

DRAFT Statutory Recommendations

General recommendation: mention of AIDS vs. HIV

As the Task Force was reviewing state statutes, we noticed a place where acquired immunodeficiency syndrome (AIDS) was mentioned when human immunodeficiency virus (HIV) should have been used. While HIV is a virus that causes an infection, AIDS is a condition that only occurs at the last stage of HIV infection. While we only noticed this in NRS 441A.300, it's possible that AIDS is incorrectly mentioned elsewhere as well. There is a clear difference between AIDS and HIV, and we recommend that the Nevada Revised Statutes be completely reviewed to correct any incorrect mention of AIDS.

NRS 174.031: no change

NRS 201.205: repeal

This statute criminalizes intentional conduct that is likely to transmit HIV. While we appreciate that the statute establishes an affirmative defense and specifically mentions "intentional" behavior, categorizing this crime as a "category B felony" is not in line with elements of modernization.

A possible remedy to this is to completely repeal this statute. Since other statutes, such as NRS 441A.180, criminalize behavior that is likely to transmit any communicable disease, this statute seems unnecessary and only further stigmatizes and isolates HIV. This change would be in accordance to a prime element of modernization that states that laws should be applicable to all diseases and not simply HIV.

If this statute cannot be repealed, we recommend that the punishment be lessened to a misdemeanor in order to reflect elements of modernization.

NRS 201.354: no change

NRS 201.356: remove fine OR no change

OPTION 1: This statute requires that someone who is arrested for a violation of NRS 201.354 (unlicensed sex work) be tested for HIV and also establishes other guidelines relating to that test. While we see no problem with the statute as a whole, we are uncomfortable with the requirement that the arrestee be charged \$100 for the cost of the test if charged with the crime of unlicensed prostitution.

We recommend that this statute be amended so that the arrestee is not required to pay for the cost of the HIV test. The existence of this mandate is yet another unjust barrier in the criminal

justice system that disproportionately affects low-income individuals. According to multiple studies (1 and 2), the existence of such fines goes against rehabilitation efforts and can be ineffective at raising revenue. Additionally, we believe this requirement is unnecessary considering the high number of opportunities for Nevadans to get a free HIV test.

OPTION 2: no change

NRS 201.358: drop charge to misdemeanor OR no change

OPTION 1: This statute makes it a class B felony for a person living with HIV to engage in sex work within our state. A key element of HIV modernization is the elimination of any enhanced sentence that applies only to people living with HIV. Consequently, we recommend an amendment to eliminate this increased charge.

It's important to note that people living with HIV cannot engage in legal sex work in a Nevada brothel. Consequently, people who are in violation of this statute are already in violation of NRS 201.358 and are guilty of a misdemeanor according to that statute. The addition of the enhanced sentence based on HIV status goes against HIV modernization efforts and may be considered excessive punishment.

It is also important to note the potential impact of this law on actual Nevadans. The Advisory Task Force on HIV Exposure Modernization had a chance to hear from a person living with HIV who admitted to engaging in survival sex work. The story highlighted that people who violate this law may do so out of necessity and with no intent to transmit HIV. Furthermore, like other HIV related statutes in Nevada, this law does not account for people who cannot transmit HIV due to a low or undetectable viral load.

OPTION 2: no change

NRS 209.385: segregation and authority given to the Department

This statute requires imprisoned individuals to be tested for HIV, and establishes additional provisions if that person tests positive. This statute states that an imprisoned person with HIV may be segregated from imprisoned individuals without HIV at the discretion of the Department of Corrections. The Task Force sees two possible issues with this requirement.

First, we're curious what "segregated" means in this context, and why segregation would be necessary. Secondly, this statute gives wide authority to the Department in determining risky behavior that is likely to transmit HIV. In other states, people with inadequate knowledge of HIV and its transmission are sometimes given authority in determining behavior that is risky or likely to transmit. In this case, it seems possible that an inmate could be segregated because someone in the Department incorrectly believed that risky behavior happened. For example, a person with a low viral load who cannot transmit HIV may be wrongfully segregated under this

law. It's extremely important that laws like this one are advised by science and not stigma, and this statute should be amended to ensure that decisions are always informed by science.

NRS 441A.160: no change?

NRS 441A.180: no change

NRS 441A.230: no change

NRS 441A.300: repeal

This statute establishes that a person living with AIDS can be subject to confinement if they fail to comply with a written order of a health authority. First of all, this statute wrongly mentions AIDS when it should mention HIV.

Other than that, this statute is identical to other statutes that govern behavior that can transmit diseases. NRS 441A.180, for example, states that a person with a communicable disease shall not conduct themselves in a way that is likely to expose others to that disease (in which a violation of this statute is subject to a misdemeanor charge). Considering that the type of violation governed by NRS 441A.300 is already covered by other statutes that don't single out HIV or AIDS, we recommend that this statute be repealed. This change conforms to elements of modernization, which states that the law should be applicable to all diseases and not just HIV.

NRS 441A.320: mention of HIV and STDs

While we see no issue with this statute as a whole, we think the mention of "human immunodeficiency virus and any commonly contracted sexually transmitted disease" is repetitive, unnecessary, and only furthers stigma for people living with HIV. Since HIV is an STD, there is no reason to list both of these items out separately, and we recommend amending this to remove the unnecessary mention of HIV in the above quoted phrase.

NRS 441A.910 SS: no change?

NRS 441A.195: recommendation?

Citations

1. <https://nicic.gov/fines-fees-and-bail-payments-criminal-justice-system-disproportionately-impact-poor>
2. <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>