



An Overview of North Carolina's Rabies Control Laws

Aimee Wall

Rabies is a viral infection that can be transmitted to humans through the bite of an infected animal, such as a raccoon, a bat, or a dog.¹ If left untreated, the disease is almost always fatal in humans.² In North Carolina, public health, animal control, and wildlife management officials work together to enforce state and local laws designed to minimize the spread of rabies and the risk of human exposure.

Like many other states, North Carolina has adopted a set of statutes and regulations governing the control of rabies. Not only do these statewide laws require the vaccination of cats, dogs, and ferrets, but they also provide a detailed framework for responding to animal bites and other potential exposures to the rabies virus. The relevant statutes can be found in Article 6, Part 6 of

This bulletin replaces *Local Government Law Bulletin* No. 109 (2007) and is being published as a supplement to Aimee Wall, *A North Carolina Guide to Animal Control Law* (Chapel Hill: UNC School of Government, 2008).

Aimee Wall is a School of Government faculty member who works in the areas of animal control law, social services law, and legislative education.

1. According to the Centers for Disease Control and Prevention (CDC), the virus can be contracted also when an infected animal's saliva or nervous system tissue come into direct contact with a person's eyes, nose, mouth, or an open wound. CDC, "How is rabies transmitted?" (Apr. 22, 2011), Rabies Homepage, CDC website, at www.cdc.gov/rabies/transmission/index.html (last accessed May 27, 2011).

2. If a person is bitten by an animal that has or may have rabies, a health care provider will most likely treat the wound and administer a series of vaccines intended to prevent rabies in humans (postexposure antirabies prophylaxis). See CDC, "Human Rabies Prevention—United States, 2008: Recommendations of the Advisory Committee on Immunization Practices," *Morbidity and Mortality Weekly Report (MMWR)* 57 (May 23, 2008): 1–26, 28, at www.cdc.gov/mmwr/preview/mmwrhtml/rr5703a1.htm (last accessed June 7, 2011). Until recently, most people believed that in the absence of prophylaxis treatment the disease would be fatal to humans. However, at least six people are known to have survived an active rabies infection, the most recent occurrence having taken place in Wisconsin in 2004. Rodney E. Willoughby Jr., Kelly S. Tieves, George M. Hoffman, Nancy S. Ghanayem, Catherine M. Amlie-Lefond, Michael J. Schwabe, Michael J. Chusid, and Charles E. Rupprecht, "Survival after Treatment of Rabies with Induction of Coma" (Brief Report), *New England Journal of Medicine* 352 (2005): 2508–14; CDC, "Recovery of a Patient from Clinical Rabies—Wisconsin, 2004," *MMWR* 53 (Dec. 24, 2004): 1171–73, at www.cdc.gov/mmwr/preview/mmwrhtml/mm5350a1.htm (last accessed May 27, 2011).

Chapter 130A, the public health chapter of the General Statutes (hereinafter G.S.).³ In 2009, the North Carolina General Assembly made several significant changes to the state’s rabies control laws.

This bulletin provides a brief summary of the history of those rabies control laws; presents an overview of their major components, including the recent changes; and highlights areas where local government ordinances and board of health rules also play a role.⁴

“Mad” Dogs

The earliest rabies control laws in North Carolina governed the killing of “mad” dogs.⁵ Any dog that exhibited symptoms of rabies infection—agitation, loss of appetite, and unusually aggressive behavior—could be considered a “mad” dog.⁶

North Carolina has two mad dog laws. The first provides that an owner who knows, or has “good reason to believe,” that his or her dog has been bitten by a mad dog must immediately kill the dog. Failure to do so can result in both civil and criminal penalties.⁷ The second law

3. The N.C. Commission for Public Health has also adopted a few regulations governing rabies control. *See, e.g.*, N.C. ADMIN. CODE (hereinafter N.C.A.C.) tit. 10A, ch. 41G, §§ .0101–.0103 (addressing rabies vaccinations).

4. Cities and counties have broad authority to adopt ordinances designed to protect the health, safety, and welfare of their citizens. *See* G.S. 153A-121 (counties) and G.S. 160A-186 (municipalities). This authority (or police power) clearly allows local governments to adopt rabies control ordinances that supplement state laws. Boards of health also have authority to adopt local rules in this area. *See* G.S. 130A-39(a) (authorizing boards of health to adopt rules “necessary to protect and promote the public health”). Unlike county ordinances, boards of health rules apply to all municipalities within a board’s jurisdiction. G.S. 130A-39(c). Over the past decade, however, the courts have significantly limited the scope of board of health rule-making authority. *See infra* notes 94–96 and related text.

5. The laws date back to the early nineteenth century and have changed very little over time. In 1817, the law read as follows:

Whereas that most dreadful of all maladies, Hydrophobia, has become much more common than formerly by reason of the negligence of the owners of dogs: For remedy whereof.

1. Be it enacted[]. That whenever the owner of any dog shall know, or have good reason to believe, that his or her dog, or any dog belonging to his or her slave, or other person in his or her employment, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he or she so refusing or neglecting, shall pay the sum of twenty-five pounds . . .
2. And be it further enacted, That he or she so refusing or neglecting as aforesaid, shall be further liable to pay all damages which may be sustained by any person or persons whatsoever, by the bite of any dog belonging as aforesaid.

A.D. 1817, c. 945.

The fine became fifty dollars in 1837, and the criminal penalty appears to have been added in 1883. R.S. 1837, c. 70 (fine); Code 1883, s. 2499 (misdemeanor).

6. *See, e.g.*, *Buck v. Brady*, 73 A. 277, 278–79 (Md. Ct. App. 1909) (describing the symptoms of a rabid dog).

7. G.S. 67-4. The law provides that if the dog that was bitten by a mad dog (victim 1) subsequently bites a person or animal (victim 2) and the owner of victim 1 is sued civilly, the owner of victim 1 must pay

authorizes any person to kill any mad dog.⁸ These two laws predate the modern statutory scheme designed to control rabies and therefore may have been superseded.

Vaccination Requirements

Vaccination of pets is the cornerstone requirement of modern rabies control. Under state law, every owner of a dog, cat, or ferret over four months of age is required to have the animal vaccinated against rabies.⁹ State regulations authorize the use of any vaccine licensed by the federal government¹⁰ and outline the requirements for the timing of vaccinations, with some being required on an annual basis and others allowed every three years.¹¹

While most pet owners take their animals to private veterinarians for rabies vaccinations, local health departments are required to organize (or assist other county departments in organizing) at least one countywide public vaccination clinic per year.¹² Boards of county commissioners set the clinic vaccination fee—which is limited by statute to the actual cost of the vaccine, the certificate, and the collar tag plus an administrative fee of up to ten dollars per vaccination. Often the county coordinates these public clinics with the assistance and support of private veterinarians in the community. For example, the county may organize and advertise the clinic while veterinarians participate at public locations or in their own offices.

