

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 instead. 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 recommendation

NRS 201.205: Amend: lower to misdemeanor, move to public health code

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 unreasonably harsh under elements of modernization.

We recommend that this statute be amended so that the crime is categorized as a misdemeanor rather than a category B felony. This change would be in accordance to a prime element of modernization while still criminalizing cases of intentional transmission.

Additionally, we also recommend that “intentionally, knowingly or willfully” be amended to read “intentionally, knowingly, **and** willfully” so that all three of these conditions must be met in order to be criminalized under this law.

We also recommend that this statute, after being amended, be moved from the penal code to the public health code. The Task Force believes that Nevada should take a public health approach, rather than a criminal approach, to fighting the HIV epidemic. This is in alignment to the state’s efforts to combat other diseases, as it removed other communicable diseases from the penal code once the public health and safety code was created in 1989. Removing HIV related statutes from the penal code will ensure that HIV status is treated like other communicable diseases and is not treated like a crime.

NRS 201.354: No recommendation

NRS 201.356: Repeal

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.

We recommend that this statute be repealed entirely. This statute is exemplary of an HIV specific law that could lead to excessive punishment for a person living with HIV. The repeal of this law would be in alignment with elements of modernization.

NRS 201.358: Repeal

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 that this statute be repealed in its entirety.

It's important to note that people living with HIV cannot engage in legal sex work in a licensed house of prostitution. Consequently, people who are in violation of this statute are already in violation of NRS 201.354 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 the opportunity 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.

NRS 209.385: Repeal

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.

We recommend that this statute be repealed in its entirety. This statute is yet another example of an HIV specific law that is potentially harmful for people living with HIV. We are concerned with the term "segregated" because it is not defined, and it is definitely not in alignment with elements of modernization to segregate people living with HIV from people who are HIV negative. This requirement could even be considered illegal discrimination under disability non-discrimination laws. The repeal of this statute would resolve all of these issues.

However, we also recommend that a statute be added to the public health code that allows inmates to get tested for STDs/STIs. We think it's important to retain the testing aspect of this statute but we think this statute is too problematic as written now for the reasons given above.

We believe that such a statute should include testing for all STDs/STIs so that it doesn't exclusively single out HIV. Lastly, the addition of an inmate testing statute fits better in the public health code than here in the criminal code since it should have no intent to criminalize a person.

NRS 441A.160: Amend: power of health authorities

This statute allows a health authority to investigate communicable disease case(s) in order to prevent, suppress, or control that disease. It also allows that health authority to issue orders to a person with a disease, such as orders to isolate, quarantine, or get treatment. Lastly, this statute also states that a health authority cannot require involuntary treatment without a court order.

We are concerned with the wide latitude this statute gives to health authorities. We recommend a few amendments to this statute to modernize the law so that it is based on the latest science and medicine. As written, this statute does not comply with other laws and contains outdated information regarding quarantine and treatment.

To resolve these issues, we recommend that language be added to require that a health authority document the reasoning for their order, and that it must show that its recommended treatment is necessary. This change would ensure that people aren't wrongfully or unnecessarily ordered to quarantine, isolate, or get treatment. Lastly, we also recommend that "testing" be added to the list of items such an order may require.

NRS 441A.180: Amend: establish clarity and import language from penal code

This statute states that a person with a communicable disease shall not conduct themselves in any manner or work in any occupation that is likely to expose others to that disease. This statute also allows a health authority to issue a warning to someone who violates this statute. That person is then guilty of a misdemeanor if another violation occurs after the warning.

We have several recommendations regarding this statute. We find this statute overly broad; more specifically, it offers no guidance on behaviors or occupations that are likely to expose others. As written now, the restrictions on occupations may even be in violation of the Americans with Disabilities Act (ADA). This statute is also overly broad in how it applies to all communicable diseases, although the risks being discussed only relate to airborne or casually transmitted diseases. To resolve these issues, we recommend that the statute explicitly state that it only applies to communicable diseases that are "transmitted through casual contact." We also recommend that "conduct intended to transmit a communicable disease" be defined.

