



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **Pandemic Emergency Bench Book for Trial Judges**

*What judicial officials might expect when dealing with isolation, quarantine  
and “safekeeper” orders amid an ongoing health emergency*

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By Legal and Legislative Affairs



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## OVERVIEW

### ISOLATION/QUARANTINE ORDERS AMID PANDEMIC EMERGENCY

*How to approach court/courtroom circumstances that involve segregating or restricting the movements of individuals or groups who are ill or are likely to become ill*

**Introductory Note:** It is recommended that judges initially familiarize themselves with the information provided herein. The material is divided into two sections.

1. Section I is a detailed description of how isolation/quarantine/“safekeeper” orders work and includes:
  - a. references to applicable statutes
  - b. examples of anticipated scenarios associated with segregation-type orders
2. Section II, consisting of five appendices, is designed to provide a quick checklist/reminder of pertinent issues a judge must address when considering such orders while on the bench.

It is the intent of the Bench Book’s author/contributors that judges assigned to isolation/quarantine/“safekeeper” cases *during a pandemic emergency*<sup>1</sup> might consult the descriptive analysis of **Section I** prior to hearing cases, then use the checklists in **Section II** as a guide during the actual proceedings.

Section I focuses on *using* established statutes, rules, and procedures that provide jurisdiction for a court to consider isolation/quarantine/“safekeeper” issues, and if warranted, order:

- The isolation/separation of ill persons who may pose a threat to other members of the public during a pandemic crisis (*i.e.*, ill person or persons ordered to remain in one designated place – *e.g.*, their home).
- The restriction of movements of ill persons who may pose a threat to other members of the public (*i.e.*, ill person or persons ordered not to go to certain places or not to participate in certain activities – *e.g.*, attend school).
- The restriction of movements of persons who *are not* ill – as a prophylactic measure aimed at preventing such persons from becoming ill (*i.e.*, person or persons showing no signs of illness ordered not to go to certain places or not to participate in certain activities that might cause them to become ill – *e.g.*, visit patients hospitalized with influenza).
- The restriction of movements of persons who show no signs of illness but who are known to have been exposed to the contagion causing the pandemic emergency (*i.e.*, person or persons who have been in contact with people infected by flu virus but who exhibit no symptoms are ordered to remain in one place or not to participate in certain activities – *e.g.*, attend church services).
- The separation of an inmate or inmates at detention facilities within the jurisdiction due to illness related to the pandemic emergency (*i.e.*, sick inmate or inmates at local jail are ordered by sheriff to be segregated from other inmates either by placing infected inmates in a separate containment area or transporting them to another detention facility that has facilities to accommodate such inmates).



**Important Note:** *The scope of this volume is intentionally limited to substantive issues directly related to isolation/quarantine/“safekeeper” hearings,<sup>2</sup> as it is anticipated that there will be a significant increase in the number of such cases during a pandemic health or environmental/bioterrorism emergency (and that many judges will have had limited experience with such hearings).<sup>3</sup>*

*In addition, please note that this Bench Book is intended to serve as a guide for holding hearings on isolation or quarantine orders that directly relate to an ongoing health emergency (e.g., pandemic influenza, bioterrorism, anthrax, etc.). Thus, this Bench Book should NOT be used as a general guide for isolation or quarantine orders as it will not include guidelines for considering “routine” isolation/quarantine orders that are not a consequence of, or coincidental with, an ongoing health emergency under NCGS § 7A-39 (i.e., a localized measles outbreak, a rabies outbreak threatening dog-breeding farms within a single county, a homeless transient with tuberculosis, etc.).*



## SECTION I

### A PRIMER ON ISOLATION/QUARANTINE ORDERS AND HEARINGS DURING A PANDEMIC CRISIS

(Outline of the Expected Process)<sup>4</sup>

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#### Understanding Existing Law

Most of the statutory and regulatory law addressing or related to isolation/quarantine situations can be found, respectively, in:

NCGS § 130A-134 (2008) through NCGS § 130A-201 (2008)

10A NCAC 41A.0101 (2008) through 10A NCAC 41A.0907 (2008)

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#### Applying Existing Law amid Pandemic Emergencies

During a pandemic emergency,<sup>5</sup> a state or local health director issues either a(n) isolation<sup>6</sup> or quarantine<sup>7</sup> order targeting an individual or group of individuals. (Templates/examples of Isolation and Quarantine Orders can be found, respectively, on pages 13 and 14 in Appendix C of this Bench Book.) In general, an *isolation order* targets people (or animals) who are known to have, or are suspected of having, a communicable disease, while a *quarantine order* targets people (or animals) who have been exposed to a communicable disease but who show no signs of illness.

