

Nevada has four criminal statutes that need to be examined and addressed in any effort to modernize its HIV criminal laws. Each will be examined in turn.

The first, NV Rev Stat Section 201.205, enacted in 1993, makes it a class B felony with a mandatory minimum 2 year and maximum 10 year sentence for an individual who knows he has the virus and *intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit the disease to another person*. It is an affirmative defense (one that must be pled and proven by the Defendant) that the person with whom the person with HIV engaged in the prohibited conduct with knew the risk and consented.

Universal Citation: [NV Rev Stat § 201.205 \(2017\)](#)

1. A person who, after testing positive in a test approved by the State Board of Health for exposure to the human immunodeficiency virus and receiving actual notice of that fact, intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit the disease to another person is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. It is an affirmative defense to an offense charged pursuant to subsection 1 that the person who was subject to exposure to the human immunodeficiency virus as a result of the prohibited conduct:

- (a) Knew the defendant was infected with the human immunodeficiency virus;
- (b) Knew the conduct could result in exposure to the human immunodeficiency virus; and
- (c) Consented to engage in the conduct with that knowledge.

(Added to NRS by 1993¹, 1943; A 1995, 1199)

¹ Senate Bill No. 514—Committee on Judiciary

CHAPTER 472

AN ACT relating to the human immunodeficiency virus; making it unlawful to engage in certain conduct through which the virus may be transmitted after testing positive for the disease; providing an affirmative defense to such unlawful conduct; and providing other matters properly relating thereto.

[Approved July 9, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

PLHIV are not allowed to engage in sex work in Nevada. It is a misdemeanor to engage in sex work outside of a licensed house of prostitution. In addition, it is a B felony punishable by a minimum of 2 and a maximum of ten years if PLHIV engaging in sex work at all whether in a licensed house of prostitution or not. There are no defenses listed. Even if you are a sex worker living with HIV who has an undetectable viral load (use of latex condoms in licensed houses of prostitution are already statutorily required) you are not allowed to work any longer in a licensed house. As stated, sex work outside of the licensed houses is illegal and graduates from a misdemeanor to the same B felony for PLHIV. Again, no defenses exist based on the risk/activity, use of risk reduction measures or otherwise.

Universal Citation: NV Rev Stat § 201.358 (2017)

1. A person who:

(a) Violates NRS 201.354²; or

Section 1. Chapter 201 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person who, after testing positive in a test approved by the state board of health for exposure to the human immunodeficiency virus and receiving actual notice of that fact, intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit the disease to another person is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. It is an affirmative defense to an offense charged pursuant to subsection 1 that the person who was subject to exposure to the human immunodeficiency virus as a result of the prohibited conduct:

(a) Knew the defendant was infected with the human immunodeficiency virus;

(b) Knew the conduct could result in exposure to the human immunodeficiency virus; and

(c) Consented to engage in the conduct with that knowledge

² NV Rev Stat § 201.354 (2017)

1. It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.

2. Except as otherwise provided in subsection 3, a person who violates subsection 1 is guilty of a misdemeanor.

3. A person who violates subsection 1 by soliciting a child for prostitution:

(a) For a first offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130, and by a fine of not more than \$5,000.

(b) For a second offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) Works as a prostitute in a licensed house of prostitution, after testing positive in a test approved by the State Board of Health for exposure to the human immunodeficiency virus and receiving notice of that fact is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. As used in this section, notice means:

(a) Actual notice; or

(b) Notice received pursuant to NRS 201.356.

(Added to NRS by 1987, 2027; A 1989, 589, 925; 1995, 1203)

There are two statutes that give health authorities wide latitude to confine PLHIV. NV Rev Stat 441A.300 allows a court to confine a PLHIV for engaging “in behavior through which the disease **may** be spread,” and NV Rev Stat 441.A.180 makes it a misdemeanor for PLHIV to conduct himself in a manner or engage in an occupation that is **likely** to transmit the disease to others after being warned in writing by the public health authority.

Universal Citation: NV Rev Stat § 441A.300 (2017)

A person who is diagnosed as having acquired immunodeficiency syndrome who fails to comply with a written order of a health authority, or who engages in behavior through which the disease may be spread to others, is, in addition to any other penalty imposed pursuant to this chapter, subject to confinement by order of a court of competent jurisdiction.

(Added to NRS by 1989, 297)

Universal Citation: NV Rev Stat § 441A.180 (2017)

(c) For a third or subsequent offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130. The court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.

(Added to NRS by 1987, 2027; A 1991, 462; 2009, 1245; 2015, 1003)

1. A person who has a communicable disease in an infectious state shall not conduct himself or herself in any manner likely to expose others to the disease or engage in any occupation in which it is likely that the disease will be transmitted to others.

2. A health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing others to the disease. The warning must be served upon the person by delivering a copy to him or her.