Vaccinations may be administered by a licensed veterinarian, a registered veterinary technician (under the supervision of a licensed veterinarian), or a certified rabies vaccinator. Individuals wishing to become certified rabies vaccinators must (1) be appointed as such by the local health director, (2) receive at least four hours of training from the state public health veterinarian, and (3) receive written certification from the state public health veterinarian indicating that they are able to administer vaccines.¹³ Local health directors are required to appoint vaccinators if a licensed veterinarian is not available to participate in the county vaccination clinic. If a veterinarian is available, the health director has the option of appointing one or more vaccinators for the county. Appointed vaccinators must make themselves available to participate in the county clinics. The local health director has the option of terminating a vaccinator's appointment at any time.¹⁴

The person who administers a vaccination must give the animal's owner a copy of a vaccination certificate and a rabies tag.¹⁵ At a minimum, the tags must include the year issued, a

victim 2 (or if victim 2 is an animal, its owner) fifty dollars as well as any damages. Victim 1's owner will also be guilty of a Class 3 misdemeanor. *Id.*

8. G.S. 67-14. The statute also allows the killing of any dog that is killing sheep, cattle, hogs, or poultry. This statute can be traced as far back as 1919. Code, c. 31, art. 3, s. 1682 (1920).

9. While state law does not currently require other types of animals to be vaccinated, a local government could adopt such a requirement. For example, Buncombe County authorizes the local board of health or health director to order the vaccination of other domestic animals in the event of a rabies outbreak or epidemic. BUNCOMBE COUNTY, N.C., CODE OF ORDINANCES § 6-56(a)(1).

10. 10A N.C.A.C. 41G .0103 (approved rabies vaccine).

11. 10A N.C.A.C. 41G .0101 (timing of rabies vaccination).

12. G.S. 130A-187.

13. G.S. 130A-185; G.S. 130A-186.

14. G.S. 130A-186.

15. G.S. 130A-189; G.S. 130A-190.

vaccination number, the words “rabies vaccine” and either “North Carolina” or “N.C.”¹⁶ The state Division of Public Health sells tags, links, and rivets, as do private companies, but a portion of the fee charged by the state (15¢ per tag) is used to support rabies education and prevention programs.¹⁷ The division also maintains a public list of those who have purchased tags from it, which can aid in the process of reuniting lost animals with their owners.¹⁸

Dogs are required to wear their tags at all times, but local governments may exempt cats and ferrets from the requirement.¹⁹ Cabarrus County, for example, exempts cats from the tag requirement but requires their owners to maintain the certificate as evidence of vaccination.²⁰ Guilford County does not exempt cats but allows them to wear an ear tag in lieu of the traditional collar tag.²¹

Some local governments have adopted ordinances or board of health rules that supplement the tag requirements in various ways. For example, the local law may prohibit the use of a rabies tag for any animal other than the one that received the vaccination.²² Local ordinances or rules should not, however, establish requirements that are less stringent or rigorous than those in the state law.²³

People who bring a dog, cat, or ferret to North Carolina from another state or country are required to either have a certificate from a licensed veterinarian or comply with additional vaccination and confinement requirements.²⁴ The veterinarian’s certificate must demonstrate that the animal

- is apparently free from rabies,
- has not been exposed to rabies, and
- is currently vaccinated against rabies.

In the absence of such a certificate, the animal must be securely confined upon entry into the state, vaccinated within one week, and then confined for a further two weeks after vaccination. This law does not apply to animals brought into the state for exhibition purposes as long as they are confined and not permitted to run at-large.

16. G.S. 130A-190.

17. G.S. 130A-190(b).

18. See “Rabies Tag Lists,” N.C. Department of Health and Human Services, Division of Public Health, website at www.epi.state.nc.us/epi/rabies/control.html (last accessed Sept. 9, 2011).

19. G.S. 130A-190.

20. CABARRUS COUNTY, N.C., CODE OF ORDINANCES § 10-99.

21. GUILFORD COUNTY, N.C., CODE OF ORDINANCES § 5-32(c).

22. See, e.g., CUMBERLAND COUNTY, N.C., CODE OF ORDINANCES § 3-14.

23. For example, an earlier version of Hyde County’s animal control ordinance required that dogs and cats “running at large” wear a rabies tag, which could erroneously lead members of the public to believe that the tags are not required for dogs kept at home or not otherwise “at-large.” The ordinance has since been amended to conform to state law. HYDE COUNTY, N.C., CODE OF ORDINANCES § 4-5. See also CLEVELAND COUNTY, N.C., CODE OF ORDINANCES § 3-31(2) (exempts dogs from the tag requirement when they are participating in an organized hunting activity as long as the owner is in possession of the tag during the activity).

24. G.S. 130A-193. See also “Import/Export Requirements for Domestic Dogs, Cats and Ferrets,” N.C. Department of Health and Human Services, Division of Public Health, website at www.epi.state.nc.us/epi/vet/importexport.html (last accessed Sept. 13, 2011).

Before transporting animals from North Carolina to another state, it is important to research the applicable law of the destination state.²⁵ Some states are implementing relatively rigorous restrictions to curtail importation of animals with diseases other than rabies. In Connecticut, for example, any person or organization that imports an animal for sale, adoption, or transfer must register with the state and present the animal to a veterinarian for examination within forty-eight hours of arrival and every ninety days thereafter until the animal is sold, adopted, or transferred.²⁶

Exposure and Potential Exposure

To minimize health risks to humans, North Carolina law creates a framework for handling situations in which a person is exposed or potentially exposed to rabies. The components include mandatory reporting, confinement of animals, and, in some cases, destruction of animals. The responsibilities of public health and animal control officials vary depending on the situation and the level of health risk, as outlined below.

If a physician treats a person for an animal bite, the physician has a duty to notify the local health director within twenty-four hours. The report must include the bite victim's name, age, and sex.²⁷ The statute provides that the physician's duty to report is triggered if the bite is by "an animal known to be a potential carrier of rabies," which the Division of Public Health interprets to include any mammal.²⁸

If a dog, cat, or ferret bites a person, the victim and the animal's owner (or person possessing or in control of the animal) are both required to notify the local health director immediately.²⁹ The report must include the names and addresses of the victim and the animal's owner. Note that this law applies to all dogs, cats, and ferrets that bite someone—not just those suspected of having rabies.

After any bite, the offending animal must be confined. If the animal is stray or feral, animal control officials must confine the animal for up to seventy-two hours while they try to locate the owner (or ninety-six hours if the bite occurred on a weekend or state holiday). If animal control officials are unable to locate the owner, the local health director may allow the animal to be euthanized. The animal's head would then be removed so that it could be sent to a lab to determine whether the rabies virus was present at the time of the bite.³⁰

Animals that are not stray or feral must be confined for ten days, regardless of vaccination status. This ten-day period is important because it allows health officials to determine whether the animal was capable of transmitting rabies to the bite victim. An animal that is infected with the rabies virus will appear healthy during an incubation period that can range from a few weeks

25. See U.S. Department of Agriculture, Animal and Plant Health Inspection Service, "Import and Export: U.S. State and Territory Animal Import Regulations," at www.aphis.usda.gov/import_export/animals/animal_import/animal_imports_states.shtml (last accessed Sept. 13, 2011).

