

# LOCAL GOVERNMENT LAW BULLETIN

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David M. Lawrence, Editor

## AN OVERVIEW OF NORTH CAROLINA'S RABIES CONTROL LAWS

■ Aimee N. Wall

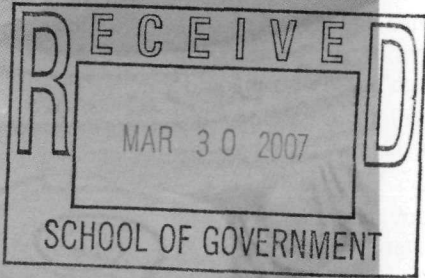
Rabies is a viral infection that is often transmitted to humans through the bites of infected animals such as raccoons, bats and dogs.<sup>1</sup> If left untreated, the disease is almost always fatal for humans.<sup>2</sup> In North Carolina, public health, animal control and wildlife management officials work together to enforce state and local laws designed to minimize the spread of rabies and the risk of rabies exposure to humans.

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The author is a School of Government faculty member who works in the areas of public health and animal control law.

<sup>1</sup> According to the Centers for Disease Control, people typically contract rabies from an animal bite. People can also be exposed to the virus if an infected animal's saliva or nervous tissue gets directly into a person's eyes, nose, mouth or a wound. Centers for Disease Control, *Questions and Answers about Rabies 2* (July 2, 2004), available at [http://www.cdc.gov/ncidod/dvrd/rabies/ques&ans/rabies\\_q\\_a\\_.pdf](http://www.cdc.gov/ncidod/dvrd/rabies/ques&ans/rabies_q_a_.pdf) (last visited Feb. 20, 2007) [hereinafter CDC Rabies Q&A].

<sup>2</sup> If a person is bitten by an animal that has or may have rabies, a health care provider will likely treat the wound and administer a series of vaccines intended to prevent rabies in humans (postexposure antirabies prophylaxis). See Centers for Disease Control and Prevention, *Human Rabies Prevention – United States, 1999: Recommendations of the Advisory Committee on Immunization Practices*, 48 *Morbidity and Mortality Weekly Report, Recommendations and Reports* (No. RR-1) 7-13 (1999). According to the Centers for Disease Control, the prophylaxis treatment is nearly 100% successful. See Centers for Disease Control, *About Rabies*, available at <http://www.cdc.gov/ncidod/dvrd/rabies/introduction/intro.htm> (last visited Feb. 20, 2007). Until recently, most believed that in the absence of prophylaxis treatment, the disease would always be fatal to humans. In 2004, however, a girl who was infected with rabies did not receive the postexposure prophylaxis treatment but still survived. Centers for Disease Control, *Recovery of a Patient from Clinical Rabies – Wisconsin, 2004*, 53 *Morbidity and Mortality Weekly Report* 1171, 1171-73 (Dec. 24, 2004); Gretchen Ehlke, *Only Known Unvaccinated Rabies Survivor Thrives*, USA Today (Dec. 24, 2005).



This state, like many other states, has adopted a series of statutes and regulations governing the control of rabies. North Carolina's statewide laws not only require vaccination of cats and dogs 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 the public health chapter of the General Statutes, Chapter 130A, Article 6, Part 6.<sup>3</sup> In addition to the state laws, some local governments have adopted ordinances or board of health rules related to rabies control.<sup>4</sup>

This Bulletin summarizes and analyzes North Carolina's rabies control laws. It is intended to provide an overview of the major components of the state's laws and highlight those areas where laws enacted by local governments, such as ordinances and board of health rules, also play a role.

### "Mad" Dogs

The earliest rabies control laws in North Carolina govern the killing of "mad" dogs.<sup>5</sup> A dog that is

<sup>3</sup> The Commission for Health Services has also adopted a few regulations governing rabies control. See 10A NCAC 41G .0101 to .0103 (addressing rabies vaccinations).

<sup>4</sup> Cities and counties have broad authority to adopt ordinances designed to protect the health, safety and welfare of their citizens. See North Carolina General Statutes 153A-121 (counties); 160A-186 (municipalities) [hereinafter G.S.]. This authority (or "police power") clearly allows local rabies control ordinances that supplement the 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, board of health rules apply to all municipalities within the board's jurisdiction. G.S. 130A-39(c). The scope of board of health rulemaking authority has, however, been significantly limited by the courts in the past decade. See *infra* notes 61-63.