##### Anticipated isolation order examples

- A local health director orders a person known to be infected with a communicable disease not to leave home.
- A local health director orders a person known to be infected with a communicable disease not to report to work or not to attend church.

##### Anticipated quarantine order examples

- A local health director orders a person known to have had contact with anthrax spores not to leave home.
- A local health director bans all persons from a facility known to be contaminated with anthrax spores (or other infectious agent).
- A local health director orders an unimmunized public school student to stay home, or away, from school.



- (Less likely, although long a staple of movie lore) A group of people exposed to a toxin or virus are confined, via an order from the local health director, to a room or wing of a medical or research facility.

As a general proposition, a judge can expect that a person named in a local or state health director's isolation or quarantine order will challenge the order by filing a claim against the health director.

The local or state health director's order should explain:

1. Why it was issued.
2. What conditions prompted the order.
3. Why there are no less restrictive means that might accomplish the intended goal of the order.

See NCGS § 130A-145(a) for specific requirements. The order also must be signed by the health director.

As a practical matter, it is likely that both the judicial official and the parties named in the order will be aware of prevailing pandemic illness conditions and that the order at issue will be the consequence of a serious influenza (or similar illness) outbreak. However, a judge considering a(n) isolation or quarantine order should be careful not to assume facts or circumstances that are not specifically described in the body of the order (*i.e.*, be careful when it comes to judicial notice).

Note that the order at issue may target a particular disease that has specific requirements outlined in the administrative code (*e.g.*, rabies, measles, tuberculosis, etc.).<sup>8</sup> Any order from a local or state health director that targets any of these diseases should comply with code requirements and should include specific references to applicable code citations. Thus, any judicial official who considers a(n) isolation/quarantine order should ask each party – the health official who issued the order and the person or persons challenging that order – if there are any particular administrative code provisions targeting the named disease or affliction at issue. **Note, too, that there are *generally* no administrative code provisions of this sort for potentially pandemic illnesses such as influenza.**<sup>9</sup>

The North Carolina Division of Public Health has developed model order forms that are intended for use during a flu pandemic. As of August 2009, the model orders can be accessed through the Internet, in Appendix L of the North Carolina Pandemic Influenza Plan, which can be found at <http://www.epi.state.nc.us/epi/gcdc/pandemic.html>.

## If an Act of Terrorism Spurs the Pandemic Emergency Conditions

If a communicable disease or other contamination outbreak is caused by an act of bioterrorism – *e.g.*, anthrax spores, nuclear or chemical agent, etc. – *the state health director has additional authorities* in order to protect the public health. See *e.g.*, NCGS § 130A-475. Under these scenarios, the state health director may impose restrictions on persons or animals that have been *contaminated* (as opposed to *infected*) by things like radioactive materials, chemicals, anthrax, etc.

Note, however, that existing law is far from clear when a health director's order *targets a place* instead of persons or animals. For example, during an anthrax emergency, a state health director may bar persons from frequenting a particular place – *e.g.*, a UPS warehouse where the anthrax was discovered, or a local business that relies on customer traffic for its sales. Under such circumstances, a judge may well face a challenge to a health director's order premised on a balancing test between health and economic considerations.

UPS might challenge a keep-closed order by arguing that the risk is minimal and its workers need to report to the warehouse so the company can continue to make its deliveries (some of which include products that will help to assuage the ongoing emergency). Similarly, a local business owner might challenge a keep-closed order by arguing that the physical risk to his customers is minimal compared to the fiscal risk his business faces if shoppers are banned from his premises.