26. CONN. GEN. STAT. § 22-344 (as amended by Substitute House Bill 5368, effective Oct. 1, 2011).

27. G.S. 130A-196.

28. E-mail communication from Dr. Carl Williams, Sept. 26, 2011 (on file with author).

29. *Id.* If the victim is a minor or is incapacitated, the victim's parent, guardian, or other caregiver may make the report on the victim's behalf.

30. G.S. 130A-196(a).

up to six months.³¹ After the incubation period, the disease will have traveled into the animal's brain, and the animal will begin to shed the virus in its saliva. Once this begins to happen, the animal will quickly become ill and die within ten days. It is during this short window of time that an infected animal will be able to pass the virus on to another animal or human through a bite.³² Therefore, the law is designed to allow monitoring of biting animals to determine whether they are in this critical ten-day window. If, during the confinement, the animal exhibits symptoms of rabies, local health officials will take immediate action to destroy the animal and ensure that the bite victim receives appropriate treatment to prevent onset of the disease.

The local health director is responsible for designating the place of confinement, which could be a veterinarian's office, a public or private animal shelter, or even the owner's property. Some health directors are comfortable allowing an owner to confine the animal on his or her own property under some circumstances, but many are not. State law leaves this decision entirely up to the health director.³³ Regardless of where the animal is confined, the owner is responsible for any costs related to the confinement.

An owner who fails to confine the animal as required by the health director will be guilty of a Class 2 misdemeanor.³⁴ For example, in 2011, the Chatham County health director charged a dog owner with a misdemeanor and began the process of issuing a seizure order after the owner removed his dog from the veterinary office where it had been confined.³⁵

*If an unvaccinated dog, cat, or ferret is exposed to rabies, it may have to be destroyed or quarantined.*³⁶ An animal is considered to have been "exposed" to rabies if the health director reasonably suspects that the dog, cat, or ferret was exposed to the saliva or nervous tissue of (1) an animal proven to be rabid or (2) an animal reasonably suspected of having rabies but not available for laboratory diagnosis.

Note that this law allows the local health director significant discretion in deciding whether an animal has been exposed. According to Dr. Carl Williams, the state public health veterinarian, a dog, cat, or ferret usually will be considered to have been exposed to rabies if it

- is bitten by an animal that can be reasonably assumed to have rabies or
- bites an animal that can be reasonably assumed to have rabies.

The animal would also be considered to be exposed if its mucous membranes (eyes, nose, or mouth) came into contact with the saliva or nervous tissue of an animal reasonably suspected of

31. See CDC, "The Path of the Virus" (Apr. 22, 2011), at www.cdc.gov/rabies/transmission/body.html (last accessed Sept. 13, 2011) ("The reason there is so much variation in the time between exposure and the onset of the disease is that many factors come into play including the site of the exposure, the type of rabies virus and any immunity in the animal or person exposed.").

32. *Id.* See also National Association of State Public Health Veterinarians, Inc., "Management of Animals That Bite Humans," section I.B.6 of the *Compendium of Animal Rabies Prevention and Control, 2011* (May 31, 2011), at www.nasphv.org/Documents/RabiesCompendium.pdf (last accessed Sept. 13, 2011).

33. The health director also has the authority to allow "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." G.S. 130A-196.

34. *Id.*

35. See Dan E. Way, "Suspect frees his dog from quarantine, faces charges," *Herald-Sun*, Feb. 2, 2011, at www.heraldsun.com/bookmark/11236086-Suspect-frees-his-dog-from-quarantine-faces-charges (last accessed Sept. 13, 2011).

36. G.S. 130A-197.

having rabies. If, however, the source animal can be tested for rabies and the results are negative, no exposure would have occurred.³⁷

If the health director concludes that the dog, cat, or ferret has been exposed, there are three possible outcomes:

- *Vaccination.* Nothing will happen to the dog, cat, or ferret if it (1) was vaccinated as required by state law more than twenty-eight days prior to being exposed and (2) is given a booster dose of rabies vaccine within five days of the exposure.³⁸
- *Quarantine.* If the dog, cat, or ferret is not currently vaccinated against rabies, it may be quarantined at a facility approved by the local health director.³⁹ The health director must establish the duration of the quarantine (up to six months) and the conditions for the quarantine.
- *Destruction.* If the exposed dog, cat, or ferret does not meet the vaccination requirements and is not quarantined, it must be humanely destroyed by the owner, an animal control officer, or a peace officer.⁴⁰

It is worth noting that, unlike the statute related to confinement of biting animals, this statute does not specifically authorize the health director to allow the animal to be confined on the owner's property. In addition, the quarantine statute refers to a "facility" rather than a "place" designated by the local health director. Based on this word choice and the omission of a direct reference to home quarantine, one could infer that the health director is not authorized to allow the animal to be quarantined on the owner's property for this six-month period. This interpretation would be consistent with a recommendation from the National Association of State Public Health Veterinarians (NASPHV) that exposed, unvaccinated animals "be placed in strict isolation for 6 months," which means "confinement in an enclosure that precludes direct contact with people and other animals."⁴¹

If any animal is suspected of having rabies, the owner or person in possession of the animal must immediately notify the local health director or animal control officer.⁴² For example, a

37. E-mail communication from Dr. Carl Williams, Feb. 20, 2007 (on file with author); see also CDC, "Human Rabies Prevention—United States, 2008," *supra* note 2 (describing types of exposure and criteria for determining when an exposure may have occurred).

38. A state regulation specifies the timetable for required rabies vaccinations. 10A N.C.A.C. 41G .0101. The full text of these rules is included in the appendix to this bulletin. The rules are in the process of being amended to incorporate some of the changes made to the rabies law by the General Assembly.

39. North Carolina law is consistent with policy recommendations from both the National Association of State Public Health Veterinarians (NASPHV) and the Centers for Disease Control (CDC). See NASPHV, "Postexposure Management," section I.B.5 of the *Compendium of Animal Rabies Prevention and Control, 2011* (May 31, 2011), at www.nasphv.org/Documents/RabiesCompendium.pdf (last accessed Sept. 13, 2011); CDC, "Caring for client animals with potential exposure," Rabies Homepage, CDC website, at www.cdc.gov/rabies/specific_groups/veterinarians/potential_exposure.html (last accessed Sept. 13, 2011).

40. While the state's rabies laws do not state that the animal must be killed in a humane manner, they should be read in conjunction with the state's animal cruelty laws, which authorize the lawful destruction of animals to protect the public health but also seek to minimize their "unjustifiable" pain or suffering. See G.S. 14-360 (establishing the criminal penalties for cruelty). An animal owner could presumably take the animal to a veterinarian or to a shelter to have it euthanized in a humane manner.

41. NASPHV, "Postexposure Management," *supra* note 39.

42. G.S. 130A-198. While the law specifies that the notification go to the county animal control officer, notifying a municipal animal control official should suffice also.

person might suspect that his or her dog has rabies because the dog is behaving erratically or exhibiting other symptoms. The health director must then designate a place for the animal to be securely confined for a period of ten days. If the animal dies during that period, its head must be sent to the state's public health laboratory for testing.

In lieu of confinement, the state public health veterinarian may require destruction of any animal suspected of having rabies.⁴³ Given the limited resources available for testing specimens, the state public health veterinarian has provided local governments with formal and informal guidance regarding the types of animals that should be destroyed and tested.⁴⁴

If an animal is diagnosed by a veterinarian as having rabies, it must be destroyed, and its head must be sent to the state's public health laboratory. Local governments, primarily counties, are responsible for shipping heads to the state.