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

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

experiencing symptoms of rabies infection, such as agitation, loss of appetite and unusually aggressive behavior, could be considered a "mad" dog.<sup>6</sup>

North Carolina has two mad dog laws. The first provides that if an owner knows or has "good reason to believe" that his dog has been bitten by a mad dog, the owner must immediately kill his or her dog.<sup>7</sup> If the owner fails to do so, he or she may be subject to both civil and criminal penalties.<sup>8</sup> The second law authorizes any person to kill any mad dog.<sup>9</sup> These two laws predate the modern statutory scheme designed to control rabies but it is interesting to note that they are still valid, enforceable laws in this state.

### Vaccination Requirements

Vaccination of pets is the cornerstone requirement of the modern rabies control framework. Under the state law, every owner of a dog or cat over four months of age is required to have the animal vaccinated against

her slave, or any 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).

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

<sup>7</sup> G.S. 67-4.

<sup>8</sup> The law provides that if the dog who was bitten by a mad dog subsequently bites a person or animal and the owner is sued civilly, he must pay fifty dollars to the person who was bitten (or the owner of an animal that was bitten) as well as any damages. The law also provides that the owner will be guilty of a Class 3 misdemeanor. G.S. 67-4.

<sup>9</sup> G.S. 67-14. The rest of the statute 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).

rabies. According to the office of the State Public Health Veterinarian in the North Carolina Department of Health and Human Services, over one million dogs and cats were vaccinated for rabies in 2006.<sup>10</sup>

While state law does not currently require animals other than cats and dogs to be vaccinated, a local government could adopt such a requirement locally. For example, Charlotte requires vaccination of ferrets<sup>11</sup> and Buncombe County authorizes the local board of health or health director to require domestic animals other than dogs and cats to be vaccinated in the event of a rabies outbreak or epidemic.<sup>12</sup>

Vaccinations may be administered by either a licensed veterinarian or a person who has been appointed a "certified rabies vaccinator."<sup>13</sup> "Certified rabies vaccinators" are appointed by a local health director and trained and certified by the State Public Health Veterinarian.<sup>14</sup> Many pet owners take their animals to private veterinarians for rabies vaccinations but local health departments are also required to organize (or assist other county departments in organizing) at least one public vaccination clinic per year.<sup>15</sup> Boards of county commissioners are required to establish the clinic's vaccination fee, which is limited by statute to the actual cost of the vaccine, the certificate and the tag plus an administrative fee of up to four 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 and the veterinarians may participate at selected locations or in their own offices.

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<sup>10</sup> Personal communication from Dr. Carl Williams, State Public Health Veterinarian, North Carolina Department of Health and Human Services, Division of Public Health, Veterinary Public Health Program (March 16, 2007). Dr. Williams indicated that the the state sold over one million rabies tags in 2006 and some veterinarians and vaccinators purchase tags from other sources.

<sup>11</sup> City of Charlotte Code of Ordinances, sec. 3-101.

<sup>12</sup> Buncombe County Code of Ordinances, sec. 6-56

<sup>13</sup> G.S. 130A-185.

<sup>14</sup> G.S. 130A-186.

<sup>15</sup> G.S. 130A-187; 130A-88.

At the time of vaccination, the owner is given a copy of a vaccination certificate and a rabies tag.<sup>16</sup> The certificates must be purchased from the state but tags can be purchased from either the state or private companies. At a minimum, the tags must include the year issued, a vaccination number, the words "rabies vaccine" and either "North Carolina" or the initials "N.C."<sup>17</sup> The state also sells special edition "I Care" tags, which cost pet owners an additional fifty cents per tag. Revenue from the special tags is dedicated to the state's Spay/Neuter Program.<sup>18</sup>

State law requires dog and cat owners to ensure their pets wear rabies tags at all times. Local governments may, however, adopt an ordinance exempting cats from the tag requirement.<sup>19</sup> Some local governments have adopted ordinances or board of health rules that supplement the tag requirement by prohibiting the use of a rabies tag for any animal other than the one that received the vaccination.<sup>20</sup>

If a dog or cat enters North Carolina from another state or country, the law requires the owners to either have a certificate from a licensed veterinarian or comply with additional vaccination and confinement requirements.<sup>21</sup> A veterinarian's certificate must demonstrate that the animal

- has been vaccinated in the last year,
- is apparently free from rabies, and
- has not been exposed to rabies.

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<sup>16</sup> G.S. 130A-189; 130A-190.

<sup>17</sup> G.S. 130A-190.