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### Various Due Process Considerations for Isolation/Quarantine Orders

- No order restricting movement or access can be longer than thirty days.
  - At the end of the initial 30-day period, the health director who issued the order may seek an extension of the order if the person or animal named in the order is shown, by a preponderance of evidence, to pose an ongoing, and significant, health threat to the public.
  - A person subject to a(n) isolation/quarantine order affecting his or her freedom of movement or access is entitled to superior court review of the order within 72 hours of its issue.<sup>10</sup>
  - A person seeking review of an order restricting *action* – *e.g.*, a person diagnosed with a sexually transmitted disease is ordered to refrain from sexual activity until the infection clears – is also entitled to review but there is no 72-hour requirement for such reviews.
  - A person seeking review of a(n) isolation/quarantine order is entitled to an attorney, and one must be appointed if such a person demonstrates he or she is indigent.
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### Enforcement of Isolation/Quarantine Orders

- Violations of the public health laws under section 130A are classified as misdemeanors, see NCGS § 130A-25, and therefore may be pursued as criminal prosecutions.
- When pursuing criminal enforcement options, the health director, law enforcement, and the judge involved should consider the effect of arresting and incarcerating the alleged offender – *i.e.*, how will the arrest and jailing of a person afflicted with pandemic flu or other pandemic illness impact law enforcement officers and/or other inmates at the local jail?<sup>11</sup>
- An alternative to prosecuting alleged violators of isolation/quarantine orders is a civil action, filed by the local or state health director, seeking injunctive relief (ordering offender to stop violating the order – *e.g.*, ill person leaving her home despite order confining her there for 30-day period – or face ramifications of a contempt finding).



## Helpful Resource Materials

*The North Carolina Public Health System's Isolation and Quarantine Authority*, by Jill Moore, Health Law Bulletin, UNC School of Government, No. 84 July 2006 (discussing statutory and case law authority as a basis for affirming isolation or quarantine orders issued by a local or state health director).

North Carolina Division of Public Health's website (as of 24 April 2009)

[www.ncpublichealth.com](http://www.ncpublichealth.com)

North Carolina Pandemic Flu Preparedness website

[www.ncpanflu.gov](http://www.ncpanflu.gov)

North Carolina Department of Health and Human Services website

[www.ncdhhs.gov](http://www.ncdhhs.gov)

National Center for State Courts website for pandemic planning

[http://www.ncsconline.org/D\\_Research/coop/resources.html](http://www.ncsconline.org/D_Research/coop/resources.html)

Centers for Disease Control and Prevention (CDC) website for updates on pandemic flu

[www.cdc.gov/swineflu](http://www.cdc.gov/swineflu)





## **A PRIMER ON “SAFEKEEPER” RULES AND STATUTES**

### **The Health and Safety of Local Inmates during a Pandemic Illness Emergency**

(Outline of the Expected Process)

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#### **Understanding Existing Law**

Most of the statutory and regulatory law addressing or related to “safekeeper” situations can be found, respectively, in:

**NCGS § 162-38 (2008) and NCGS § 162-39 (2008)**

**10A NCAC 14J.0101 (2008) through 10A NCAC 14J.1755 (2008)**

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#### **Applying Existing Law Amid Pandemic Emergencies**

So-called “safekeeper” statutes,<sup>12</sup> and their supporting administrative code rules, target inmates housed in local detention facilities such as the county jail. In sum, the statutory subsections that are germane to health issues (and thus may apply during a pandemic emergency) focus on the following:

1. Maintaining a safe environment in such detention facilities;
2. Permitting the transfer of ill inmates to other detention facilities that are better equipped to handle such inmates.

The transfer of inmates to either another local jail facility (*e.g.*, to alleviate unsafe conditions) or to a state Department of Corrections facility (*e.g.*, to provide proper medical care for an inmate stricken with a pandemic illness while lessening the threat of its spread to other local inmates) is accomplished through an order by a superior court judge.

NCGS § 162-38 is a statute that makes no mention of either “safekeepers” or specific health issues. It simply allows for superior court judges to transfer locally held inmates to an adjoining county’s detention facilities if “unfit or insecure” conditions exist in the local jail.

NCGS § 162-39(d) addresses the authority of a superior court judge to transfer locally held ill inmates to a state-operated facility with medical facilities that can better treat the ill inmate(s) in question. During a pandemic emergency, it is likely that any such transfers, in addition to helping treat ill prisoners, would help protect other locally held inmates who are not ill by eliminating, or at least reducing, their exposure to the pandemic illness at issue (*e.g.*, contagious influenza).

It is not entirely clear how NCGS § 162-39 might apply to juvenile offenders during a pandemic emergency. State law bars the blending of juvenile and adult inmates during non-emergency circumstances. Thus, questions remain as to what might be done in order to separate juvenile inmates affected by the pandemic emergency from those not so affected. In all likelihood, transferring ill juvenile inmates to a state detention facility will not be an option because state detention facilities lack accommodations that would enable juvenile inmates to be segregated from adult inmates.