3. A person who violates the provisions of subsection 1 after service upon him or her of a warning from a health authority is guilty of a misdemeanor.

(Added to NRS by 1989, 296)

Elements of Modernization

While advocates in different states have developed a variety of approaches to addressing HIV-specific statutes, the most common approach is to bring an existing HIV-specific statute into line with modern science. Some general principles of reform/modernization to keep in mind as you go through your own decision making process:

-Lower any penalty to the lowest graded misdemeanor

-Eliminate any sentence enhancement that results from being a PLHIV such as for an HIV positive sex worker.

-Assign all burdens of proof the prosecution.

-Make the law applicable to all non-airborne contagious or infectious disease, not HIV in isolation.

-Include a requirement that the law apply only to those act with specific intent to transmit and who engage in conduct that carries a substantial risk of transmission defined as a reasonable probability of transmission as proven by competent medical evidence.

-Include a statement that the prosecution cannot meet its burden of proving specific intent to transmit where the PLHIV undertook or attempted to undertake practical means to prevent transmission defined as any method, device, behavior or activity demonstrated epidemiologically to measurable limit, reduce, or eliminate the risk of transmission (use of barrier protection, use of ART).



HIV MODERNIZATION IN NEVADA



Why are these current laws so problematic?

We have made significant advances in our scientific understanding of HIV and the medical interventions available to treat it.

Our laws should reflect this progress.

Living with a chronic illness should not be criminalized, but that is exactly what laws that use outdated language and science do.

We offer elements of modernization that are based in science and not stigma; that ask for proof of transmission and intent; that require a realistic possibility of transmission; and promote public health.

They were created from a lack of information and science.

At the height of the AIDS epidemic there was little understanding of HIV and widespread concern about its transmission.

Out of fear and limited scientific knowledge many states enacted harmful and discriminatory laws that have done more harm than good.

These statutes are unnecessary and counterproductive.

They do not promote public health.

There is no evidence that HIV criminalization laws promote public health. Many of these outdated laws discourage people from testing and getting into treatment, which we now know prevents the spread of HIV.

They punish those who learn their status and privilege those who remain ignorant.

They create mistrust of health professionals, making people who test HIV positive less likely to cooperate with partner notification, treatment adherence, and other prevention programs.



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Nevada HIV Modernization Coalition



So. N HPPG

Northern Nevada HIV Prevention Planning Group (NNHPPG)



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2019 PWN-USA POLICY FELLOW PROJECT

ELEMENTS OF MODERNIZATION

If any statute criminalizing HIV must exist, it must meet the following criteria:

Proof of Transmission

Any law criminalizing behavior that poses a risk of transmission or exposure to HIV, should include proof of: 1) a realistic possibility of transmission, 2) the intent of the alleged perpetrator, and 3) non-disclosure.

Based in Science, not Stigma

Laws should not criminalize behavior that poses no risk of transmission. This includes discriminatory penalty enhancing sentences for people with a known HIV status.

Promote Public Health

Criminalizing HIV in broad terms – or having poorly drafted legislation that allows for inappropriate application – undermines the public health goals of such laws. They further marginalize and isolate communities of color, Latinx and immigrant communities, women, the LGBTQ+ communities, people in the commercial sex trade, and the community of people who use drugs.

All these communities are priority groups in every plan to End The (HIV) Epidemic (EHE) nationwide.



What is HIV MODERNIZATION?

HIV Modernization is the modernization of the current unwarranted use of the criminal law to address a public health issue.

HIV modernization seeks to update current laws that target people living with HIV for prosecution and excessive punishment in an effort to make them solely responsible for the sexual risk behaviors of others. Many of these laws are based on decades old science and irrational fears of HIV. These outdated laws are often referred to as "HIV Criminalization".

Mission Statement

The Nevada HIV Modernization Coalition

The Coalition brings together people living with HIV (PLHIV), medical and public health leaders, policy experts, and other allies to improve public health, advance social justice, humanize PLHIV, and end HIV criminalization. We seek to modernize outdated laws and to end inappropriate arrests and prosecutions, unnecessary detentions, excessive bail and inadequate legal representation of PLHIV.

We do this by speaking with a collective voice that is anchored in science and informed by the leadership of PLHIV working with public health and policy experts to educate our communities, our legislators, the judiciary, and law enforcement officials in order to pass meaningful reform measures. We will work to amplify the voices of PLHIV by engaging in these activities and will approach all our activities while honoring the dignity of those most affected by HIV

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WHY SHOULD YOU CARE ABOUT HIV CRIMINALIZATION?

HIV criminalization laws don't work as intended.

HIV criminalization laws do work against public health

HIV criminalization laws don't align with current science

Criminalization laws do increase stigma

HIV criminalization laws don't make sense for our justice system

**NEVADA HIV MODERNIZATION
COALITION**