

North Carolina

Analysis

PLHIV must disclose their status to sexual partners under many circumstances and are required to take risk reduction measures during sex. Violations of these requirements can result in incarceration.¹

Although there is no specific HIV-related criminal exposure statute in North Carolina, it is a misdemeanor to violate any administrative regulation concerning public health² and individuals are required to comply with “control measures” (e.g., requirements to submit to treatment, limitations on sexual activity, and disclosure to past and current sexual partners) directed at communicable disease.³

HIV and a variety of other communicable diseases are subject to a wide array of control measures in the state’s Administrative Code.⁴ PLHIV are generally prohibited from engaging in condomless sexual intercourse⁵ unless certain exceptions apply: 1) the PLHIV is in care, adherent with the treatment plan of their attending physician, and has been virally suppressed⁶ for at least six months at the time of intercourse; 2) the PLHIV’s sexual partner is also HIV-positive; 3) the PLHIV’s sexual partner is taking preexposure prophylaxis (PrEP) as prescribed by an attending physician; or 4) the sexual intercourse occurred as part of a sexual assault in which the PLHIV was the victim.⁷

PLHIV must disclose their status to future sex partners unless they have been virally suppressed for at least six months or they are the victim of a sexual assault.⁸ If a PLHIV knows the date they acquired HIV, sexual or needle-sharing partners from that date forward must be notified of the individual’s HIV status.⁹ Otherwise, all such partners from the year preceding a positive test must be notified.¹⁰ A

¹The North Carolina Commission for Public Health revised control measures relating to HIV after a process of notice and public comment in 2017. The revised regulations went into effect on January 1, 2018.

² N.C. GEN. STAT. § 130A-25(a) (2017).

³ N.C. GEN. STAT. § 130A-144(f) (2017).

⁴ 10A N.C. ADMIN. CODE 41A.0202 (2018). Note that persons with Hepatitis B and Hepatitis C are subject to many of the same types of control measures and potential penalties as persons with HIV, including those related to sexual activities, disclosure, needle-sharing, the sale or donation of blood or other bodily products, and disclosure of sexual or needle-sharing partners to public health officials. See 10A N.C. ADMIN. CODE 41A.0203, 41A.0214 (2018)

⁵North Carolina regulations do not define the term “sexual intercourse” and so it is not entirely clear whether the control measures encompass activities like oral sex.

⁶ Viral suppression is defined as below 200 copies per milliliter. 10A N.C. ADMIN. CODE 41A.0202(1)(a)(i) (2018).

⁷ 10A N.C. ADMIN. CODE 41A.0202(1)(a)(i)-(iv) (2018).

⁸ 10A N.C. ADMIN. CODE 41A.0202(1)(e) (2018).

⁹ 10A N.C. ADMIN. CODE 41A.0202(1)(f) (2018).

¹⁰ 10A N.C. ADMIN. CODE 41A.0202(1)(g) (2018).

PLHIV has the option of giving information on sexual and needle-sharing contacts to a public health disease intervention specialist who can assist with contacting sexual and needle-sharing partners.¹¹

A maximum of two years' imprisonment may occur from violating these and other regulations directed at the control of HIV,¹² and an individual may not be released before the end of their sentence unless a District Court has determined that the release of the person would not "create a danger to the public health."¹³

- In April 2015, a PLHIV was charged with violating the public health HIV control measures after he had unprotected sex with two people and ostensibly did not disclose his status.¹⁴
- In November 2011, a 27-year-old PLHIV was charged with a public health violation for failing to tell a sexual partner of his HIV status.¹⁵
- In August 2008, a 23-year-old PLHIV was sentenced to 30 months of probation for having condomless sex with numerous partners.¹⁶ He was later sentenced to six months of house arrest for further acts sex in violation of his probation.¹⁷

Physicians who treat PLHIV have a variety of duties related to counseling and notification procedures.

Physicians are required to notify the local health director when they have "cause" to suspect that a PLHIV is not following or cannot follow control measures and is "thereby causing a significant risk of transmission."¹⁸ The control measures do not describe the kinds of conduct that would constitute "cause" sufficient to trigger this duty to report for a treating physician.¹⁹ Physicians are also required to provide patients with a copy of control measures relating to HIV, and must advise PLHIV to notify all future sexual partners of their serostatus.²⁰

When applicable, an attending physician is expected to obtain the consent of a PLHIV to notify and counsel that person's spouse as a potentially exposed person. Alternatively, an attending physician may provide information on a PLHIV's spouse to the Division of Public Health, which will then attempt to notify and counsel the spouse.²¹

Physicians who treat children living with HIV are required to contact the local health director if their child patient may "pose a significant risk of transmission" in a school or daycare setting due to "open, oozing

¹¹ 10A N.C. ADMIN. CODE 41A.0202(1)(f)-(g) (2018).