<sup>18</sup> The General Assembly established the Spay/Neuter Program in 2000 in response to pet overpopulation concerns. G.S. 19A-60 to -65 (S.L. 2000-163). The program has two components. First, it requires DHHS to educate the public about the benefits of having cats and dogs spayed and neutered. Second, it requires DHHS to manage a program that reimburses local governments that offer spay/neuter services to low-income persons. The program is funded primarily through the proceeds of sales of the "I Care" rabies tag and a special "I Care" license plate.

<sup>19</sup> G.S. 130A-190. *See, e.g.*, Cabarrus County Code of Ordinances, sec. 10-99 (exempting cats from the tag requirement but requiring the owner to maintain the certificates as evidence of vaccination); Guilford County Code of Ordinances, sec. 5-28(c) (allowing cats to wear an "ear tag" in lieu of the traditional collar tag).

<sup>20</sup> *See, e.g.*, Cumberland County Code of Ordinances, sec. 3-14.

<sup>21</sup> G.S. 130A-193.

In the absence of such a certificate, the animal must be securely confined upon entry into the state, vaccinated within one week of entry, and then further confined for 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.

## Exposure and Potential Exposure

In order to minimize health risks to humans, there is a framework in North Carolina law for handling situations in which a person is exposed or potentially exposed to rabies. The law has various components, including mandatory reporting, confinement of animals, and even destruction of animals. The responsibilities of public health and animal control will vary depending on the situation and the level of health risk.

*If a physician treats a person for an animal bite*, and the offending animal is known to be a potential carrier of rabies (such a bat, raccoon, or fox, or another animal behaving erratically), the physician has a duty to notify the local health director within 24 hours. The report must include the bite victim's name, age and sex.<sup>22</sup>

*If a dog or cat bites a person*, the victim<sup>23</sup> and the pet's owner (or person possessing or in control of the animal) are both required to notify the local health director immediately.<sup>24</sup> The report must include the name and address of the victim and the pet's owner. Note that this law applies to all dogs and cats – not just those suspected of having rabies.

After any bite, the offending animal must be confined for ten days. This ten day period is important because it allows health officials to determine whether the animal was shedding the rabies virus in its saliva at the time of the bite.<sup>25</sup>

<sup>22</sup> G.S. 130A-196.

<sup>23</sup> If the victim is a minor, the victim's parent, guardian or person standing *in loco parentis* is allowed to make the report on the minor's behalf. If the victim is incapacitated, the victim's guardian is allowed to make the report.

<sup>24</sup> G.S. 130A-196.

<sup>25</sup> See *North Carolina Manual for Rabies Prevention and Animal Bite Management* 12 (Feb. 2007), available at <http://www.epi.state.nc.us/epi/vet/pdf/2007NCRabiesManu>

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 own property under some circumstances, but many are not. State law leaves this decision entirely up to the health director.<sup>26</sup> Regardless of where it is confined, the owner is responsible for any costs related to the confinement.

If an owner fails to confine the animal as required by the health director, he will be guilty of a Class 2 misdemeanor.<sup>27</sup> In addition, the health director has the authority to order seizure and confinement of the animal.

*If a dog or cat is exposed to rabies*, it may have to be destroyed or quarantined.<sup>28</sup> An animal is considered to have been exposed to rabies if the health director reasonably suspects that the dog or cat

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al.pdf (last visited Feb. 28, 2007) [hereinafter NC Rabies Manual]; see also CDC Rabies Q&A, *supra* note 1 ("The quarantine period is a precaution against the remote possibility that an animal may appear healthy, but actually be sick with rabies. To understand this statement, you have to understand a few things about the pathogenesis of rabies (the way the rabies virus affects the animal it infects). From numerous studies conducted on rabid dogs, cats, and ferrets, we know that rabies virus inoculated into a muscle travels from the site of the inoculation to the brain by moving within nerves. The animal does not appear ill during this time, which is called the incubation period and which may last for weeks to months. A bite by the animal during the incubation period does not carry a risk of rabies because the virus is not in saliva. Only late in the disease, after the virus has reached the brain and multiplied there to cause an encephalitis (or inflammation of the brain), does the virus move from the brain to the salivary glands and saliva. Also at this time, after the virus has multiplied in the brain, almost all animals begin to show the first signs of rabies. Most of these signs are obvious to even an untrained observer, but within a short period of time, usually within 3 to 5 days, the virus has caused enough damage to the brain that the animal begins to show unmistakable signs of rabies. As an added precaution, the quarantine period is lengthened to 10 days.")

<sup>26</sup> 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.

<sup>27</sup> G.S. 130A-196.

