

NRS 441a.195

Nevada Revised Statute 441a.195 allows for testing of person or decedent who may have exposed law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner or medical examiner, person employed by or volunteering for agency of criminal justice or certain other public employees or volunteers to communicable disease. The 2019 Task Force, through recommendations from the Center for HIV Law and Policy and community advocates, recommended changes to this statute in an effort to protect the rights of a person required to be tested and aligning the current science of HIV transmission and acquisition risk with legislation.

Language in the statute, prior to changes passed in the 2021 legislative session, noted that if there was “possible” exposure to a communicable disease through the transfer of blood or bodily fluids from a person or decedent to the person in a position stated above, that the person potentially exposed could petition the court to order a test for exposure to a communicable disease. Prior to petitioning the court, the person exposed should submit information about the exposure to a designated health care officer for the employer or public agency or the person designated by the employer to document and verify the exposure and the likelihood of disease transmission from a person or decedent to the potentially exposed person, based on current scientific information.

Concerns from community members were brought forward to the 2019 Task Force that the use of “possible” in relation to exposure was too subjective. The scientific information on what constitutes substantial exposure to a communicable disease is specific to the communicable disease. People have been ordered to test based on perceived exposure to a communicable disease that is not grounded in scientific information of what exposure facilitates disease transmission. Examples of this situation are people that have been ordered to provide a sample for testing of HIV because they exposed a protected person, i.e. law enforcement, first responders and other named above, to urine, feces, or saliva. Scientific information demonstrated that these body fluids do not facilitate HIV transmission. In some circumstances, criminal charges have been imposed based on the alleged exposure. These charges and orders for testing were often based on stigma, fear, and discrimination related to HIV.

Feedback from first responder representatives and advocates voiced concern that a change in the statute would limit the potentially exposed person from the timely testing to ascertain the communicable disease status of the person or decedent that transferred blood or bodily fluids. Further concern was voiced that a delay in testing may also delay appropriate post exposure prophylaxis to help prevent acquisition from the exposure. First responder representatives and advocates acknowledged that they did not support language that furthers HIV stigma. Their concern was the protection of the first responders and the protection of their ability to receive medical information to direct additional medical intervention in case of exposure. Representatives and advocates were from Clark County Fire Fighters Association and Professional Fire Fighters of Nevada.

Ongoing meetings between advocates, first responder representatives, public health representatives, and the sponsoring legislator discussed the implication of the word “possible” in relation to exposure. After much deliberation, the group gained consensus on a change from “possible” to “likely” with regard to exposure. The group agreed that “likely” was a stronger word.

A Task Force member who was involved in the meetings where the verbiage change was discussed followed up with first responder representatives and advocates a year after the legislation was passed,

to inquire about any consequences, positive or negative, from the change. The representatives appreciated the follow up and stated that no consequences had been reported from the language changes.