine within five days of the exposure. As an alternative to destruction, the animal may be quarantined at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director.

**§ 130A-198. Confinement.**

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the local health director or county Animal Control Officer and shall securely confine the animal in a place designated by the local health director. The animal shall be confined for a period of 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian.

**§ 130A-199. Rabid animals to be destroyed; heads to be sent to State Laboratory of Public Health.**

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all animals that die during a confinement period required by this Part shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis.

**§ 130A-200. Confinement or leashing of vicious animals.**

A local health director may declare an animal to be vicious and a menace to the public health when the animal has attacked a person causing bodily harm without being teased, molested, provoked, beaten, tortured or otherwise harmed. When an animal has been declared to be vicious and a menace to the public health, the local health director shall order the animal to be confined to its owner's property. However, the animal may be permitted to leave its owner's property when accompanied by a responsible adult and restrained on a leash.

**§ 130A-201. Rabies emergency.**

A local health director in whose county or district rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat, may petition the State Health Director to declare a rabies emergency in the county or district. In determining whether a rabies emergency exists, the State Health Director shall consult with the Public Health Veterinarian and the State Agriculture Veterinarian and may consult with any other source of veterinary expertise the State Health Director deems advisable. Upon finding that a rabies emergency exists in a county or district, the State Health Director shall petition the Executive Director of the Wildlife Resources Commission to develop a plan pursuant to G.S. 113-291.2(a1) to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. Upon determination by the State Health Director that the rabies emergency no longer exists for a county or district, the State Health Director shall immediately notify the Executive Director of the Wildlife Resources Commission.

## **Article 1, Part 2: Remedies**

### **§ 130A-17. Right of entry.**

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

### **§ 130A-18. Injunction.**

(a) If a person shall violate any provision of this Chapter, the rules adopted by the Commission or rules adopted by a local board of health, or a condition or term of a permit or order issued under this Chapter, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

### **§ 130A-19. Abatement of public health nuisance.**

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

**§ 130A-25. Misdemeanor.**

(a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Section of Prisons of the Division of Adult Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Public Safety after consultation with the State Health Director. The Secretary of Public Safety shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court.

(d) A violation of Part 7 of Article 9 of this Chapter or G.S. 130A-309.10(m) shall be punishable as a Class 3 misdemeanor.