<sup>28</sup> G.S. 130A-197.

was exposed to the saliva or nervous tissue of either a proven rabid animal, or an animal reasonably suspected of having rabies that is not available for laboratory diagnosis.<sup>29</sup>

Note that this law provides the health director with significant discretion in deciding whether an animal has been exposed. If the health director concludes that the dog or cat has been exposed, there are three possible outcomes:

- *Vaccination:* Nothing will happen to the dog or cat if it (1) was vaccinated as required by state law more than three weeks prior to being exposed, and (2) is given a booster dose of rabies vaccine within three days of the exposure.<sup>30</sup>

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<sup>29</sup> According to the Dr. Carl Williams, State Public Health Veterinarian, a dog or cat will usually be considered to have been exposed to rabies if the dog or cat:

- Is bitten by an animal that can be reasonably assumed to have rabies, or
- Bites an animal that can reasonably assumed to have rabies.

A dog or cat would also be considered to be exposed if its mucous membranes (eyes, nose, mouth) came into contact with the saliva or nervous tissue of an animal reasonably suspected of having rabies. If, however, the source animal can be tested for rabies and the results are negative, no exposure would have occurred. Email communication from Dr. Carl Williams, State Public Health Veterinarian, NC Department of Health and Human Services (Feb. 20, 2007) (on file with author; also available from the archives of the animal control listserv which are accessible via [www.ncanimalcontrol.unc.edu](http://www.ncanimalcontrol.unc.edu)).

<sup>30</sup> A state regulation specifies the timetable for required rabies vaccinations. It provides:

- (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 [*sic*] jurisdiction, then the dog or cat must be vaccinated annually regardless of the type [of] vaccine used, until the resolution is repealed.

10A NCAC 41G .0101.

- *Quarantine:* If the dog or cat has not had the required vaccinations, it may be quarantined at a facility approved by the local health director.<sup>31</sup> The health director must establish the time period for the quarantine (up to six months) and the conditions for the quarantine.<sup>32</sup>
- *Destruction:* If the exposed dog or cat does not meet the vaccination requirements and is not quarantined, it must be humanely<sup>33</sup> destroyed by the owner, an animal control officer or a peace officer.

*If any animal is suspected of having rabies, the owner or person who has possession of the animal must immediately notify the local health director or animal control.<sup>34</sup> For example, a 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. Dogs and cats suspected of having rabies must be confined for 10 days. If the animal dies during the confinement*

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<sup>31</sup> The Centers for Disease Control recommend that animal be placed in "strict isolation" for six months and vaccinated one month before being released. See CDC Rabies Q&A, *supra* note 1, at 2. The six month period is necessary because the rabies virus may take that long to emerge (i.e., the incubation period). See NC Rabies Manual, *supra* note 25, at 14.

<sup>32</sup> It is important to note 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. One could infer that, based on the word choice and the omission of the direct reference to quarantine in the home, that the health director is not authorized to allow a quarantine on the owner's property.

<sup>33</sup> While the state's rabies laws do not state that the animal must be destroyed in a humane manner, it should be read in conjunction with the state's animal cruelty laws, which authorize the lawful destruction of animals to protect the public's health but also seek to minimize "unjustifiable" pain or suffering. See G.S. 14-360 (establishing the criminal penalties for cruelty). An animal owner could, for example, take the animal to a veterinarian to have the animal euthanized in a humane manner.

<sup>34</sup> G.S. 130A-198. Note that the law requires the notification to go to the *county* animal control officer. But it would certainly be reasonable for an animal owner to notify city animal control instead.

period, its head must be sent to the state's public health laboratory for testing.

With respect to animals other than dogs and cats, the State Public Health Veterinarian may require the animal to be destroyed. Given the limited resources available for testing specimens, the Veterinarian has provided local governments with formal and informal guidance regarding the types of animals that should be destroyed and tested.<sup>35</sup>

*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 these heads to the state.

## Rabies Enforcement

Local governments are expected to enforce the statewide rabies laws. The organization and structure of animal control functions vary tremendously across the state. Responsibility for animal control issues, including rabies control, is often shared between municipalities and counties. Within counties, animal control functions are sometimes housed in the local health department, the sheriff's office or a freestanding department. Within cities, the functions are often under the police department but are also sometimes established as freestanding departments.