¹² N.C. GEN. STAT. §§ 130A144(f), 130A-25(a)-(b) (2017).

¹³ N.C. GEN. STAT. § 130A-25(c) (2017).

¹⁴ Anna Bulszewicz, *Man charged with not informing his partners of his positive HIV status*, WCTI12.COM, April 24, 2015, available at <http://www.wcti12.com/news/man-charged-with-not-informing-partners-of-his-positive-hiv-status/15726238>.

¹⁵ *Police: Man didn't tell partner he has HIV*, ABC11, Nov. 4, 2011, available at <http://abclocal.go.com/wtvd/story?section=news/local&id=8419702>.

¹⁶ *Club DJ on house arrest for violating probation*, WRAL.COM, Oct. 21, 2008, available at http://www.wral.com/news/news_briefs/story/3781930/.

¹⁷ *Id.*

¹⁸ 10A N.C. ADMIN. CODE 41A.0202(5) (2018).

¹⁹ The control measures also specify that "any other person" can notify the local health director if they have "cause" to suspect a PLHIV is not following control measures and is thereby causing a significant risk of transmission. *Id.*

²⁰ 10A N.C. ADMIN. CODE 41A.0202(2)(a)-(b) (2018).

²¹ 10A N.C. ADMIN. CODE 41A.0202(2)(c) (2018).

wounds” or on the basis of “behavioral abnormalities.”²² Depending on the circumstances, the local health director may further investigate any potential risk posed by the child and recommend alternate educational or child care arrangements.²³

PLHIV are prohibited from donating blood or blood products, organs, human tissue, semen, ova, or breast milk except under specific circumstances.

Under North Carolina’s Administrative Code, PLHIV must not donate or sell blood, plasma, platelets, any other blood products, semen, ova, tissues, organs, or breast milk.²⁴ However, organ donation is permissible if it occurs as part of a clinical research study that has been approved by an institutional review board under the requirements outlined by 42 USC 274f-5(a) and (b).²⁵ Sperm and ova donation by PLHIV are authorized if harvest occurs under the supervision of an attending physician and is to be used by the PLHIV’s spouse for the purpose of achieving pregnancy.²⁶

PLHIV may face criminal penalties for sharing needles.

North Carolina’s Administrative Code prohibits PLHIV from sharing needles, syringes, or any other drug paraphernalia that may be contaminated with blood.²⁷

PLHIV are also subject to general criminal laws in North Carolina.

PLHIV may also be prosecuted under general criminal laws such as assault or reckless endangerment. In 2005, a man living with HIV appealed his conviction for two counts of failure to comply with public health control measures and two counts of assault with a deadly weapon, among other charges, after he had sex with an underage boy.²⁸ In a different case, *State v. Monk*, the North Carolina Court of Appeals determined that charges of assault with a deadly weapon and attempted murder, which were based on the defendant’s HIV status, were properly joined for trial with charges of first-degree statutory rape and taking indecent liberties with minor, after the defendant allegedly sexually assaulted a minor.²⁹

Persons with a sexually transmitted infection (STI) other than HIV are subject to a range of public health control measures and violation may result in incarceration.

North Carolina’s Administrative Code contains various control measures to address sexually transmitted infections.³⁰ These are different than the control measures for HIV, Hepatitis B and

²² 10A N.C. ADMIN. CODE 41A.0202(3) (2018).

²³ 10A N.C. ADMIN. CODE 41A.0202(3)(a)-(c) (2018).

²⁴ 10A N.C. ADMIN. CODE 41A.0202(1)(c) (2018).

²⁵ These provisions of the U.S. Code refer to criteria, standards, and regulations with respect to organs of PLHIV that are to be promulgated by the HHS Secretary consistent with the requirements of the HOPE Act (Human Immunodeficiency Virus Organ Policy Equity Act). Organ donation by PLHIV in North Carolina is also authorized if the HHS Secretary determines under 42 USC 274f-5(c) that clinical research is not longer warranted as a requirement for transplants and the organ recipient is receiving the transplant consistent with the requirements of 42 USC 274f-5(c).