## The Anticipated Scenario

A superior court judge holding court during a pandemic emergency will likely face requests by local jail operators to transfer inmates who exhibit symptoms of the illness causing the pandemic emergency (although it is also possible that a judge may also face inmate transfer requests for other illnesses, such as tuberculosis).

Under these circumstances, a judge will have to make the initial decision on how to conduct proceedings – *i.e.*, are pandemic conditions such that holding a conventional court proceeding poses inappropriate risk to participants such as the sheriff, participating attorneys, or even the judge? If so, a judge might consider holding the hearing via remote audio (*e.g.*, telephone conference) or remote audio/video (*e.g.*, two-way videoconference).

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## A Few Cautionary Notes to Keep in Mind on “Safekeeper” Situations

Both statutes require that the county transferring the inmates will bear the cost of maintaining such inmates. Thus, if a mass transfer becomes necessary, expect such costs to be a disputed issue despite the mandatory language. See NCGS § 162-40.1 (2008).

Subsection (e) of NCGS § 162-39 specifically limits “safekeeper”-related transfers to state facilities to 200 inmates. Thus, that express limitation may become an issue if the pandemic illness in question requires the transfer of large numbers of inmates from around the state.

While the two statutes at issue seem to contemplate inmate transfers only at the behest of jailkeepers, a widespread pandemic emergency might produce petitions by individual inmates or groups of inmates seeking:

1. to be transferred for treatment;
2. to have ill inmates transferred so their illnesses don’t spread;
3. to overturn an order that the inmate or inmates be transferred elsewhere.

Note that while the statutes’ language suggests inmates have no say regarding such transfers, both ill and well inmates may well try to seek judicial remedies if conditions are bad enough and local detention overseers are slow to respond to the crisis. Amid an ongoing pandemic emergency, inmates might also choose to file health- or conditions-related actions in federal court.

State law prohibits alleged juvenile offenders from being housed with adult inmates. Thus, it may not be possible to transfer ill juvenile inmates to a state detention facility because such facilities are not likely to have areas where the ill juvenile inmates can be segregated from adult inmates.

The last paragraph of NCGS § 162-39(c) provides that the requirements of the entire section applies to municipalities as well as counties. Thus, the statute applies to transfer applications submitted by municipal jail operators.

## SECTION II

### APPENDIX A

#### Quick Checklist I – Isolation/Quarantine Orders During a Pandemic Emergency

**Situation:** Subject of public health director's isolation/quarantine order challenges the restrictions imposed on his or her actions, movement, or access (or in the case of restrictions imposed on an animal, the owner challenges the restrictions placed on the animal).

- ☐ Does the order at issue place restrictions on petitioner/plaintiff's movements or access? If so, then the order must be heard within 72 hours from time of challenge. Orders targeting restrictions on plaintiff's *actions* are not subject to such time limits – e.g., health director orders person with an STD to abstain from sexual activity until the infection abates.
- ☐ Does the petitioner/plaintiff have an attorney? He or she is entitled to one, and *one must be appointed if the party demonstrates he or she is indigent*.
- ☐ What local conditions resulting from the ongoing pandemic emergency might affect how a hearing will be held? Are health risks to participants wide-ranging enough to consider alternative hearing protocols – e.g., should it be held via videoconferencing so participants do not spread or expose themselves to the pandemic illness?
- ☐ Has the order been signed by the official, and does it both:
  - 1. describe why quarantine or isolation has been imposed;
  - 2. explain why less restrictive means would not accomplish the intended goal.
- ☐ Does the order cite to specific statutory authority and, when applicable, requisite regulatory authority (administrative code rules)? Ask each party if the underlying illness at issue is addressed in the administrative code. (See Appendix C for specific statutory references.)
- ☐ Is the underlying illness at issue the same affliction that has caused the pandemic emergency – i.e., if influenza, for example, is widespread in the community and has caused local courts to operate under pandemic emergency rules, is influenza the contagion at issue or is another affliction at issue (e.g., tuberculosis, rabies, etc.)?
- ☐ Is the underlying health threat at issue not a disease but the result of bioterrorism or industrial accident – e.g., anthrax spores, chemical spill, chemical weapon, etc.?
- ☐ Has the health director, in the body of the order, met his or her burden of justifying the isolation/quarantine of the plaintiff by clear and convincing evidence? If not, has his or her testimony and evidence contributed enough that, viewed in combination with the order, the burden is satisfied?
- ☐ Does the order impose restrictions on the plaintiff for 30 days or fewer? Note: an initial isolation/quarantine order is subject to a strict 30-day limit. If conditions still warrant continuation of the order beyond 30 days, the health director must seek an extension of the order in superior court.