Typically, a local government will have one or more animal control officers or similar officials who impound animals without rabies tags and respond to bite reports.<sup>36</sup> If a person is bitten or otherwise potentially exposed to rabies, the local health department will often assume primary responsibility for the communicable disease investigation and response. Some health departments, however, may choose to delegate this authority in whole or in part

<sup>35</sup> See NC Rabies Manual, *supra* note 25, at 24. At times, the State Public Health Veterinarian provides additional guidance via email. For example, in May 2006 Dr. Carl Williams transmitted an email over an animal control listserv regarding testing of opossums (email on file with author; access to the archives and information about subscribing to the listserv sponsored by the author is available at [www.ncanimalcontrol.unc.edu](http://www.ncanimalcontrol.unc.edu)).

<sup>36</sup> 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.

to animal control officials. While the rabies statutes impose many duties on the "local health director," the director is allowed to delegate his or her authority to others.<sup>37</sup>

State law requires local government animal control officers to canvass their jurisdictions to find animals not wearing rabies tags.<sup>38</sup> The term "canvass" suggests that the officers have a duty to proactively tour the jurisdiction and seek out animals in violation of the law.<sup>39</sup> In practice, however, animal control officers are probably responding more to complaints within their jurisdictions than actually canvassing.

If an officer finds a dog or cat without a tag, he has the authority to take action which may include impounding the animal. If the officer knows who owns the animal, he 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.<sup>40</sup> If the owner fails to do so, he can be charged with a Class 1 misdemeanor.<sup>41</sup>

If the officer does not know who owns the animal, he has the authority to impound the animal. Note that the officer is not *required* to impound the animal; state law provides local governments with the authority to seize the animal but does not require them to impound all dogs and cats found without rabies tags. If the officer does seize the animal, the

<sup>37</sup> 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.").

<sup>38</sup> G.S. 130A-192.

<sup>39</sup> The dictionary definition of the term "canvass" discusses going through a region to solicit votes, orders, or opinions and also conducting a "thorough examination." See *The American Heritage Dictionary of the English Language*, Fourth Edition. Houghton Mifflin Company (2004), available at <http://dictionary.reference.com/> (last visited Feb. 15, 2007).

<sup>40</sup> The law states that the owner must produce the vaccination certificate "within three days of the notification." G.S. 130A-192. The most reasonable interpretation of this language would be that the owner must produce the certificate within three days of *receiving* the notification, rather than within three days of the notification being sent.

<sup>41</sup> G.S. 130A-25. In lieu of criminal prosecution, a local government could also consider seeking an injunction. G.S. 130A-18.

officer is required to make a reasonable effort to locate the animal's owner.

The local government is required to hold the animal for a time period established by the board of county commissioners, which must be at least 72 hours. Many cities and counties hold animals for periods longer than 72 hours. For example, the city of Garner holds most animals for a minimum of five days and Durham County holds most animals for ten days.<sup>42</sup> Under federal law, before a shelter owned, operated or under contract with a local government is allowed to sell an impounded dog or cat to a dealer, the shelter must hold the animal for at least five days.<sup>43</sup>

If the owner of an impounded animal does not claim the animal within the established time period, the local government may:

- Allow another person to adopt the animal,
- Euthanize the animal, or
- Sell the animal to certain research institutions and others registered with the federal government.<sup>44</sup>

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<sup>42</sup> Garner Code of Ordinances, sec. 3037; Durham County Code of Ordinances, sec. 4-40. The Durham ordinance further provides that if "the animal is not redeemed within 24 hours following the last day of confinement, the animal becomes property of the county."

<sup>43</sup> 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).

<sup>44</sup> 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 provides for licensure of dealers and exhibitors and for registration of any research facility, handler, carrier and exhibitor that is not required to have a license. 7 U.S.C. 2133 (licenses); 2136

## Euthanasia

If an animal impounded under the authority of the rabies control law is to be euthanized, state law currently allows local governments to employ any method approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association. The methods approved by these three organizations vary.<sup>45</sup> Most local government animal shelters in North Carolina use one of two methods for euthanizing impounded animals: (1) sodium pentobarbital injection or (2) inhalation of carbon monoxide gas. Both of these methods are acceptable under state law.

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(registration). Given that the state law refers only to institutions "registered" pursuant to the AWA, it would be reasonable to interpret North Carolina's law as limiting the sale to research facilities and 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.