²⁶ 10A N.C. ADMIN. CODE 41A.0202(1)(c)(ii) (2018).

²⁷ 10A N.C. ADMIN. CODE 41A.0202(1)(b) (2018).

²⁸ *State v. Murphy*, 2005 N.C. App. LEXIS 840, *1 (N.C. Ct. App. 2005). The appellate court reversed the convictions for the control measure violations because they had occurred outside the two-year statute of limitations.) *Id.* at *16-19.

²⁹ 511 S.E.2d 332, 336-37 (N.C. Ct. App. 1999).

³⁰ 10A N.C. ADMIN. CODE 41A.0204 (2018).

Hepatitis C. The requirements vary slightly depending on the particular condition. A person infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis must refrain from sexual intercourse until they have been examined, diagnosed, and completed treatment.³¹ Persons with these conditions must also notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that the partners must be evaluated by a physician or local health department.³² A person infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, or chancroid must also refrain from sexual intercourse until they have been examined, diagnosed, and completed treatment.³³ They must also provide the names of their sexual partners to a disease intervention specialist for the purpose of contact tracing; depending on the disease, the window for determining which partners are to be identified is different.³⁴ As with HIV, “sexual intercourse” is not defined and it is unclear whether activities like oral sex are included in the ambit of prohibited conduct.

All persons with an STI are required to be tested, treated and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service.³⁵ Pregnant women are required to undergo mandatory HIV and STI testing.³⁶

A maximum of two years’ imprisonment may occur from violating these and other regulations directed at the control of STIs,³⁷ and an individual may not be released before the end of their sentence unless a District Court has determined that the release of the person would not “create a danger to the public health.”³⁸

Public health officials may isolate or quarantine a person with an STI, including HIV.

Individuals with an STI, including HIV, are required to “comply with control measures, including submission to examinations and tests.”³⁹ State and local health directors are empowered to exercise quarantine and isolation authority when “public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.”⁴⁰ What constitutes public health endangerment or other reasonable means of correcting the problem are not defined.

An initial order for isolation or quarantine is not to exceed 30 calendar days and any person subject to such a restriction may challenge the measure in the superior court of the county in which the limitation

³¹ 10A N.C. ADMIN. CODE 41A.0204(b)(1) (2018).

³² 10A N.C. ADMIN. CODE 41A.0204(b)(3) (2018).

³³ 10A N.C. ADMIN. CODE 41A.0204(c)(1) (2018).

³⁴ 10A N.C. ADMIN. CODE 41A.0204(c)(3) (2018).

³⁵ 10A N.C. ADMIN. CODE 41A.0204(b)(2), 41A.0204(c)(2) (2018).

³⁶ 10A N.C. ADMIN. CODE 41A.0202(14), 10A N.C. ADMIN. CODE 41A.0204(e), 41A.0204(f) (2018).

³⁷ N.C. GEN. STAT. § 130A-25(a) (2017).

³⁸ N.C. GEN. STAT. § 130A-25(b) (2017).

³⁹ N.C. GEN. STAT. § 130A-144(f) (2017).

⁴⁰ N.C. GEN. STAT. § 130A-145(a) (2017).

is imposed.⁴¹ The hearing must occur within 72 hours of the request and the individual is entitled to be represented by counsel.⁴² To uphold the order, the court must determine, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.⁴³

If a public health official concludes it is necessary to extend the order beyond 30 calendar days, they must institute an action in the superior court of the county where the restriction is imposed to obtain an extension.⁴⁴ The court must make the same finding by a preponderance of the evidence that the restriction is reasonably necessary to limit the spread of communicable disease.⁴⁵ The court may then specify a period of time that the limitation shall continue. Prior to the expiration of that period, state health officials may seek an extension, for only for additional increments of 30 days.⁴⁶

When an isolation order is issued on the basis of someone's HIV status, health officials may require compliance with a plan as part of the order which details activities intended to "assist the individual to comply with control measures."⁴⁷ These activities include substance abuse counseling and treatment,⁴⁸ harm reduction services,⁴⁹ mental health counseling and treatment required to prevent transmission,⁵⁰ education and counseling sessions about "HIV, HIV transmission, and behavior change required to prevent transmission"⁵¹ and intimate partner violence intervention services.⁵²

A person who arrested for a violating a quarantine or isolation order may be denied pretrial release by a judge who determines by clear and convincing evidence that the person "poses a threat to the health and safety of others."⁵³ As with the other control measures described above, violation of a quarantine or isolation order can result in a penalty of up to two years' imprisonment.⁵⁴

A defendant may be detained solely for the performance of HIV testing.