## APPENDIX B

### Quick Checklist II – “Safekeeper” Orders During a Pandemic Emergency

**Situation:** Sheriff or other local jail official seeks to transfer inmates from county jail to either of the following:

1. an adjoining county’s jail, as a means to combat unsafe or unfit conditions at the local jail due to illness during a pandemic emergency; or
  2. the state Department of Corrections, as a means to better treat inmates with pandemic emergency-related illness or to protect inmates who are not ill.
- ☐ Under what conditions should the request be addressed? Will participants in a conventional hearing conducted during emergency pandemic conditions be unnecessarily exposed to greater risk of becoming ill? Should an alternative hearing be considered (via video or other social distancing method)?
  - ☐ Which statute(s) is/are referred to in the request for an order to transfer – NCGS § 162-38 or NCGS 162-39(d), or both?
  - ☐ Does the transfer request cite to any applicable portions of the administrative code?<sup>13</sup> Ask each party whether – and which – administrative code provisions offer support to the request to transfer prisoners.
  - ☐ Inquire as to whether local jail official(s) making the transfer request is/are doing so in order to:
    1. protect ill inmates;
    2. protect seemingly healthy inmates;
    3. protect both groups.
  - ☐ Has the sheriff or other local jail official making the transfer request contacted, where applicable respectively, the adjoining county’s jail officials or the state Department of Corrections facility where the inmate(s) will be sent?
  - ☐ Has the local county made arrangements to provide payment to either the adjoining county jail or the state Department of Corrections for the maintenance of the transferred inmate? Does the Secretary of Correction need to be contacted to ensure that the state facilities are not over capacity for harboring ill “safekeeper”-inmates? (NCGS § 162-39(e) limits number to 200 such transfers unless express approval is provided by the Secretary of Correction.)
  - ☐ Has the local sheriff or jail overseer made a good case for demonstrating that conditions are such that the transfer of (an) ill inmate(s) is necessary?
  - ☐ Does the representative acting on behalf of the local jail (e.g., sheriff or police chief) work for the county or a municipality? Note: NCGS § 162-39(c) provides that the “safekeeper”-inmate transfer statute(s) also apply to municipal jails and jailers.



## APPENDIX C

### Isolation Order Template

You may have been exposed or are reasonably suspected of being exposed to pandemic \_\_\_\_\_ influenza and have developed some symptoms of pandemic \_\_\_\_\_ influenza. Pandemic \_\_\_\_\_ influenza is highly contagious and is spread person to person mostly by coughing or sneezing. If pandemic \_\_\_\_\_ influenza spreads in the community, it will have severe public health consequences. Your illness requires that you be isolated and requires further public health investigation and monitoring.

I, [name of health director] of [name of agency], pursuant to authority vested in me by North Carolina General Statute (NCGS) 130A-145, issue this ISOLATION ORDER to [name of person].

You are required to remain at the following location [ \_\_\_\_\_ ] for the time specified in this ISOLATION ORDER: \_\_\_\_\_. [length of time from symptom onset? Exposure?]

#### You are required to:

- Follow these instructions for the duration of this order.
- Contact the health department if, during the duration of this order, your symptoms become worse, or you develop any new symptom such as fever, headache, muscle aches or respiratory difficulties, including sore throat, cough or breathing difficulties.
- Comply with other requirements based on individual circumstances of the isolation or the disease:  
\_\_\_\_\_
- Comply with advisory for \_\_\_\_\_ given to you at the time you received this order.

If you fail to comply with this ISOLATION ORDER, you will be subject to prosecution pursuant to NCGS 130A-25, which provides for imprisonment for up to two (2) years, as well as pretrial detention without bail under NCGS 15A-534.5.

The staff of this Health Department is available to provide assistance and counseling to you concerning your pandemic \_\_\_\_\_ influenza and compliance with this ISOLATION ORDER.