Furthermore, since we suggested moving language in HIV statutes from the penal code to the public health code, we recommend that that language be imported to this statute because it already governs what a person with a communicable disease cannot do. Our recommendation includes the addition of some language from NRS 201.205, such as the affirmative defense, but without explicit mention of HIV so that it applies to all communicable diseases.

All of these amendments ensure that HIV is treated like any other disease, guarantee that the statute is not in violation of disability non-discrimination laws, and clarify behavior that is likely to transmit a disease. For more specific language recommendations on this statute, look to the suggestions from The Center for HIV Law & Policy with edited language (citation).

NRS 441A.230: Amend: infected to diagnosed

While we see no issue with this statute as a whole, we recommend that the word “infected” be changed to “diagnosed.” This change simply ensures that the statute is more specific.

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.

We recommend that this statute be repealed in its entirety. First, this statute is identical to other laws 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 the statute is subject to a misdemeanor charge). This statute may also be in violation of the Americans with Disabilities Act (ADA) because it singles out people living with HIV and ascribes them separate testing and segregation policies. Considering that this statute may be unlawful and that there are other, similar statutes that don't single out HIV or AIDS, we recommend that this statute be repealed. This change conforms to elements of modernization, which state that the law should be applicable to all diseases and not just HIV.

NRS 441A.320: Amend: mention of HIV and STDs, offer testing to victim

This statute states that, if a crime involving sexual penetration has been alleged, a health authority is required to test the alleged perpetrator for HIV and STDs. The statute also establishes guidelines for disclosing the test results, testing the victim if the perpetrator test positive, and counseling/healthcare for the victim.

First, 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. We recommend amending this phrase so that it just reads “any commonly contracted sexually transmitted disease.”

Furthermore, it is also stigmatizing to always require that the alleged perpetrator be tested for STDs. Doing so establishes a false connection between criminal offenses and disease. Instead of requiring perpetrators to be tested, we recommend that the statute be amended so that victims are instead offered STD tests. This recommendation also includes a requirement for the

victim to consent to such testing. This change would be in the best interest of the victim while also not stigmatizing disease.

NRS 441A.195: Amend: require actual exposure

This statute allows a court to order a person to be tested for a communicable disease if possible transmission occurred. More specifically, if a law enforcement officer, firefighter, coroner, or another public employee or volunteer comes into contact with a person's blood or other bodily fluids, then that public employee/volunteer can petition the court to require that the person be tested for a communicable disease.

In several other states, people living with HIV have been charged under HIV criminalization laws when biting or spitting on law enforcement or other public employees (1, 2, and 3). Considering that HIV cannot be transmitted through saliva, these criminalization cases completely disregard science and are extremely unfair. With NRS 441A.195, it may be possible for a similar situation to happen where a person living with HIV is wrongfully criminalized for behavior that cannot transmit HIV.

We recommend that this statute be amended to add safeguards that would prevent it from being used in an instance similar to that described above. First, we recommend adding language to clarify that the blood or bodily fluid in question has to be transmitted "in a manner that poses a substantial risk of transmission of a communicable disease." We also recommend removing mentions of "may have" exposed or "possible" exposure and amend those phrases to require "actual" or "confirmed" exposure to have taken place. Lastly, we recommend that language be added to require documentation of actual exposure and to offer the exposed individual a test for the communicable disease. These amendments would ensure that testing isn't being done unnecessarily and that people are not being wrongfully criminalized while still allowing for testing when actual exposure has occurred.

NRS 441A.910: no recommendation

Citations

1. <https://www.brproud.com/news/local-man-who-allegedly-spit-on-officer-admits-to-knowing-he-has-hiv/>
2. <https://www.augustachronicle.com/news/20191029/hiv-positive-augusta-inmatecharged-after-spitting-in-deputys-face>
3. <https://wsbt.com/news/local/elkhart-county-jail-inmate-faces-new-charges-after-spittingon-two-officers>