In a judge finds during a defendant's initial appearance that a person had a non-sexual exposure to a defendant "in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant," the defendant may be detained for up to 24 hours in order to permit testing by public health officials.⁵⁵ Activities that would pose a "significant risk of transmission" are not defined.

⁴¹ N.C. GEN. STAT. § 130A-145(d) (2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 10A N.C. ADMIN. CODE 41A.0202(11) (2018).

⁴⁸ 10A N.C. ADMIN. CODE 41A.0202(11)(a) (2018).

⁴⁹ 10A N.C. ADMIN. CODE 41A.0202(11)(b) (2018).

⁵⁰ 10A N.C. ADMIN. CODE 41A.0202(11)(c) (2016).

⁵¹ 10A N.C. ADMIN. CODE 41A.0202(11)(d) (2018).

⁵² 10A N.C. ADMIN. CODE 41A.0202(11)(d) (2018).

⁵³ N.C. GEN. STAT. § 15A-534.5 (2017)

⁵⁴ N.C. GEN. STAT. § 130A-25(a) (2017).

⁵⁵ N.C. GEN. STAT. § 15A-534.3 (2017).

Medical information may be released to “protect the public health” or in response to a court order.

Medical information regarding a person’s HIV status or their infection with another reportable condition⁵⁶ is strictly confidential.⁵⁷ However, release is permitted when “necessary to protect the public health”⁵⁸ and may also occur pursuant to subpoena or court order.⁵⁹ The type of legal proceeding in which such medical information is or could be admissible is not specified.

Important note: While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.

⁵⁶ Reportable conditions that are sexually transmitted include AIDS, chancroid, chlamydia, gonorrhea, granuloma inguinale, hepatitis B, HIV, lymphogranuloma venereum, nongonococcal urethritis, pelvis inflammatory disease, syphilis, and Zika virus. 10A N.C. ADMIN. CODE 41A.0101(2018).

⁵⁷ N.C. GEN. STAT. § 130A-143 (2017).

⁵⁸ N.C. GEN. STAT. § 130A-143(4) (2017).

⁵⁹ N.C. GEN. STAT. § 130A-143(6) (2017).

North Carolina Administrative Code

Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.

TITLE 10A, DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A N.C. ADMIN. CODE 41A.0202 (2018).

The following are the control measures for the Human Immunodeficiency Virus (HIV) infection:

- (1) Persons diagnosed with HIV infection (hereafter "person living with HIV") shall:
 - (a) refrain from sexual intercourse unless condoms are used except when:
 - (i) the person living with HIV is in HIV care, is adherent with the treatment plan of the attending physician, and has been virally suppressed for at least 6 months (HIV levels below 200 copies per milliliter) at the time of sexual intercourse;
 - (ii) the sexual intercourse partner is HIV positive;
 - (iii) the sexual intercourse partner is taking HIV Pre-Exposure Prophylaxis (PrEP) antiretroviral medication used to prevent HIV infection as directed by an attending physician; or
 - (iv) the sexual intercourse occurred in the context of a sexual assault in which the person living with HIV was the victim;
 - (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
 - (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk, except when:
 - (i) The person living with HIV is donating organs as part of a clinical research study that has been approved by an institutional review board under the criteria, standards, and regulations described in [42 USC 274f-5](#)(a) and (b);

or, if the United States Secretary of Health and Human Services determines under USC 274f-5(c) that participation in this clinical research is no longer warranted as a requirement for transplants, and the organ recipient is receiving the transplant under the criteria, standards, and regulations of USC 274f-5(c); or
 - (ii) Sperm or ova are harvested under the supervision of an attending physician to be used by the person's spouse or partner for the purpose of achieving pregnancy.
 - (d) have a test for tuberculosis;
 - (e) notify future sexual intercourse partners of the infection, unless the person living with HIV meets the criteria listed in Sub-item (1)(a)(i) of this Rule. If the person living with HIV is the victim of a sexual assault, there is no requirement to notify the assailant;
 - (f) if the time of initial infection is known, notify persons who have been sexual intercourse or needle-sharing partners since the date of infection or give the names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing and notification; and
 - (g) if the date of initial infection is unknown, notify persons who have been sexual intercourse or needle-sharing partners for the previous 12 months or give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual and needle-sharing partners for the preceding 12 months.
- (2) The attending physician shall:

- (a) give the control measures in Item (1) of this Rule to patients living with HIV in accordance with [10A NCAC 41A .0210](#);
 - (b) advise persons living with HIV to notify all future sexual partners of infection;
 - (c) If the attending physician knows the identity of the spouse of the person living with HIV and has not, with the consent of the person living with HIV, notified and counseled the spouse, the physician shall list the spouse on a form provided by the Division of Public Health and shall send the form to the Division by secure transmission, required by [45 CFR 164.312\(e\)\(1\)](#), or by secure fax at (919) 715-4699. The Division shall undertake to counsel the spouse and the attending physician's responsibility to notify exposed and potentially exposed persons shall be satisfied by fulfilling the requirements of Sub-Items (2)(a) and (c) of this Rule;
 - (d) advise persons living with HIV concerning proper methods for the clean-up of blood and other body fluids;
 - (e) advise persons living with HIV concerning the risk of perinatal transmission and transmission by breastfeeding.
- (3) The attending physician of a child living with HIV who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities shall notify the local health director. The local health director shall consult with the attending physician and investigate the following circumstances:
- (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parents or legal guardians to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint this interdisciplinary committee. Significant risk of transmission shall be determined in accordance with the HIV Risk and Prevention Estimates published by the Centers for Disease Control and Prevention, which are hereby incorporated by reference including subsequent amendments and editions. A copy of this publication can be accessed at no cost online at <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>.
 - (i) If the superintendent or private school director establishes this committee within three days of notification, the local health director shall consult with this committee.
 - (ii) If the superintendent or private school director does not establish this committee within three days of notification, the local health director shall establish this committee.
 - (b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
 - (i) notify the parents or legal guardians;
 - (ii) notify the committee;
 - (iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
 - (iv) determine if an alternative educational setting is necessary to protect the public health;
 - (v) instruct the superintendent or private school director concerning protective measures to be implemented in the alternative educational setting developed by school personnel; and
 - (vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.
 - (c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents or legal guardians that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were HIV positive, would pose a significant risk of HIV transmission, the following shall apply:

(a) When the source person is known:

(i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and, unless the source is already known to be living with HIV, shall test the source for HIV infection with or without consent unless it reasonably appears that the test cannot be performed without endangering the safety of the source person or the person administering the test. If the source person cannot be tested, any existing specimen shall be tested. The attending physician of the source person shall notify the attending physician of the exposed person of the infection status of the source.

(ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since last exposure is sufficient to assure detection using current CDC HIV testing guidelines, and, if the source person was HIV positive, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The CDC HIV testing guidelines are hereby incorporated by reference including subsequent amendments and editions. The CDC HIV testing guidelines can be accessed at no cost online at <https://www.cdc.gov/hiv/guidelines/testing.html>, with the most current updates found at <https://stacks.cdc.gov/view/cdc/23447>. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality of the source person's HIV status.

(b) When the source person is unknown, the attending physician of the exposed persons shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since the last exposure is sufficient to assure detection using the current CDC HIV testing guidelines.

(c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.

(5) The attending physician shall notify the local health director when the physician has cause to suspect a patient living with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person has cause to suspect a person living with HIV is not following control measures and is thereby causing a significant risk of transmission.

(6) When the local health director is notified pursuant to Item (5) of this Rule of a person who is mentally ill or intellectually impaired, the local health director shall confer with the attending mental health physician or Local Management Entity/Managed Care Organization and the physician, if any, who notified the local health director to develop a plan to prevent transmission.

(7) The Division of Public Health shall notify the Director of Health Services of the North Carolina Department of Public Safety and the prison facility administrator when any person confined in a state prison is determined to be living with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined person living with HIV is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making recommendations to the unit housing classification committee.

(8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.

(9) Local health departments shall provide counseling and testing for HIV infection at no charge to the patient. Third party payers may be billed for HIV counseling and testing when such services are provided and the patient provides written consent.

(10) HIV pre-test counseling is not required. Post-test counseling for persons living with HIV is required, must be individualized, and shall include referrals for medical and psychosocial services and control measures counseling.

(11) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with [G.S. 130A-145](#), compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual including linkage to care and may include referral to one or more of the following available and appropriate services:

- (a) substance abuse counseling and treatment;
- (b) harm reduction services;
- (c) mental health counseling and treatment required to prevent transmission;
- (d) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission; and
- (e) intimate partner violence intervention services.