Enforcement of Vaccination Requirements

Local governments are expected to enforce the statewide rabies laws, but local administrative and operations structures for animal control vary tremendously, and responsibility is often shared between municipalities and counties. In counties, animal control functions may be housed in the health department, the sheriff's office, or a freestanding department. In cities, animal control is often under the police department, but it may also be a separate department.

The typical local government has one or more animal control officers or law enforcement officials who impound stray animals without rabies tags, respond to bite reports, and handle other enforcement matters.⁴⁵ If someone is bitten or otherwise potentially exposed to rabies, the local health department often assumes primary responsibility for the communicable disease investigation and response. Some health departments, however, choose to delegate this authority, in whole or in part, to animal control officials. Although the rabies statutes impose many duties on the local health director, that official is allowed to delegate authority to others.⁴⁶ Some handle the delegation authority informally while others have a written agreement in place outlining the responsibilities of each agency or department.

43. Previously, the confinement requirements in G.S. 130A-198 distinguished between "dogs and cats" and "other animals." The ten-day confinement was required for dogs and cats while the state public health veterinarian had the authority to order destruction of "other animals" (such as raccoons). When the statute was amended in 2009, the law deleted the words "dog and cat" and inserted the more general term "animal." S.L. 2009-327, s. 13. As a result, this section of the law is somewhat ambiguous because it both *requires* ten-day confinement of animals and *allows* the state public health veterinarian to order destruction of "other animals."

44. At times, the state public health veterinarian provides guidance via e-mail. For example, in September 2011 Dr. Marilyn Haskell with the Division of Public Health transmitted to an animal control listserv an e-mail regarding the packaging of rabies specimens (on file with author).

45. Historically, counties employed "dog wardens" who were responsible, at least in part, for rabies control. G.S. 67-31. The dog warden law is still in effect but does not appear to be an integral part of the current animal control system in North Carolina.

46. G.S. 130A-6 ("Whenever authority is granted by this Chapter upon a public official, the authority may be delegated to another person authorized by the public official.").

State law requires local government animal control officers to canvass their jurisdictions to find animals not wearing rabies tags.⁴⁷ The term “canvass” suggests that officers have a duty to proactively tour the jurisdiction seeking out animals in violation of the law.⁴⁸ In practice, however, an animal control officer probably spends more time responding to complaints within the jurisdiction than actually canvassing it.

An officer who finds a dog, cat, or ferret without a tag has the authority to take action, which may include impounding the animal (unless a local ordinance exempts the cats or ferrets from the tag requirement). If the officer knows who owns the animal, the officer is required to notify the owner in writing about the vaccination requirements. The owner must produce a copy of the animal's current vaccination certificate “within three days of the notification.”⁴⁹ An owner who fails to do so can be charged with a Class 1 misdemeanor.⁵⁰ In lieu of criminal prosecution, a local government could consider seeking an injunction.⁵¹

Impoundment of Animals

If the officer does not know who owns the animal, he or she has the authority to impound it. Note that the officer is not *required* to impound the animal; state law authorizes local governments to seize the animal but does not require them to impound all dogs, cats, and ferrets found without rabies tags. An officer who does seize an animal is required to make a reasonable effort to locate the animal's owner.⁵² In 2009, the law was amended to expressly allow, but not require, animal control officials to use microchip scanning devices for this purpose.⁵³ Many officials were already performing such scans, but it is possible that the inclusion of this permissive language will encourage more officials to use the technology.

Minimum Holding Period

Once an animal is impounded, the local government is required to hold the animal for a time period established by the board of county commissioners. The state law requires a minimum holding period of seventy-two hours, but many cities and counties hold animals for longer periods. For example, Durham County holds most animals for a minimum of five days but holds feral cats for seventy-two hours.⁵⁴ Under federal law, a shelter owned, operated, or under

47. G.S. 130A-192.

48. The dictionary definition of canvass includes going through a region to solicit votes, orders, or opinions and also conducting a thorough investigation. See “canvass,” *Collins English Dictionary—Complete & Unabridged*, 10th ed., at Dictionary.com, www.dictionary.reference.com/browse/canvass (last accessed Sept. 13, 2011).

49. G.S. 130A-192.

50. G.S. 130A-25.

51. G.S. 130A-18.

52. G.S. 130A-192.

53. *Id.* See S.L. 2009-304, s. 1 (amending G.S. 130A-192).

54. DURHAM COUNTY, N.C., CODE OF ORDINANCES §§ 4-221, 4-222. The Durham County ordinance further provides that if the animal is not redeemed “within 24 hours following the last day of the ten-day confinement period,” the animal becomes the property of the county. *Id.* at § 4-40(b).

contract to a local government must hold an impounded dog or cat for at least five days before it can sell it to a dealer.⁵⁵

Previously, the minimum holding period in state law applied only to animals impounded as a result of violations of the rabies law. In 2009, the law was amended to expand the reach of the requirement. It now applies to dogs and cats that have a rabies tag but are impounded for violations of other laws, such as a local leash or nuisance ordinance.⁵⁶ In addition, the minimum holding period applies to dogs and cats that are surrendered to a shelter unless the person surrendering the animal provides some proof of ownership of the animal and consents to dispose of the animal before the expiration of the state or local minimum holding period.⁵⁷ The law is silent as to what constitutes “proof of ownership,” but some shelters rely on such evidence as vaccination certificates, veterinary bills, photographs, and adoption paperwork.

During the holding period, the shelter must have a system in place to share information with the public about the animals being held. If a person comes to the shelter in search of a lost pet, the person must be allowed to view every animal held during specified viewing periods of at least four hours a day, three days a week.⁵⁸ Note that for shelters that are not open on weekends or other days, this requirement automatically extends the minimum seventy-two hour holding period as long as necessary to satisfy the viewing requirement. The shelter may choose to keep some impounded animals from public view for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings. If it chooses to do so, the shelter must have a system in place that allows pet owners to determine whether their animals are among those being shielded from public view. For example, a shelter could post photographs of shielded animals on a bulletin board at the facility or post photographs or videos online.

The law also allows shelters to place an impounded animal in foster care or to transfer it to an agent during the minimum holding period.⁵⁹ The term “foster care” is not defined in the law, but it is already common for shelters to have formal and informal agreements with animal rescue groups, fostering organizations, or individuals to place animals in private homes on a temporary basis at the end of the minimum holding period. The concept of transferring an animal to an agent is a new addition to the law and is discussed in more detail below. These provisions in the law serve to reassure shelters that they may lawfully place the animals in alternative care loca-

55. 7 U.S.C. § 2158(a). Under the federal law, a “dealer” is defined as

any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except . . .

- (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or
- (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat and who derives no more than \$500 gross income from the sale of other animals during any calendar year.

