

Position of the Governor's Advisory Taskforce on HIV Exposure Modernization

Importance of Modernizing Laws Related to HIV

Advancements in the prevention and treatment of HIV over the past 40 years have extraordinarily impacted the lives of people living with HIV (PLHIV) to realize the ability of living full, healthy lives. Antiretroviral therapy (ART) is integral to the ability of people to live with HIV as a chronic medical condition and achieve an undetectable HIV level where a person cannot transmit the virus through sexual contact. Medication is also available for people that have tested negative for HIV to prevent acquiring the virus. By a person knowing their HIV status through testing and then linking to the appropriate method of treatment, the HIV epidemic will end. However, stigma, social and legal barriers impede the ability for people to access the services needed to meet this vision.

HIV is the only communicable disease in Nevada that has specific statutes that support criminal prosecution with charges or punishment that are heightened simply because the person charged is living with HIV. Laws that are specific to HIV target and punish people for engaging in conduct that would otherwise be legal if not for the person's HIV positive status. Of note:

- These outdated laws do not require that someone actually infect another person with HIV to be held liable and punished with a felony conviction and imprisonment;
- These outdated laws do not require someone to intend to infect someone else;
- Behavior that cannot transmit HIV is criminalized. These behaviors include, in part, biting, spitting, using a condom during sex with someone living with HIV, and someone living with HIV having an undetectable viral load when having sex.

While HIV specific laws were enacted to discourage behavior that might lead to transmission and promote safer sex practices, they were passed at a time when little was known about HIV treatment and transmission. Many of the enacted laws applied regardless of actual transmission or intent. These laws discourage the activities that are evidence-based and scientifically known to prevent and treat HIV. Laws that criminalize people living with HIV are shown to discourage people from knowing their HIV status through testing, increase the stigma that drives the HIV epidemic and contributes to disparities that already negatively impact a community's health. Exacerbation of racial and ethnic inequities, wider gaps in health disparities, violation of civil and human rights, facilitation of intimate partner violence, and hindering a person's ability to access proven disease prevention and health promotion services all stem from the stigma of criminalization.

Therefore, the Governor's Advisory Taskforce supports the modernization of laws specific to HIV that utilize proven public health strategies, reflect the advancements of HIV prevention and treatment and support the human and civil rights of people living with HIV.

Elements of Modernization

The Taskforce supports the Elements of Modernization provided by the Nevada HIV Modernization Coalition.

- Lower any penalty to the lowest graded misdemeanor;
- Eliminate sentence enhancement that results from a person living with HIV;
- Assign all burdens of proof to the prosecution;

- Bring HIV into the law applicable to all other communicable diseases;
- Include a requirement that the law apply only to those act(s) with specific intent to transmit and who engage in conduct that carries a substantial risk of transmission as defined by competent medical evidence, or actual transmission occurs;
- Include a statement that the prosecution cannot meet its burden of proving specific intent to transmit where PLHIV understood or attempted to undertake practical means to prevention transmission as defined by any method, device, behavior or activity demonstrated epidemiologically to limit, reduce, or eliminate the risk of transmission (e.g. use of barrier protection and use of ART);
- Ensure any penalty must be proportionate to the harm and prioritize alternative to incarceration.