Various local governments and the Governor have issued stay-at-home or shelter-in-place orders. The Governor has cited N.C.G.S. §166A-19.30 (“Additional powers of the Governor during state of emergency”) and local governments have cited N.C.G.S. §166A-19.31 (“Power of municipalities and counties to enact ordinances to deal with states of emergency”) for authority to impose many of these orders.

“Shelter-in-place” is not really a legal term. In fact, it does not appear anywhere in the General statutes. The concept of requiring people to stay home and away from other people has historically been governed by laws allowing government officials to order “isolation” and “quarantine.” Such laws have been used to limit the spread of diseases like tuberculosis and polio.

Isolation and quarantine laws are more appropriate to the current need to slow or limit the spread of COVID-19. But these laws aren’t the ones government is relying on. Why is that? There are probably at least two reasons. First, the Governor and local governments aren’t the ones with authority to issue isolation or quarantine orders. The statutes leave that power to specific medical professionals. Second, isolation and quarantine laws have built-in procedural safeguards. Persons subject to isolation and quarantine have rights to counsel and to court review. Isolation and quarantine orders have time limits which can only be extended under certain circumstances.

North Carolina is now under a broad order from the Governor to stay home, effectively a statewide order for isolation. The Governor is using a statute which grants him additional power during a state of emergency, a statute most often employed during natural disasters like hurricanes and floods. The reality, though, is that stay at home or shelter in place orders are more akin to efforts to control the spread of other diseases like tuberculosis. Isolation orders to control the spread of disease are statutorily given to state and local public health directors. Isolation and quarantine orders are subject to limitations and safeguards which are notably absent from the orders North Carolina is presently under. Not least of these limitations and safeguards are time limits and the right to counsel.
Below are just some of the details about isolation and quarantine orders.

- **NCGS § 130A-145** give the State Public Health Director and Local Health Director isolation and quarantine authority.

- **Isolation** - Order to limit the freedom of movement or action of persons or animals that are infected or reasonably suspected to be infected with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

- **Quarantine** - Order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Can also be an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

- **Isolation and Quarantine orders have a 30-day limit**
  - When quarantine or isolation limits freedom of movement, any person substantially affected by that limitation may challenge it in court either in Wake County or in the county in which the limitation is imposed. That person has the right to an attorney. If he or she cannot afford an attorney, one will be appointed (similar to appointed counsel for a criminal case)
  - The official who orders the quarantine or isolation must 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 who is under isolation or quarantine (his/her representative) requests a hearing, the hearing must be held within 72 hours of the filing of that request, excluding Saturdays and Sundays.
  - 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-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 seek a court order extending the period of limitation of freedom of movement or access.**
Except 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.

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About the Author

Jeanette Doran has served as President and General Counsel of the North Carolina Institute for Constitutional Law since returning to the Institute to reorganize and restart the organization in July 2019.

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