

To: Nevada HIV Law Modernization Task Force
From: Connie Shearer, Davina Connor Otalor, Co-Chairs, Nevada HIV Modernization Coalition;
Marguerite Schauer, Jada Hicks, The Center for HIV Law and Policy
Date: September 1, 2020
RE: Amended proposed reforms to punitive HIV and communicable disease laws

We are submitting a slightly, but importantly, tweaked version of our specific recommendations we provided you last week to reflect a discussion this past weekend that included CHLP representatives, the Co-chairs of the Nevada HIV Modernization Coalition, and staff of the Williams Institute at UCLA School of Law. These revisions also, we believe, are consistent with the principles and background set out in detail in the Statement of Brad Sears and Luis Vasquez of the Williams Institute.¹

The most important change is moving the amended language of the primary criminal code provision on HIV exposure out of the criminal code, to replace an outdated public health code provision on communicable disease exposure. HIV is covered under Nevada's definition of a communicable disease, and the current communicable disease law, which imposes misdemeanor penalties on exposure without evidence of intent or transmission, is itself in need of modernization. Therefore, the proposed "tweak" is both consistent with a public health approach endorsed for other communicable diseases and creates no new crimes.² In fact, it affords more equitable protection for all individuals suspected of exposing others to disease infection.

Other points of note in both this and our original recommendations:

- 1) We have added a preliminary statement that it is the policy of the State of Nevada to treat exposure to communicable disease through public health, not criminal law, measures.
- 2) Communicable disease laws in the public health code that are not HIV-specific must be addressed because they can in fact be applied to HIV and because we believe the best approach is to take a consistent public health approach to all communicable diseases. This is consistent with what the Nevada legislature decided to do more than 30 years ago when – with the exception of HIV, which was highly stigmatized and a politically charged issue at the time -- it ended its practice of criminalizing disease transmission and moved disease control measures to the public health code.
- 3) Connecting HIV and other communicable disease testing to alleged criminal conduct or mandating it when there is no apparent medical purpose for such testing, undercuts basic public health goals and messaging without serving any individual or community benefit. All mandatory testing provisions are repealed with the exception of testing of source patients, in incidents of public employee and sexual assault victim exposures to communicable diseases, when requested by the exposed individual and testing of the source person/defendant is necessary to determine the appropriate course of treatment; and when the exposed individual has consented to testing to determine their baseline health status.
- 4) Similarly, segregating incarcerated persons on the basis of their HIV status or other conditions that would not require quarantine or isolation in the general population is stigmatizing, serves no public or individual health goal; for this reason, all recent federal court decisions have banned HIV-specific segregated housing as a violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973.

¹ Statement of Dean Brad Sears, Associate Dean of Public Interest Law, UCLA School of Law/the Williams Institute, and Luis A. Vasquez, Renberg Law Fellow, the Williams Institute (August 31, 2020).

² See Statement of Brad Sears, August 31, 2020, at 1, 21-22.

- 5) Restrictions on employment based on a communicable disease are limited to airborne diseases that pose a risk to others through casual contact, and in accordance with the requirements of state and federal disability antidiscrimination law.
- 6) There is no public health purpose served by treating anyone differently under the criminal or civil law solely on the basis of what they do, such as sex workers; accordingly, provisions that eliminate unique standards and punishments for sex workers are eliminated.

Thank you for considering this revised submission.