<sup>45</sup> A full list of the euthanasia methods approved by these organizations is included in Aimee N. Wall, North Carolina Animal Control Law: 2005 Legislative Update, Local Government Law Bulletin No. 107 (October 2005), available at <http://www.ncanimalcontrol.unc.edu/pubs.htm>. The complete policy statements for all three organizations are available on the Internet. See American Humane Association, Animal Welfare Position Statements at 9, available at <http://www.americanhumane.org/site/DocServer/apsstatements.pdf?docID=101> (last visited Feb. 23, 2007), Humane Society of the United States, The HSUS Statement on Euthanasia Methods for Dogs and Cats (August 23, 2005), available at [http://www.animalsheltering.org/resource\\_library/policies\\_and\\_guidelines/statement\\_on\\_euthanasia.html](http://www.animalsheltering.org/resource_library/policies_and_guidelines/statement_on_euthanasia.html) (last visited Feb. 23, 2007) [hereinafter HSUS Statement]; American Veterinary Medical Association Panel on Euthanasia, 2000 Report of the AVMA Panel on Euthanasia, 218 J. Am. Vet. Med. Assoc. 669 (Mar. 1, 2001), available at [http://www.avma.org/issues/animal\\_welfare/euthanasia.pdf](http://www.avma.org/issues/animal_welfare/euthanasia.pdf) (last visited Feb. 23, 2007) [hereinafter AVMA Report].

The list of euthanasia methods allowed under state law may change in the near future. In 2005, the General Assembly passed a new law that requires the North Carolina Department of Agriculture and Consumer Services to adopt regulations governing the euthanasia of all cats and dogs in animal shelters.<sup>46</sup> Note that these regulations will apply to *all* dogs and cats at shelters, not just those impounded for violations of the rabies laws. In addition to identifying the approved methods of euthanasia, the regulations must also address other issues related to euthanizing animals including the equipment to be used, the process to be followed, the separation of animals, the age and condition of animals and the training of personnel.

As of spring 2007, the Department was still in the process of drafting the regulations. The most controversial issue that it will need to resolve is whether shelters will be able to continue using carbon monoxide gas as method of euthanasia. Some oppose the method, arguing that it is inhumane (particularly for very young, old, sick and pregnant animals) and that exposure to the gas presents too great a health risk for shelter employees.<sup>47</sup> Arguments in favor of the method include the relative ease of obtaining the gas as compared to sodium pentobarbital (a controlled substance)<sup>48</sup> and the cost of obtaining and using the gas.<sup>49</sup>

If the Department does approve use of the gas method, state law requires that (1) only commercially compressed carbon monoxide be used and (2) the gas be delivered in a commercially manufactured chamber that allows for the individual separation of animals.<sup>50</sup>

<sup>46</sup> S.L. 2005-276, Sec. 11.5(b); amending G.S. 19A-24.

<sup>47</sup> See, e.g., HSUS Statement, *supra* note 44 (addressing both the risks to animals and humans); AVMA Report, *supra* note 45 at 679 (“Carbon monoxide is extremely hazardous for personnel...”).

<sup>48</sup> See HSUS Statement (recognizing that some shelters do not have ready access to sodium pentobarbital and conditionally

<sup>49</sup> See Doug Fakkema, *Comparison of Sodium Pentobarbital v. Carbon Monoxide as Euthanasia Agents, Killing with Kindness*, available at <http://www.crean.com/kindness/ebi-vs-co.html> (last visited Mar. 7, 2007).

<sup>50</sup> G.S. 19A-24.

## Rabies in the Community

In addition to making efforts to control rabies at the individual animal level through enforcing vaccination requirements and responding to potential rabies exposures, local governments have two additional tools available for responding to rabies 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 exists to the extent that the lives of persons are endangered.<sup>51</sup> When an area is under quarantine, dogs and cats must be confined to the owner’s premises, confined to a veterinary hospital, kept on a leash, or kept under the control and in the sight of a responsible adult. If a peace officer or animal control officer sees a dog or cat running uncontrolled in a quarantined area and is unable to catch it, the officer is allowed to destroy the animal.

The 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” is defined in Chapter 130A to include orders:

- limiting freedom of movement or action of persons or animals that have been exposed to a communicable disease,
- limiting access by any person or animal to an area or facility that may be contaminated with an infectious agent, and
- limiting the freedom of movement or action of people who have not received immunizations in certain circumstances.<sup>52</sup>

The term “quarantine authority” is often used in connection with “isolation authority.”<sup>53</sup> 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 or cat has been exposed to rabies or is suspected of having rabies.

<sup>51</sup> G.S. 130A-194; 130A-195.

<sup>52</sup> G.S. 130A-2(7a).