7 U.S.C. § 2132(f).

56. G.S. 130A-192(b)(1). Note that this subsection addresses impoundment of dogs and cats but not ferrets.

57. G.S. 130A-192(b)(2).

58. G.S. 130A-192(a2).

59. G.S. 130A-192(d).

tions before the expiration of the period. The law also states that if a shelter transfers an animal to an agent or to foster care during the holding period, the shelter must post a photograph of the animal for the duration of the period.⁶⁰

Caring for Impounded Animals

Caring for animals during the minimum holding period can present some operational challenges for shelters. One question that often comes up is the extent to which the shelter must provide veterinary care to an animal during the holding period. There is nothing in the law that expressly requires a shelter to provide particular types of care to animals, but there is a regulation that requires shelters to have in place a written program of veterinary care.⁶¹ One national organization, the Association of Shelter Veterinarians, recommends that shelters provide “adequate treatment and analgesia” for animals with painful injuries or debilitating medical conditions.⁶² In some situations, care is critically important to preventing the spread of disease among animals in the shelter.

In addition, the state’s animal cruelty laws could come into play. In some states, animal cruelty laws specifically address the failure to provide emergency veterinary care.⁶³ In North Carolina, animal cruelty laws are framed in more general terms. It is a crime to intentionally torment an animal, and the term “torment” refers to “any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death.”⁶⁴ One could argue that a failure to provide care such as pain relief or sedation to an animal that is injured or suffering constitutes torment. It is more difficult to argue that the shelter has a duty to provide more extensive veterinary care during the impoundment period as long as the pain relief or sedation would be sufficient to alleviate the animal’s suffering. New York’s cruelty statute is similar to North Carolina’s in that it does not expressly require provision of veterinary or emergency veterinary care but, rather, addresses situations in which an animal may be in unjustifiable pain.⁶⁵ Several cases have worked their way through the New York courts, and, as a result, it appears that the current position is that the state’s cruelty law may be used to prosecute people for failing to provide veterinary care in some circumstances.⁶⁶ This same issue arises also in the context of the shelter’s duty to make unclaimed animals available for adoption (see discussion below).

60. G.S. 130A-192(e). The photograph must (1) depict the head and face of the animal, (2) be displayed in a conspicuous location that is open to the public during hours of operation, and (3) remain posted for the full minimum holding period.

61. 02 N.C.A.C. 52J .0210.

62. Association of Shelter Veterinarians, Position Statement on Medical Treatment of Shelter Animals, www.sheltervet.org/associations/4853/files/Medical%20Treatment%20of%20Shelter%20Animals.pdf.

63. See, e.g., MD. CODE ANN., CRIM. LAW § 10-604(a)(5) (West 2006) (requiring a person with custody of an animal to provide it with necessary veterinary care); MICH. COMP. LAWS ANN. §§ 750.50(1)(a), (2) (a) (West 2004 & Supp. 2009) (requiring that animals receive “veterinary medical attention in order to maintain an animal in a state of good health”); VA. CODE ANN. § 3.2-6570 (West 2008) (making it a crime to deprive an animal of emergency veterinary treatment); see also Susan J. Hankin, *What Is the Scope of the Duty to Provide Veterinary Care?* 43 Md. B. J. 18 (2010). *People v. Arroyo*, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004).

64. G.S. 14-360(a) & (c).

65. N.Y. AGRIC. & MKTS. LAW §§ 353, 353-a (Consol. 2011).

66. Compare *People v. Arroyo*, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004) with *People v. Curcio*, 874 N.Y.S.2d 723 (N.Y. Crim. Ct. 2008) (reaching different conclusions as to whether the cruelty law included a duty to provide veterinary care).

It is not clear from the law or guidance documents, however, if or when it would be appropriate to euthanize an animal that is seriously ill or injured before the expiration of the minimum holding period. There is language in the section of the law governing adoption that allows shelter operators to euthanize animals that are unadoptable due to injury or defects in health or temperament, but this section goes on further to state that it does not “supercede” applicable minimum holding periods (state or local).⁶⁷ Taken together, these provisions could be interpreted to mean that shelters should never euthanize sick or injured animals prior to the expiration of the holding period. Given that some animals impounded by shelters are so severely injured, such an interpretation would probably be contrary to current practices. It is difficult to read all of these provisions in harmony and to understand exactly the responsibilities of shelter operators and animal control officials.

Disposition of Unclaimed Animals

Animals not claimed by their owners during the holding period may be adopted out by the shelter, transferred to a finder or rescue organization as an agent of the shelter, euthanized, or sold to certain research institutions and others registered with the federal government.⁶⁸ Limitations applicable to each type of disposition are discussed in more detail below.

Adoption

If the owner of an impounded animal does not claim it within the established time period, the shelter must, subject to a limited exception, make the animal available for adoption. This is a relatively new requirement in the rabies law. It was added in 2009, and at the time several shelters across the state did not have adoption programs in place. The new section in the law also requires the shelter to have procedures in place to allow members of the public to inspect the animals available for adoption.

A shelter is not required to make the animal available for adoption if the shelter operator determines that the animal is “unadoptable due to injury or defects of health or temperament.” The law does not define terms associated with this exception. Before this language was added, many shelters had formal or informal systems or criteria for identifying which animals were considered adoptable, but the addition of this new language imposes a limitation—it provides

67. G.S. 130A-192(a1).

68. State law provides that unclaimed animals may be “sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended.” G.S. 130A-192. The Federal Animal Welfare Act (AWA) provides for licensure of dealers and exhibitors and for registration of any research facility, handler, carrier, or exhibitor that is not required to have a license. 7 U.S.C. § 2133 (licenses); 7 U.S.C. § 2136 (registration). Given that the state law refers only to institutions registered pursuant to the AWA, it would be reasonable to interpret the North Carolina law as limiting the sale to research facilities and to any institutions that are considered handlers, carriers, or exhibitors. The term “research facility” is defined as

any school (except an elementary or secondary school), institution, or organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments.

7 U.S.C. § 2132(e). The secretary of the U.S. Department of Agriculture has the authority to exempt certain persons or entities from the registration requirement in some circumstances.

that animals are considered unadoptable only if they have injuries or defects of health or temperament. A shelter may not, for example, conclude that an animal is unadoptable simply because it is a certain age or breed. Rather, the determination would need to be tied back to the individual animal's health or temperament.

With respect to defects in health, if a shelter decides to euthanize an animal that is "seriously ill or injured" rather than make it available for adoption, the manager of the shelter must put that determination in writing. This requirement does not apply to determinations based on defects in temperament, but it would be reasonable for shelters to implement a documentation policy that applies across the board to all such decisions.

For animals that are sick or injured, shelters face the same issue discussed above about the appropriate amount of veterinary care to provide. While the law allows sick or injured animals to be euthanized rather than be made available for adoption, the shelter operator may feel a duty to provide some level of veterinary care if that care will enable an unadoptable animal to become adoptable. There is nothing in the law that suggests such a duty exists.

Transfer to an Agent

The law now includes a somewhat unusual provision that allows a person or an approved rescue organization to be appointed as the agent of the shelter. The term "agent" is not defined in the law,⁶⁹ but in this context it is clearly referring to a limited transfer of authority from the shelter to another person or rescue organization. In short, the shelter is authorizing the agent to hold the animal for the minimum holding period.⁷⁰

This option is available in two circumstances:

1. if a person finds an unidentified animal and delivers it to the shelter or
2. a person finds an unidentified animal, delivers it to a rescue organization, and the rescue organization delivers it to the shelter.