The authority of this ISOLATION ORDER to restrict your freedom of movement expires in 30 days from the date of this order unless extended or modified by a court pursuant to NCGS 130A-145. You may petition the Superior Court for review of the restriction of your freedom of movement contained in this ISOLATION ORDER pursuant to NCGS 130A-145(d).

Health Director: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Issued by: \_\_\_\_\_

Date: \_\_\_\_\_

I have received the original copy of this order: \_\_\_\_\_  
*Patient Signature* *Date*



## Quarantine Order Template

You have been exposed or are reasonably suspected of having been exposed to a person infected with or reasonably suspected of being infected with pandemic \_\_\_\_\_ influenza. Pandemic \_\_\_\_\_ influenza is highly contagious and is spread person to person mostly by coughing or sneezing. If pandemic \_\_\_\_\_ influenza spreads in the community, it will have severe public health consequences. Your possible exposure requires that you be quarantined and requires further public health investigation and monitoring.

I, [name of health director] of [name of agency], pursuant to authority vested in me by North Carolina General Statute (NCGS) 130A-145, issue this QUARANTINE ORDER to [name of person].

You are required to remain at the following location \_\_\_\_\_ for the duration of this QUARANTINE ORDER: \_\_\_\_\_ days after your last potential exposure to pandemic \_\_\_\_\_ influenza.

### You are required to:

- Follow these instructions for the duration of this order.
- During the quarantine period, observe yourself for any of the following symptoms: fever, headache, muscle aches, respiratory difficulties, including sore throat, cough and breathing difficulties.
- Report any symptoms immediately to the local health department.
- Comply with other requirements based on individual circumstances of the quarantine location or the disease:  
\_\_\_\_\_
- Comply with the advisory given to you with this order.

If you fail to comply with this QUARANTINE ORDER, you will be subject to prosecution pursuant to NCGS 130A-25, which provides for imprisonment for up to two (2) years, as well as pretrial detention without bail pursuant to NCGS 15A-534.5.

The staff of this health department is available to provide assistance and counseling to you concerning your situation and compliance with this QUARANTINE ORDER.

The authority of this QUARANTINE ORDER to restrict your freedom of movement expires in 30 days from the date of this order unless extended or modified by a court pursuant to NCGS 130A-145. You may petition the Superior Court for review of the restriction of your freedom of movement contained in this QUARANTINE ORDER pursuant to NCGS 130A-145(d).

Health Director: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Issued by: \_\_\_\_\_

Date: \_\_\_\_\_

I have received the original copy of this order: \_\_\_\_\_

*Patient Signature*

*Date*



## APPENDIX D

### Definitions and Statutory Authority Pertinent to Pandemic Influenza and Emergency Management

#### I. Important Definitions

##### A. Communicable Disease

Communicable Disease is defined in NCGS 130A-2(1c) as an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.” This definition is the basis for many of the communicable disease statutes that would be used to prevent the spread of disease in the event of a pandemic.

##### B. Communicable Condition

Communicable Condition is defined as the state of being infected with a communicable agent but without symptoms. This term is important because there are people who are identified as carriers of disease without suffering the effects of the disease. They often unwittingly spread disease because they show no symptoms and therefore are less likely to be identified by healthcare providers as being infected.

##### C. Departmental References

For the purposes of this section, HHS means the North Carolina Department of Health and Human Services and Secretary means the Secretary of HHS, unless otherwise stated. CHS refers to the Commission for Health Services, the rulemaking body for communicable disease control and the majority of other public health issues in North Carolina.

##### D. Nuclear, Biological, Chemical (NBC) Agents

While not likely to apply in the most probable scenarios of transmission, the consideration of the State’s powers to address a possible terrorist incident using some form of influenza as a biological agent is included in the cited statutes. Within this context, a number of the statutes governing control of communicable diseases, including those specifically addressing a response to a possible terrorist incident, refer to the use of *nuclear, biological, or chemical agents*. (See NCGS 130A-475-477; NCGS 14-288.21.) *NBC agents* is used as a shorthand term for this phrase.

#### II. Public Health Statutes

North Carolina has a strong public health system involving both state agencies and local health departments that provide the foundation for responding to a pandemic. North Carolina has a core set of statutes dealing with communicable disease control that would therefore be essential tools in identifying and responding to pandemic influenza.