<sup>53</sup> 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



The definition of “quarantine authority” above is inconsistent with the geographic quarantine concept in this section of the rabies law, which provides for restricting the movement and/or action of animals within a certain geographic region. The definition refers 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 cats and dogs within a geographic region to be confined or restrained.<sup>54</sup> The second is the more general isolation and quarantine authority that is available for all communicable diseases, including when a dog or cat is exposed to or suspected of having rabies.<sup>55</sup>

### Rabies Emergency

During the early-1990s, a new rabies epidemic began sweeping through North Carolina’s wild animal population.<sup>56</sup> 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).<sup>57</sup>

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a person or animal is exposed to or is reasonably suspected of having been exposed to rabies.

<sup>54</sup> G.S. 130A-194; 130A-195.

<sup>55</sup> G.S. 130A-197. For more information about this type of quarantine authority, see the discussion above accompanying notes 28-33. For a detailed discussion of the more expansive isolation and quarantine authorities, see Jill Moore, *The North Carolina Public Health System’s Isolation and Quarantine Authority*, Health Law Bulletin, No. 84 (July 2006), available at <http://ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/hlb84.pdf> (last visited Feb. 20, 2007).

<sup>56</sup> 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 2005, there were over 450 confirmed cases. Data available from the North Carolina Department of Health and Human

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 to develop a plan to help minimize the threat of rabies exposure to humans and domestic animals from foxes, raccoons, skunks and/or bobcats.<sup>58</sup> 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 local ordinances and board of health rules addressing rabies.<sup>59</sup> It may be appropriate to rely on local laws in order to supplement the state law in some circumstances. For example, a jurisdiction might want to require vaccination of other types of animals, establish an extended impoundment period for the shelter or otherwise address a local concern. These local laws should not, however, attempt to contradict or change existing state law in this area.<sup>60</sup>

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Services, Division of Public Health, <http://www.epi.state.nc.us/epi/rabies/state.html> (last visited Feb. 20, 2007). See also Martha Quillin, *Pets Are Vital Link in Battling Rabies*, Raleigh News & Observer, B1 (Mar. 17, 1996) (describing some of the history of the rabies outbreak in the early 90s).

<sup>57</sup> G.S. 130A-201. Before deciding to declare an emergency, the State Health Director must consult with the Public Health Veterinarian (employed by the N.C. Department of Health and Human Services) and the State Agriculture Veterinarian (employed by the N.C. Department of Agriculture and Consumer Services).

<sup>58</sup> The Wildlife Resources Commission has the authority to develop such plans pursuant to G.S. 113-291.2(a1).

<sup>59</sup> Local governments do not have specific authority to regulate in this area, elected bodies may rely on their general ordinance-making powers and the board of health upon its general rulemaking authority. (G.S. 130A-39 (boards of health); 153A-121 (county authority); 160A-174 (city authority)

<sup>60</sup> 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).

Furthermore, if a local board of health wishes to adopt rules governing rabies, the board should ensure that it acting within the scope of its authority.<sup>61</sup> The Court of Appeals cautioned boards of health not to consider factors other than health when establishing local rules.<sup>62</sup> Therefore, a board of health rule should be limited in scope to issues directly addressing human health. Note that an elected body, such as a board of county commissioners or a city council, is not subject to that inherent limitation on its authority and therefore is able to go beyond human health concerns when adopting ordinances.

The Supreme Court has also recently addressed limitations on board of health rulemaking authority. The court indicated that if a local board of health is going to regulate in a field that is already heavily regulated by the state, it must justify the additional regulation based upon a 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."<sup>63</sup>

<sup>61</sup> For more information regarding the rulemaking authority of boards of health, see Aimee Wall, *The Rulemaking Authority of North Carolina Local Boards of Health*, Health Law Bulletin No. 81 (Nov. 2003), available at <http://ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/hlb81.pdf> (last visited Feb. 23, 2007). In addition, an online training module on this subject is available through the Association of the North Carolina Boards of Health. It is available at free of charge at <http://www.ancbh.org/continuing-education.cfm>.

<sup>62</sup> *City of Roanoke Rapids v. Peedin*, 124 N.C. App 578, 589, 478 S.E.2d 528, 535 (1996).

<sup>63</sup> *Craig v. County of Chatham*, 356 N.C. 40, 565 S.E.2d 172 (2002). One could argue that local action in any form (e.g., ordinance, rule) with respect to rabies control is preempted because the state has created a "complete and integrated regulatory scheme" with respect to rabies control. The local swine laws were invalidated in large part because the General Assembly had included express language in the state statutes indicating an intent to standardize swine farm siting regulation across the state to the exclusion of local regulation. *See id* at 46-50, 565 S.E.2d at 176-79 (invalidating local ordinances that attempted to regulate siting of swine farms). The state's rabies control laws can be distinguished from the swine farm laws in two regards. First, the rabies laws do not include any statements indicating legislative intent to standardize or otherwise "occupy the field" of rabies control laws. Second, the rabies statutes and regulations are not comprehensive because they primarily address dogs and cats.