In these two situations, the shelter may appoint either the person (i.e., the finder) or the rescue organization as the agent of the shelter. The shelter must make the appointment in writing.⁷¹ In order for a rescue organization to serve as an agent, it must be a nonprofit that cares for stray animals. In addition, the shelter must use written standards to assess the organization and conclude that it is an approved rescue organization.⁷² The law does not specify what standards the shelters must apply when assessing an organization, but presumably the standards would relate to the organization's ability to care for the animal safely and adequately.

During the holding period, the shelter must post a photograph of the animal's head and face "in a conspicuous location that is available to the general public during hours of operation."⁷³ At the end of the holding period, the shelter may choose to have the animal returned to the shelter, allow the agent to continue holding the animal, or allow the agent to adopt the animal.

69. The leading dictionary definition of agent is "a person or business authorized to act on another's behalf." See "agent," *Dictionary.com Unabridged* (based on the *Random House Dictionary* [2011]), at Dictionary.com, www.dictionary.reference.com/browse/agent (accessed Sept. 14, 2011).

70. G.S. 130A-192(c)(1).

71. G.S. 130A-192(c).

72. An "approved rescue organization" is defined as "a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards." G.S. 130A-192(c).

73. G.S. 130A-192(e).

A shelter that enters into one of these agency relationships is not required to pay the agent for the care of the animal.⁷⁴ The law also provides that the shelter is not liable to the owner of the animal if the animal is harmed while in the care of the agent.⁷⁵ The shelter could, however, enter into a contractual relationship with an agent that shifts some of this responsibility from the agent to the shelter, but it is not required to do so.

Foster Care

Many shelters across the state work with individuals and organizations that agree to host one or more animals temporarily in a private home or group setting. These foster care placements can provide some relief to overcrowded shelters and reduce the number of animals that need to be euthanized.⁷⁶ When the law was amended in 2009 to add the “agency” relationship described above, the legislature added another section expressly allowing shelters to place animals in foster care.⁷⁷ This section of the law is remarkably short. It does not define the term “foster care,” specify any terms or limits on the fostering relationship, or offer insight as to the differences between an “agency” relationship and a foster care relationship. The law does require the shelter to post a photo of the animal, as it does for animals held by agents, but does not provide any other guidance about these relationships.

Euthanasia

If an animal is to be euthanized, the rabies law provides that shelters may employ any method approved by the American Veterinary Medical Association (AVMA), the Humane Society of the United States (HSUS), or the American Humane Association (AHA).⁷⁸ The methods approved by these three organizations vary. Most local government animal shelters in North Carolina typically use one of two methods: (1) injection of sodium pentobarbital or (2) inhalation of carbon monoxide gas. Both methods are acceptable under state law.⁷⁹

74. G.S. 130A-192(c)(4).

75. *Id.*

76. See Katie O'Connor Sirakos, “Euthanasia in North Carolina Companion Animal Shelters: Interviews with Decreased-Rate Facilities and Comparative Analysis,” MPA thesis, UNC School of Government, available at www.sog.unc.edu/node/255 (last accessed Sept. 14, 2011) (listed under the heading “Other Resources”).

77. G.S. 130A-192.

78. The complete policy statements for all three organizations are available on the Internet. See AHA Animal Protection Position Statement on Euthanasia (2009) at www.americanhumane.org/assets/pdfs/animals/au-animal-welfare-position-statements.pdf (last accessed Sept. 14, 2011); HSUS Statement on Euthanasia Methods for Animals in Shelters (hereinafter HSUS Statement) (Mar. 31, 2009) at www.animalsheltering.org/resource_library/policies_and_guidelines/statement_on_euthanasia.html (last accessed June 21, 2011); AVMA Guidelines on Euthanasia (formerly Report of the AVMA Panel on Euthanasia) (June 2007) at www.avma.org/issues/animal_welfare/euthanasia.pdf (last accessed Sept. 14, 2011) (hereinafter AVMA Guidelines). See also Douglas K. Fakkema, *American Humane Association Operational Guide for Animal Care and Control Agencies: Euthanasia by Injection 1* (2010), at www.americanhumane.org/assets/pdfs/animals/operational-guides/op-guide-euthanasia.pdf (last accessed Sept. 14, 2011) (restating the AHA position that the euthanasia by injection is the only approved method and offering operational guidance for performing euthanasia by injection).

79. At one point, the board of agriculture considered draft regulations that would have eventually prohibited the use of carbon monoxide gas as a form of euthanasia. In the final regulations, the board authorizes the use of gas but establishes strict guidelines governing its use. 02 N.C.A.C. 52J .0601 to .0609.

If a shelter elects to euthanize animals by injection, it must follow the detailed guidelines of at least one of the national animal welfare organizations cited above. In addition, a state regulation provides that intracardiac injection may be used only on animals that have been anesthetized or heavily sedated.⁸⁰

If a shelter elects to euthanize animals using carbon monoxide gas, it must follow the detailed guidance available from either the AVMA or the HSUS. In addition, the shelter must comply with detailed state regulations governing its equipment, facilities, and practices.⁸¹ Failure to comply with these regulations can result in the imposition of a civil monetary fine as well as a suspension or revocation of the shelter's license. For example, in 2011 the Animal Welfare Division of the North Carolina Department of Agriculture and Consumer Services cited Robeson County's shelter for violations of the shelter standards governing euthanasia. Ultimately, the department and the county entered into a consent agreement.⁸²

In some circumstances, state law allows the use of "extreme" methods of euthanasia, such as shooting the animal or using a mechanical kill-trap.⁸³ Extreme methods are authorized if (1) the animal is not at the shelter, (2) the animal poses an immediate risk to animal, human, or public health, and (3) no alternative method is feasible. It may also be appropriate if it would be inhumane to transport an animal to another location for euthanasia. Any extreme methods used must be approved by one of the three national organizations mentioned above (AVMA, HSUS, or AHA) and carried out in a manner consistent with guidance from that organization.

Euthanasia of animals in shelters may be performed only by a veterinarian or by a relatively new type of professional: a certified or probationary euthanasia technician.⁸⁴ State regulations outline the training and certification requirements for technicians,⁸⁵ which must include both written and practical examinations. The state does not offer the training directly but does approve people or organizations to offer the training, and it maintains a list of training opportunities.⁸⁶

Rabies in the Community

The basic legal framework for rabies control at the individual animal level lies in the enforcement of preventive vaccination requirements and effective responses to potential rabies exposures. Local governments also have two additional tools they can use to meet the threat of

80. 02 N.C.A.C. 52J .0501.

81. 02 N.C.A.C. 52J .0601 to .0609.

82. Information about penalties and other legal actions taken by the Animal Welfare Section of the North Carolina Department of Agriculture and Consumer Services is available at www.ncagr.gov/vet/awp/penalties.htm (last accessed Sept. 14, 2011).

83. 02 N.C.A.C. 52J .0701 to .0705. See AVMA Guidelines at 16 for a discussion of the various types of physical euthanasia methods, including gunshot and mechanical kill-traps; HSUS Statement (recognizing use of gunshot as a method in very limited circumstances).