##### A. Communicable Disease Control

1. NCGS 130A-134 -130A-142 – Establish requirements for physicians, laboratories, and other designated entities to report listed communicable diseases and conditions to local health departments and for local health departments to report this information to HHS. Also provides



immunity for making such reports. Gives rulemaking authority for listing communicable diseases and conditions and the form, content and timing of reports to CHS. The rules are found at 10A NCAC 41A .0100. NCGS 130A-141.1 allows the State Health Director to require temporary reporting of symptoms, trends or diseases that may indicate a danger to the public health without going through the rulemaking process first.

2. NCGS 130A-143 – Provides for strict confidentiality of communicable disease information unless one of eleven listed exceptions is met. The exceptions allow such information to be shared with other public health agencies and, under limited circumstances, with law enforcement, to prevent or control the spread of communicable diseases or conditions.
3. NCGS 130A-144 – Sets out provisions requiring the investigation and control of communicable diseases and conditions. The CHS adopts specific control measures for communicable diseases that must be followed to prevent the spread of disease. Local Health Directors are charged with enforcing control measures, and the statutes require persons to comply with control measures, including Paragraph (f), which states all persons shall comply with control measures, including submission to examinations and tests. The control measure rules are found at 10A NCAC 41A .0200. This statute also requires physicians, medical facilities and laboratories to provide public health officials access to medical or other records as part of the investigation of a known or suspected communicable disease outbreak or investigation of a known or suspected case.
4. NCGS 130A-145 – Establishes the authority of the State Health Director and of a local health director to issue isolation or quarantine orders. The isolation or quarantine order initially lasts up to 30 days, but can be extended by court order. (Isolation authority is defined in NCGS 130A-2(3a) and quarantine authority is defined in NCGS 130A-2(7a)).
5. NCGS 130A-146 – Sets out special requirements for transportation of dead bodies for persons who have died from highly communicable diseases.
6. NCGS 130A-147 – Gives the CHS authority to adopt rules for the detection, control and prevention of communicable diseases.
7. NCGS 130A-480 – Establishes a mandatory surveillance program to review electronic hospital emergency department data to detect and investigate public health threats that may be related to a terrorist incident using NBC agents or an epidemic or infectious, communicable or other disease.
8. NCGS 153A-225 – Addresses requirements for medical care of prisoners.

#### B. Remedies

1. NCGS 130A-17 – Provides the Secretary of HHS or local health director with authority to enter premises when necessary to enforce provisions of Chapter 130A or rules adopted by CHS or local board of health.
2. NCGS 130A-18 – Allows Secretary of HHS or local health director to pursue injunctive relief in superior court for violation of Chapter 130A or rules adopted by CHS or local board of health.
3. NCGS 130A-19 – Allows Secretary or local health director to issue order to abate a public health nuisance. If the person does not comply, the Secretary or health director can pursue court action to order abatement.





4. NCGS 130A-20 – Allows Secretary or local health director to order abatement of an imminent hazard or to enter property and abate the imminent hazard. “Imminent Hazard” is defined in NCGS 130A-2(3).
5. NCGS 130A-25 – Makes a violation of any of the laws in Chapter 130A or rules adopted pursuant to Chapter 130A a misdemeanor. Paragraph (b) is particularly important because it provides for specific sentencing outside of the Structured Sentencing Act for persons violating control measures (NCGS 130A-144(f)) or isolation or quarantine orders (NCGS 130A-145). Persons convicted under this section can be sentenced for up to two years in designated prisons with the ability to properly manage prisoners with communicable diseases.

C. Statutes Specifically Addressing a Response to a Possible Terrorist Incident

1. NCGS 130A- 475-479 – Sets out State Health Director’s powers if he or she reasonably suspects that a public health threat may exist and may have been caused by a terrorist incident using NBC agents.

### III. Emergency Management/Public Health Coordination

- A. NCGS 166A-5(3) b1 – Requires a special component of the Emergency Operations Plan to be prepared in coordination with the State Health Director. The plan includes specific provisions regarding public health matters, including guidelines for prophylaxis and treatment of exposed and affected persons, allocation of the National Pharmaceutical Stockpile, and appropriate conditions for quarantine and isolation to prevent further transmission of disease.
- B. NCGS 166A-6 – Provides for the Governor’s authority to make a Disaster Proclamation and sets out the Governor’s powers once a Disaster has been declared.
- C. NCGS 166A-40 -53 – Establishes the Emergency Management Assistance Compact (EMAC) in conjunction with other states to provide mutual aid and support in managing declared emergencies or disasters.



