

HIV & Nevada State Prisons

NRS 209.385 was repealed with the passage of Senate Bill 275 of 2021. This statute related to testing offenders for HIV and consequent treatment of inmates with HIV. In the report submitted in 2020, the Advisory Task Force on HIV Exposure Modernization recommended that this statute be repealed for several reasons. Primarily, Task Force members were concerned that inmates who tested positive for HIV “must be segregated from every other offender whose test results are negative” according to the statute. Task Force members believed that this requirement was not medically necessary due to the ways in which HIV can be transmitted. Additionally, members worried that inmates living with HIV could have been subjected to inferior treatment after being segregated from inmates without HIV. In fact, the US Justice Department shared similar concerns regarding this statute. The Justice Department found that this practice by the Nevada Department of Corrections was in violation of the Americans with Disabilities Act, and the two parties reached an agreement in 2021 to stop this illegal segregation.¹

Although this current Task Force is happy to see this provision be repealed, there were certain parts of NRS 209.385 that we believe are important to keep in practice, such as testing inmates for HIV and establishing an education program for inmates and employees regarding HIV. To find out more about HIV in Nevada prisons, the Task Force reached out to the Nevada Department of Corrections and requested for a representative to attend one of our meetings.

On August 18, 2022, Russ Alfano, Medical Administrator for the Nevada Department of Corrections, attended our Task Force meeting and answered our questions. First, he told us that, to his knowledge, the Department of Corrections is no longer segregating inmates based on HIV status. Mr. Alfano also confirmed that HIV testing is still available in Nevada prisons along with other medical tests. He stated that inmates are offered testing when entering the Department of Corrections and may also be tested if deemed medically warranted. Mr. Alfano told us that inmates still receive counseling regarding HIV if they test positive while in prison, and information about HIV is still provided to staff and inmates along with other medical information.

Overall, it seems as though the repeal of NRS 209.385 has not had a detrimental effect on the Nevada Department of Corrections’ ability or mandates to offer HIV and other communicable disease testing in prisons. They seem to have no issue with its repeal and have changed their practices to avoid illegal segregation and support inmates and staff in knowing their HIV status.

Nonetheless, more work needs to be done within the Nevada Department of Corrections to improve the treatment of inmates living with HIV and other infections, especially hepatitis C. An

¹<https://www.justice.gov/opa/pr/justice-department-reaches-agreement-nevada-end-discriminatory-policies-against-inmates-hiv#:~:text=The%20Justice%20Department%20today%20reached,benefit%20from%20Nevada%20Department%20of>

article from 2019 detailed how prison officials in Nevada “have denied or limited access to the drugs” that treat hepatitis C.² That same article also alludes to the need for increased testing for hepatitis C in Nevada prisons. In 2021, the Nevada HIV Modernization Coalition heard from an incarcerated person at the Washoe County Detention Center who claimed he was not receiving his HIV medication consistently. Ultimately, the standard of care for inmates with HIV or hepatitis C is not always equal to the care that people receive outside of the prison system. In general, lack of access to medication and quality healthcare has been an ongoing issue in the Nevada Department of Corrections as evidenced by lawsuits in 2008³ and reports in 2017⁴.

At the end of 2022, the Task Force learned of a story that highlights another statutory issue relating to Nevada prisons. A Nevada inmate named Kendrick Ethey, who has an unspecified communicable disease, was recently arrested on a felony charge after allegedly spitting on a deputy.⁵ NRS 212.189 states that a prisoner cannot store, use, propel, or discharge (amongst other actions) any human excrement or bodily fluid with the intent to have the excrement or fluid come into physical contact with another person or under circumstances in which it is reasonably likely for it to come into contact with another person. The punishment for violating this statute ranges from a gross misdemeanor to a category A felony. Since Ethey is aware that he has a communicable disease that is “likely to cause substantial bodily harm” if transmitted, he is being charged with a category A felony.

This statute is somewhat related to NRS 441A.195, which Senate Bill 275 amended in 2021. That law allows for testing of a person who may have exposed a public employee, like a police officer, to a communicable disease if the public employee came into contact with that person’s bodily fluids (see more information about this statute in the “First Responders and NRS 441a.195” section of this report). The 2019 Advisory Task Force on HIV Exposure Modernization recommended that NRS 441A.195 be amended to require actual exposure in order for a court to order testing. The Task Force made that recommendation to protect the rights of a person required to be tested, align the law with the current science of HIV transmission, and prevent unnecessary testing that could have led to wrongful criminalization.

This current Task Force recommends changes to NRS 212.189 to prevent unnecessarily harsh punishment. First, it seems extremely harsh that someone already in prison for their crime(s) could face an additional category A felony sentence for behavior that might not actually cause

²<https://www.nbcnews.com/news/us-news/nevada-prisoners-denied-hepatitis-c-treatment-sue-state-n1107381>

³<https://www.aclu.org/press-releases/aclu-lawsuit-charges-grossly-inadequate-medical-care-state-prison-nevada>

⁴<https://www.reviewjournal.com/news/politics-and-government/nevada/nevada-gets-low-marks-for-inmate-health-spending/>

⁵<https://carsonnow.org/story/12/17/2022/30-year-old-carson-city-prisoner-arrested-felony-spitting-could-face-life-prison-of>

harm to another person. A prime element of HIV modernization is the idea that any penalty must be proportionate to the harm that it caused, and we believe that this idea should apply with this statute too. Additionally, while the law requires intent to have the bodily fluid come into contact with another person (or situations in which it is reasonably likely for contact to occur), the law does not require intent to transmit a communicable disease or for actual transmission to occur. Another prime element of HIV modernization states that laws should only apply to acts with specific intent to transmit and in instances that carry a substantial risk of transmission. The law should be amended to align with this principle.

As stated before, the statute imposes harsher punishment (a category A felony) if the person knows that they have a communicable disease that is likely to cause harm if transmitted. The Task Force is curious to know how the Nevada Department of Corrections educates their inmates on communicable disease transmission and how the Department documents that education. It is important that inmates are being taught medically accurate information about the transmission of diseases, including which fluids can and cannot transmit certain diseases. Since this statute imposes harsher punishment for those who know their communicable disease status and how it can be transmitted through bodily fluids, the Task Force wants to ensure that inmates are truly being educated on these issues and that documentation of that education exists.

Ultimately, the Task Force is pleased to know that the potentially harmful practice of isolating inmates due to their HIV status is no longer happening while HIV testing and information is still available for inmates and staff. At the same time, we hope to see additional actions taken to ensure equal quality of care for all Nevada inmates and to prevent unnecessarily harsh punishment for inmates with communicable diseases.