84. G.S. 19A-24(b) (authorizing the board of agriculture to adopt rules governing certification of euthanasia technicians); 02 N.C.A.C. 52J .0402.

85. 02 N.C.A.C. 52J .0403 to .0419.

86. Information about training opportunities is available through the Animal Welfare Section, Veterinary Division, N.C. Department of Agriculture and Consumer Services, at www.ncagr.gov/vet/awp/euthanasiarules.htm (last accessed Sept. 14, 2011).

a rabies outbreak in their communities: geographic quarantine and declaration of a rabies emergency.

Geographic Quarantine

A local health director has the authority to order a rabies quarantine for a geographic area if he or she determines that the disease is prevalent enough to endanger the lives of the human population.⁸⁷ When an area is under quarantine, dogs, cats, and ferrets must be confined to the owners' premises or at a veterinary hospital, kept on a leash, or be under the control and in the sight of a responsible adult. A peace officer or animal control officer who sees a dog, cat, or ferret running uncontrolled in a quarantined area but cannot catch it is allowed to destroy the animal.

Use of the term "quarantine" in the context of rabies control could be somewhat confusing because the term is used in different ways in other sections of the state's public health laws. Specifically, the term "quarantine authority" defined in G.S. Chapter 130A includes orders that

- limit the freedom of movement or action of persons or animals that have been exposed to a communicable disease,
- limit access by any person or animal to an area or facility that may be contaminated with an infectious agent, and
- under certain circumstances, limit the freedom of movement or action of people who have not received immunizations.⁸⁸

The term "quarantine authority" is often used in connection with "isolation authority."⁸⁹ Public health officials have a long history of using these two legal authorities to control the spread of communicable diseases and conditions. The definition above is consistent with the quarantine that a health director might order if a dog, cat, or ferret has been exposed to rabies or is suspected of having rabies.

However, the definition of quarantine authority above is inconsistent with the geographic quarantine concept in the section of the rabies law that provides for restricting the movement and/or action of animals within a certain geographic region. That definition refers specifically to (1) animals that either have been exposed to a communicable disease or have not been immunized and (2) areas and facilities that may be contaminated with an infectious agent. It does *not* address the ability of local health directors to order restrictions for an entire geographic region regardless of exposure to disease or immunization status.

Until this discrepancy in the law is resolved, it would be reasonable for local health directors to assume that they have two separate and distinct quarantine authorities in the limited context of rabies control. The first is the authority to order *all* dogs, cats, and ferrets within a geographic region to be confined or restrained when rabies is prevalent.⁹⁰ The second is the more general isolation and quarantine authority available for all communicable diseases, including when a dog, cat, or ferret is exposed to or suspected of having rabies.⁹¹

87. G.S. 130A-194; G.S. 130A-195.

88. G.S. 130A-2(7a).

89. Isolation authority is available when a person or animal is infected or is reasonably suspected of being infected with rabies. Quarantine authority is available when a person or animal has been exposed to or is reasonably suspected of having been exposed to rabies.

90. G.S. 130A-194; G.S. 130A-195.

91. G.S. 130A-197. For more information about this type of quarantine authority, see the discussion *supra* accompanying notes 23–29. For a detailed discussion of the more expansive isolation and

Rabies Emergency

During the early 1990s, a new rabies epidemic began sweeping through North Carolina's wild animal population.⁹² In response, the General Assembly enacted a law authorizing local health directors to ask the state health director to declare a rabies emergency in any jurisdiction where rabies is found in a wild animal (other than a bat).⁹³

The primary benefit of declaring a rabies emergency in a jurisdiction is that it allows the state health director to ask the Wildlife Resources Commission (WRC) to develop a plan to minimize the threat of rabies exposure to humans and domestic animals from foxes, raccoons, skunks, and/or bobcats.⁹⁴ The plan developed by the WRC could, for example, suspend or liberalize hunting restrictions for those animals until the emergency has passed.

Local Rabies Laws

Some local governments have chosen to adopt ordinances and board of health rules addressing rabies.⁹⁵ Local governments do not have specific authority to regulate in this area, though elected bodies may rely on their general ordinance-making powers and boards of health on their general rule-making authority. Cities and counties have broad authority to adopt ordinances designed to protect the health, safety, and welfare of their citizens.⁹⁶ Boards of health may adopt local rules "necessary to protect and promote the public health" and that apply countywide.⁹⁷

Local laws should not duplicate or contradict existing state law related to rabies, but in some circumstances it may be appropriate to rely on local laws to supplement the state law.⁹⁸ A local law could set a higher standard or impose a more stringent requirement, such as extending the

quarantine authorities see Jill Moore, "The North Carolina Public Health System's Isolation and Quarantine Authority," *Health Law Bulletin* No. 84 (July 2006), at www.sog.unc.edu/pubs/electronicversions/pdfs/hlb84.pdf (last accessed Sept. 14, 2011).

92. According to one report, North Carolina's confirmed cases of rabies almost doubled every year early in the decade. The state had 10 confirmed cases in 1990, 24 cases in 1991, 50 cases in 1992, and 106 cases in 1993. The number peaked in 1997 at 879 confirmed cases. In 2010 there were almost 400 confirmed cases. See "Rabies Data, Maps, and Other Information," N.C. Department of Health and Human Services, Division of Public Health, website at www.epi.state.nc.us/epi/rabies/state.html (last accessed Sept. 14, 2011). See also Martha Quillin, "Pets Are Vital Link in Battling Rabies," *News & Observer*, March 17, 1996, B1 (describing some of the history of the rabies outbreak in the early nineties).

93. G.S. 130A-201. Before declaring an emergency, the state health director must consult with the public health veterinarian (in the N.C. Department of Health and Human Services) and the state agriculture veterinarian (in the N.C. Department of Agriculture and Consumer Services).

94. The Wildlife Resources Commission has the authority to develop such plans pursuant to G.S. 113-291.2(a1).

95. G.S. 130A-39 (boards of health); G.S. 153A-121 (county authority); G.S. 160A-174 (city authority).

96. See G.S. 153A-121 (counties) and G.S.160A-186 (municipalities).

97. G.S. 130A-39(a), (c).

98. See G.S. 160-174(b) (identifying the preemption principles applicable to city ordinances); *State v. Tenore*, 280 N.C. 238, 247, 185 S.E.2d 644, 650 (1972) (extending those preemption principles to county ordinances). Cumberland County's ordinance, for example, explains that the rabies control provisions are designed "to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by the state." CUMBERLAND COUNTY, N.C., CODE OF ORDINANCES § 3-35(e). It is possible that a court could conclude that the state has "occupied the field" with respect to rabies, thus preempting any local regulation in this field. See

minimum impoundment period from seventy-two hours to five or ten days or requiring all biting animals to be confined at the shelter or a veterinarian's office rather than allowing owners to confine them at home. A local law could also address procedural or administrative issues, such as specifying how the shelter establishes proof of ownership in animal surrender situations or establishing guidelines for foster care or agency relationships.