## APPENDIX E

### Endnotes

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- <sup>1</sup> For the purposes of this Bench Book, the term *pandemic emergency* is used as an umbrella term to encompass emergency conditions stemming from: (1) influenza or other communicable illness, (2) environmental disasters such as a nuclear plant fire, and (3) bioterrorism (*e.g.*, chemical weapons, anthrax spores).
  - <sup>2</sup> It is assumed that general courtroom procedures and permissible options for operating courts under pandemic conditions have already been developed and implemented via the local P-COOP manuals previously submitted by your jurisdiction and approved by the Chief Justice.
  - <sup>3</sup> There may well be a number of options to consider as to how courtroom hearings of any type may be conducted during a pandemic crisis – *e.g.*, all participants report to the courtroom; some participants report to the courtroom while other participants appear via video or telephone; all participants, including the judge, participate via a video feed; etc. Depending on the extent and effect of the pandemic crisis at a given time, a judge considering isolation/quarantine/“safekeeper” issues may have to choose an unconventional hearing site or procedure in order to minimize the participants’ risk of contracting or spreading the pandemic illness.
  - <sup>4</sup> So-called “safekeeper” statutes and administrative code provisions (statutes and code provisions addressing the medical needs of county-held inmates awaiting trial – commonly referred to as safekeepers) are addressed separately. *See* pages 11-13 of this Bench Book for guidelines and projections as to how a pandemic illness emergency might affect the legal rights of such inmates.
  - <sup>5</sup> The state’s courts are considered to be operating under pandemic emergency conditions when the Chief Justice issues a declaration to that effect, pursuant to NCGS § 7A-39.
  - <sup>6</sup> A so-called isolation order refers to disease-control methods imposed on persons (or animals) known or suspected to be infected with a communicable disease and may either: (1) limit the movement of such persons (or animals) or (2) limit the actions of such persons (or animals). *See* NCGS § 130A-2(3a).
  - <sup>7</sup> A so-called quarantine order refers to disease-control methods imposed on persons (or animals) who appear well but who have been exposed to a communicable disease. Such an order may: (1) limit the named person(s)’ (or designated animals’) movements, (2) limit their access to contaminated areas, and/or (3) limit the movement or action of unimmunized persons (or animals) during an outbreak. *See* NCGS § 130A-2(7a).
  - <sup>8</sup> Again, during a pandemic emergency, while a(n) isolation/quarantine order targeting measles or rabies may occur, it is highly unlikely that either disease will be the cause of the pandemic or even related to the pandemic beyond coincidence of time. However, the same cannot be said for tuberculosis-based orders. TB cases may well relate to the pandemic and could complicate other isolation/quarantine orders (*e.g.*, can persons with TB be ordered isolated along with flu patients or will they require a separate isolation area?).
  - <sup>9</sup> Note, however, that there are at least three related exceptions in the code that might arise for consideration during a hearing on isolation/quarantine: (1) 10A NCAC .0101(a)(29) requires that influenza deaths of persons less than 18 years of age must be reported, (2) 10A NCAC .0102(c)(1) requires food sellers to report the discovery of anthrax on or around their premises, and (3) 10A NCAC .0206(a)-(f) outlines specific infection control requirements for health care facilities.



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- <sup>10</sup> Note to Wake County judges: a person seeking review of a(n) isolation/quarantine order may apply to either the superior court where the order was issued OR in Wake County Superior Court.
- <sup>11</sup> *See* NCGS § 15A-401(b)(4); NCGS § 15A-534.5; and NCGS § 130A-475 (statutes combine to provide judicial officials with acceptable methods for determining whether the defendant poses a threat to others and, if so, where to confine such defendant).
- <sup>12</sup> Note that it is common for those in law enforcement to use the term “safekeepers” as a broad term to describe locally housed inmates who are either awaiting trial or awaiting a decision on their appeal. In sum, “safekeepers” generally refer to inmates kept in local detention facilities.
- <sup>13</sup> Some common applicable administrative code provisions include 10A NCAC 14J.0101 (2008) through 10A NCAC 14J.1755 (2008).