## Appendix: Relevant Statutes

### § 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.

### § 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.

### § 130A-184. *Definitions.*

The following definitions shall apply throughout this Part:

(1) "Animal Control Officer" means a city or county employee designated as dog warden, animal control officer, animal control official or other designations that may be used whose responsibility includes animal control.

(2) "Cat" means a domestic feline.

(3) "Certified rabies vaccinator" means a person appointed and certified to administer rabies vaccine to animals in accordance with this Part.

(4) "Dog" means a domestic canine.

(5) "Rabies vaccine" means 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" means a person appointed by the Secretary to direct the State public health veterinary program.

(7) "Vaccination" means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator.

### § 130A-185. *Vaccination of all dogs and cats.*

(a) The owner of every dog and cat over four months of age shall have the animal vaccinated against rabies. The time or times of vaccination shall

be established by the Commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.

(b) 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.

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

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

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

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 dogs and cats. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area.

**§ 130A-188. Fee for vaccination at county rabies vaccination clinics.**

The county board of commissioners is authorized to establish a fee to be charged at the county rabies vaccination clinics. The fee shall include an administrative charge not to exceed four dollars (\$4.00) per vaccination, and a charge for the actual cost of the vaccine, the vaccination certificate, and the rabies vaccination tag.

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

A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall complete a three-copy rabies vaccination certificate. The original rabies vaccination certificate shall be given to the owner of each dog or cat that receives rabies vaccine. One copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. The other copy shall be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes.

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

(a) A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat 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 and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance.

(b) Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. Except as otherwise authorized in this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. The Secretary may increase the fee beyond the actual cost plus transportation, by an amount not to exceed five cents (\$.05) per tag, to fund rabies education and prevention programs.

(c) The Department shall make available a special edition rabies tag to be known as the "I Care" tag. This tag shall be different in shape from the standard tag and shall carry the inscription "I Care" in addition to the information required by subsection (a) of this section. The Secretary is authorized to establish a fee for the "I Care" rabies tag equal to the amount set forth in subsection (b) of this section plus an additional fifty cents (\$.50). The additional fifty cents (\$.50) shall be credited to the Spay/Neuter Account established in G.S. 19A-62.

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

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

**§ 130A-192. Dogs and cats not wearing required rabies vaccination tags.**

The Animal Control Officer shall canvass the county to determine if there are any dogs or cats not wearing the required rabies vaccination tag. If a dog or cat is found not wearing the required tag, 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, 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 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 the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association. 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.

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

(a) A dog or cat brought into this State 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) The provisions of subsection (a) shall not apply to:

(1) A dog or cat brought into this State for exhibition purposes if the animal is confined and not permitted to run at large; or

(2) A dog or cat brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the dog or cat is apparently free from and has not been exposed to rabies and that the dog or cat has received rabies vaccine within the past year.

**§ 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 dog and cat in the area shall be confined on the premises of the owner or in a veterinary hospital. However, dogs or cats on a leash or under the control and in the sight of a responsible adult may be permitted to leave the premises of the owner or the veterinary hospital.

**§ 130A-195. Destroying stray dogs and cats in quarantine districts.**

When quarantine has been declared and dogs and cats 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 uncontrolled dogs and cats and properly dispose of their bodies.

**§ 130A-196. Confinement of all biting dogs and cats; notice to local health director; reports by physicians; certain dogs exempt.**

When a person has been bitten by a dog or cat, 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. All dogs and cats that bite a person shall be immediately confined for 10 days in a place designated by the local health director. However, 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 his 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 a dog or cat that has bitten a person refuses to confine the animal as required by this section, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner. A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the local health director the name, age and sex of that person.

**§ 130A-197. *Infected dogs and cats to be destroyed; protection of vaccinated dogs and cats.***

When the local health director reasonably suspects that a dog or cat 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 dog or cat shall be considered to have been exposed to rabies. A dog or cat exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the dog or cat has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than three weeks prior to being exposed, and is given a booster dose of rabies vaccine within three days of the exposure. As an alternative to destruction, the dog or cat may be quarantined at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director.

**§ 130A-198. *Confinement.***

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

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

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all dogs and cats that die during the 10-day confinement period required by G.S. 130A-196, shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis.

**§ 130A-201. *Rabies emergency.***

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

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