(12) The Division of Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of persons living with HIV.

(13) Every pregnant woman shall be offered HIV testing by her attending physician at her first prenatal visit and in the third trimester. The attending physician shall test the pregnant woman for HIV infection, unless the pregnant woman refuses to provide informed consent pursuant to [G.S. 130A-148\(h\)](#). If there is no record at labor and delivery of an HIV test result during the current pregnancy for the pregnant woman, the attending physician shall inform the pregnant woman that an HIV test will be performed, explain the reasons for testing, and the woman shall be tested for HIV without consent using a rapid HIV test unless it reasonably appears to the clinician that the test cannot be performed without endangering the safety of the pregnant woman or the person administering the test. If the pregnant woman cannot be tested, an existing specimen, if one exists that was collected within the last 24 hours, shall be tested using a rapid HIV test. The attending physician must provide the woman with the test results as soon as possible.

(14) If an infant is delivered by a woman with no record of the result of an HIV test conducted during the pregnancy and if the woman was not tested for HIV during labor and delivery, the fact that the mother has not been tested creates a reasonable suspicion pursuant to [G.S. 130A-148\(h\)](#) that the newborn has HIV infection and the infant shall be tested for HIV. An infant born in the previous 12 hours shall be tested using a rapid HIV test

(15) Testing for HIV may be offered as part of routine laboratory testing panels using a general consent that is obtained from the patient for treatment and routine laboratory testing, so long as the patient is notified that they are being tested for HIV and given the opportunity to refuse.

10A N.C. ADMIN. CODE 41A.0204 (2018)

Control measures- sexually transmitted diseases

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;

(2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the and a copy may be obtained free of charge by writing the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

(3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

(1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;

(2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures are not required;

(3) Give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual partners and others as listed in this Rule:

(A) for syphilis: . . .

(B) for lymphogranuloma venereum: . . .

(C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and

(D) or chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation and at delivery. Hospitals shall determine the syphilis serologic status of the mother prior to discharge of the newborn so that if necessary the newborn can be evaluated and treated as provided in (c)(2) of this rule. Pregnant women 25 years of age and younger shall be tested for chlamydia and gonorrhea in the third trimester or at delivery if the woman was not tested in the third trimester.

(f) Any woman who delivers a stillborn infant shall be tested for syphilis . . .

General Statutes of North Carolina

CHAPTER 130A, PUBLIC HEALTH

N.C. GEN. STAT. § 130A-143 (2017)

Confidentiality of records

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances: . . .

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions; . . .

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case; . . .

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS.

N.C. GEN. STAT. § 130A-144 (2017)

Investigation and control measures

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians, persons in charge of medical facilities or laboratories, and other persons shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

(c) A physician or a person in charge of a medical facility or laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being

infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13.

(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143.

N.C. GEN. STAT. § 130A-145 (2017)

Quarantine and isolation authority

(a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. The official who exercises the quarantine or isolation authority shall give the persons known by the official to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is

reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. Except as provided below for persons with tuberculosis, the court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each. If the person whose freedom of movement has been limited has tuberculosis, the court shall continue the limitation for a period not to exceed one calendar year if it determines, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of tuberculosis to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order limiting the freedom of movement of a person with tuberculosis, the State Health Director or local health director may move to continue the order for additional periods not to exceed one calendar year each.

N.C. GEN. STAT. § 130A-25 (2017) **

Misdemeanor

§ 130A-25. (Effective December 1, 2017) Misdemeanor

- (a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.
- (b) A person convicted under this section for violation of [G.S. 130A-144\(f\)](#) or [G.S. 130A-145](#) shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult Correction and Juvenile Justice, McCain, North Carolina; the North Carolina Correctional Center for Women, Section of Prisons of the Division of Adult Correction and Juvenile Justice, Raleigh, North

Carolina; or any other confinement facility designated for this purpose by the Secretary of Public Safety after consultation with the State Health Director. The Secretary of Public Safety shall consult with the State Health Director concerning the medical management of these persons.

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

CHAPTER 15A, CRIMINAL PROCEDURE ACT

N.C. GEN. STAT. § 15A-534.3 (2017)

Detention for communicable diseases

If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

N.C. GEN. STAT. § 15A-534.5 (2017)

Detention to protect public health

If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the State Health Director or local health director has made recommendations to the court.