If a local board of health wishes to adopt rules governing rabies, it should be aware of additional limitations on its authority.⁹⁹ There are two key limitations that apply:

- A board of health must not consider factors other than health when establishing local rules, unless directed to do so by an elected body (such as the General Assembly or the board of county commissioners).¹⁰⁰
- If the board wishes to adopt rules in a field already heavily regulated by the state, such as rabies, the board must tie the need for local rules to a particular local health need. In other words, the board must provide "a rationale or basis for making the [local rules] more rigorous than those applicable to and followed by the rest of the state."¹⁰¹

If a local jurisdiction adopts an ordinance or a board of health rule related to rabies, it may be useful to take the time to develop a guidance document for the general public that integrates the detailed provisions of state law with the additional requirements imposed by local laws or policies. This area of the law imposes strict duties on animal owners, establishes tight timelines for compliance, and outlines violations that can result in the loss of a pet. Therefore, the public would clearly benefit from clear and easy-to-understand information about the law as it applies to them.

Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172 (2002) (holding that the state law impliedly preempted local regulation of swine farm siting).

99. For more information regarding the rule-making authority of boards of health, see Aimee N. Wall, "The Rulemaking Authority of North Carolina Local Boards of Health," *Health Law Bulletin* No. 81 (Nov. 2003), at www.sog.unc.edu/pubs/electronicversions/pdfs/hlb81.pdf.

100. *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578, 589, 478 S.E.2d 528, 535 (1996). Note that an elected body, such as a board of county commissioners or a city council, is not subject to the same inherent limitation on its authority and therefore may go beyond human health concerns when adopting ordinances.

101. *Craig v. County of Chatham*, 356 N.C. 40, 565 S.E.2d 172 (2002).

Appendix. North Carolina Statutes and Rules regarding Rabies Control

Relevant Statutes

G.S. 67-4. Failing to kill mad dog.

If the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars (\$50.00) to him who will sue therefor; and the offender shall be liable to pay all damages which may be sustained by anyone, in his property or person, by the bite of any such dog, and shall be guilty of a Class 3 misdemeanor.

G.S. 67-14. Mad dogs, dogs killing sheep, etc., may be killed.

Any person may kill any mad dog, and also any dog if he is killing sheep, cattle, hogs, goats, or poultry.

Part 6 of Article 6 of Chapter 130A. Rabies

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 130A-188: Repealed by Session Laws 2009-327, s. 4, effective October 1, 2009.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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 may 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; sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; 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 sold or put to death, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in cases in which the animal is found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament. An animal that is seriously ill or injured may be euthanized if the manager of the animal shelter determines, in writing, that it is appropriate to do so. Nothing in this subsection shall supercede (i) any rules adopted by the Board of Agriculture which specify the number of animals allowed for kennel space in animal shelters, or (ii) the duration of impoundment established by the

county board of commissioners, or the 72-hour holding period, as provided in subsection (a) of this section.

(a2) **(See note)** Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.

(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) In addition to domesticated dogs and cats not wearing the required rabies tags, the provisions of subsection (a) of this section concerning the holding of animals for at least 72 hours and the permissible means of disposition of animals after expiration of that holding period also apply to all of the following:

- (1) Dogs and cats that are wearing rabies tags but are taken into custody for violation of statutes or ordinances not related to rabies control, such as ordinances requiring the leashing or restraining of dogs and cats.
- (2) Dogs and cats surrendered to an animal shelter by the owners of the animals, unless an owner provides to the shelter the following:
 - a. Some proof of ownership of the animal, and
 - b. A signed written consent to the disposition of the animal, in a manner authorized by this section, before the expiration of the 72-hour holding period or of a longer period established by ordinance or local rule to which the shelter is subject.

(c) If an animal is not wearing tags, or other mode of identification indicating its owner, and is delivered to an animal shelter by (i) a person who has found and captured the animal, or (ii) by an approved rescue organization that received the animal from a person who found and captured the animal, then the shelter may, in writing, appoint the finder or approved rescue organization to be the agent of the shelter. For purposes of this subsection, the term "approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.

- (1) If the animal is a dog or cat, the finder or approved rescue organization shall hold the animal for the 72-hour holding period provided for in subsection (a) of this section or such longer holding period that may be applicable to the shelter by ordinance or local rule. If the animal is not a dog or cat, then the holding period shall be by agreement between the animal shelter and the person or organization receiving the animal.
- (2) After the expiration of the applicable holding period, the shelter may:
 - a. Transfer the animal by adoption to the person or organization that has held it as agent, or
 - b. Extend the period of time the finder or rescue organization holds the animal as agent of the shelter.
- (3) A shelter may terminate an agency created under this subsection at any time by directing the finder or rescue organization to deliver the animal to the shelter.
- (4) The city, county, or organization operating the animal shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.

(d) During the 72-hour or longer holding period established under subsection (a) of this section, an animal shelter may place an animal it is holding in foster care.

(e) If an animal shelter transfers physical possession of a dog or cat under subsection (c) or (d) of this section, so that the animal is no longer on the animal shelter premises, at least one photograph which depicts the head and face of the animal shall (i) be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and (ii) remain posted for the 72-hour or longer holding period established under subsection (a) of this section.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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.

G.S. 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. 113291.2(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.

Relevant State Regulations

Title 10, Chapter 41, Subchapter G. Veterinary Public Health Program

10A N.C.A.C. 41G .0101 TIME OF RABIES VACCINATION

- (a) When rabies vaccine is administered by a certified rabies vaccinator to a dog or cat, the dog or cat shall be re-vaccinated annually.
- (b) When rabies vaccine is administered by a licensed veterinarian to a dog or cat, the dog or cat shall be re-vaccinated one year later and every three years thereafter, if a rabies vaccine licensed by the U.S. Department of Agriculture as a three-year vaccine is used. Annual re-vaccination shall be required for all rabies vaccine used other than the U.S. Department of Agriculture three-year vaccine. However, when a local board of health adopts a resolution stating that in order to control rabies and protect the public health annual vaccination is necessary within the area over which they have jurisdiction, then the dog or cat must be vaccinated annually regardless of the type vaccine used, until the resolution is repealed.

10A N.C.A.C. 41G .0102 FEES FOR RABIES TAGS, LINKS, AND RIVETS

- (a) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of rabies tags, links, and rivets. This fee shall be determined on the basis of actual cost plus transportation, and an additional five cents (\$.05) per tag to be used to fund rabies education and prevention programs.
- (b) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of I Care rabies tags. This fee shall be determined on the basis of actual cost plus transportation, an additional five cents (\$.05) per tag to be used to fund rabies education and prevention programs plus an additional fifty cents (\$0.50) per tag. The fifty cents (\$0.50) fee per tag shall be credited to the Spay/Neuter fund established in G.S. 19A-62.

10A N.C.A.C. 41G .0103 APPROVED RABIES VACCINES

Any animal rabies vaccine licensed by the United States Department of Agriculture is approved for use on animals in North Carolina.

This bulletin is published and posted online by the School of Government to address issues of interest to government officials. This publication is for educational and informational use and may be used for those purposes without permission. Use of this publication for commercial purposes or without acknowledgment of its source is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Publications Division, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919.966.4119; or fax 919.962.2707.