

Summary of Work

The Advisory Task Force on HIV Exposure Modernization held its first meeting on July 8, 2020. The first order of business was the nomination and election of André Wade as Chair of the Task Force and Senator Dallas Harris as Co-Chair, which was followed by the review and adoption of the By-Laws.

Article 1 Section 2.2 of the Task Force By-Laws identifies specific duties and responsibilities of the Council, which includes:

- a. Identify, review, and evaluate the current statutes and regulations of this State that criminalize exposure to HIV;
- b. Research the implementation and impact of such statutes and regulations, including without limitation, quantifying their impact through the analysis of the records, information, and data relevant to this State to the extent possible;
- c. Identify any disparities in arrests, prosecutions, or convictions under such statutes or regulations related to race, color, sex, sexual orientation, gender identity or expression, age or national origin;
- d. Evaluate current medical and scientific research with respect to the modes of HIV transmission implicated by such statutes and regulations;
- e. Identify any court decisions enforcing or challenging such statutes and regulations;
- f. Assess developments occurring in other states and nationally with respect to modernizing HIV criminalization laws;
- g. The Task Force may make recommendations concerning any matter relating to the review and evaluation pursuant to subsection 10, including, without limitation, recommendations concerning proposed legislation, proposed regulations and policies;
- h. The Task Force shall, on or before September 1, 2020, prepare and submit a report of the activities, findings, and recommendations of the Task Force.

There were four Nevada Revised Statutes (NRS) that were immediately identified as needing review and discussion. The four statutes include:

NRS 201.205: Penalty; affirmative defense – “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 willingly engages in conduct in a matter 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 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.”

NRS 201.358: Engaging in prostitution or solicitation for prostitution after testing positive for exposure to human immunodeficiency: Penalty; definition – “A person who violates NRS 201.354 (prostitution or solicitation except in a licensed establishment) or works as a prostitute in a licensed house of prostitution, after testing positive in a test approved by the State Board of

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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 of 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.”

NRS 441A.300: Confinement of person whose conduct may spread acquired immunodeficiency syndrome – “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 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.”

NRS 441A.180 Contagious person to prevent exposure to others; warning by health authority; penalty – “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 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.”

These four statutes were identified by the Nevada HIV Modernization Coalition, which has been meeting for several years, with the ultimate goal of modernizing HIV laws. “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.”¹ Additionally, these four statutes, and eight others, were identified in a memo written by law firm Sidley, by way of Equality California/Silver State Equality, regarding HIV Decriminalization. (See Appendix ___). The memo summarizes and reviews “(1) The Laws of the State of Nevada to confirm what provision are likely to be impacted in connection with the implementation of any modernization and reform efforts related to HIV/AIDS criminal laws, including any relevant Laws that would need to be updated to implement the modernization and reforms; and (2) the Laws described in Section III.3 for purposes of referencing those provisions that provided for HIV/AIDS criminalization modernization and reform, which such review included both on the substance of each relevant Law and summaries of the argument raised for and against enactment of such Laws.”²

Elements of Modernization

The Task Force adopted the use of the Nevada HIV Modernization Coalition’s Elements of Modernization. The Elements of Modernization include:

¹ Nevada HIV Modernization Coalition, 2020

² Becker, Justin et. Al 2020. *HIV Decriminalization*. Sidley.

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- a. Lower any penalty to the lowest graded misdemeanor;
- b. Eliminate any sentence enhancement that results from being a PLHIV (Person Living with HIV);
- c. Assign all burdens of proof to [the] prosecution;
- d. Make the law applicable to all non-airborne contagious or infectious disease, not HIV in isolation. No specific disease or condition should be the focus of a criminal law or sentence enhancement³
- e. Include a requirement that the law apply only to those act[s] 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;
- f. Include a statement that the prosecution cannot meet its burden of proving specific intent to transmit where PLHIV undertook or attempted to undertake practical means to prevent transmission defined as any method, device, behavior or activity demonstrated epidemiologically to measurably limit, reduce, or eliminate the risk of transmission (use of barrier protection, use of ART).⁴
- g. Any penalty must be proportionate to the harm and prioritize alternatives to incarceration, and classification as a sex offender should never result.⁵

The Task Force decided to meet weekly and work to create a list of tasks and timeline needed to complete the report by September 1, 2020, with the caveat that additional information would be submitted later in the year. The 2019 Senate Bills 284 (19 SB284) Task Force Activities and Timeline was created and lists the specific duties and responsibilities of the Task Force, which is outlined in the By-Laws and listed above, related Nevada Revised Statutes, Member(s) Responsible, Status, Completion Deadline, Source Documentation and Comments/Notes. (See Appendix)

To help further inform the work of the Task Force, various stakeholders in Nevada and across the nation, who have lived and/or otherwise expertise in HIV Modernization were invited to present to members of the Task Force. The following individuals were invited and presented information:

1. Chris Reynolds, Chair of the Nevada HIV Modernization Coalition
2. Brad Sears, J.D., Distinguished Scholar of Law & Policy at the Williams Institute and the Associate Dean of Public Interest Law at UCLA
3. Cheryl Radeloff, HIV Advocate
4. Marguerite Schauer, Interim Staff Attorney, The Center for HIV Law and Policy
5. Christian Eduardo, Survivor Leader, Sanctuary for Families

³ Positive Justice Project, Guiding Principles for Eliminating Disease-specific Criminal Laws. www.hivlawandpolicy.org/pjp.

⁴ Nevada HIV Modernization Coalition, 2020

⁵ Positive Justice Project, Guiding Principles for Eliminating Disease-specific Criminal Laws. www.hivlawandpolicy.org/pjp.

Chris Reynolds spoke to the Task Force about HIV Modernization in general and HIV Modernization in Nevada. Mr. Reynolds attended subsequent meetings, as a standing presenter to the Task Force, and helped research the implementation and impact of NRS and regulations and their impact on records, information, and data. He also assisted with the evaluation of current medical and scientific research with respect to the modes of HIV transmission.

Brad Sears spoke to the Task Force about the work of the Williams Institute's research for California, Florida, Georgia and Missouri. He outlined that these laws that were passed in the 1980s and 1990s when there was a lot of fear and uncertainty about the AIDS epidemic. He noted the following:

- a. These outdated laws do not require that someone **actually infect** another person with HIV to be held liable and punished with a felony conviction and imprisonment;
- b. These outdated laws do not require someone to **intend to infect** someone else; and
- c. **Behavior that cannot transmit HIV is criminalized.** These behaviors include, in part, biting, spitting, using a condom during sex with someone living with HIV, and someone living with HIV having an undetectable viral load when having sex.

Mr. Sears provided a written statement (See Appendix____) that outlines ten major trends and themes from various studies, which are listed below:

1. HIV criminal laws have impacted hundreds of people in every state we have studied.
2. HIV criminal laws are not based on the latest science and foundational principles of criminal law.
3. The enforcement of HIV criminal laws happens in cities, suburbs, and rural areas.
4. HIV criminal laws disproportionately impact Black people, Latinx, people, and other people of color.
5. HI criminal laws disproportionately impact women and sex workers.
6. For recent immigrants, HIV criminal laws can not only mean incarceration but deportation.
7. HIV criminal laws bring new people into the criminal justice system.
8. HIV criminal laws bring young people into the criminal justice system, including minors.
9. HIV criminal laws cost states millions of dollars in incarceration costs alone.
10. HIV criminal laws undermine Nevada's public health efforts to fight HIV disease.⁶

Cheryl Radeloff spoke to the Task Force, in part, about the work of the Nevada Ending the HIV Epidemic Project and the completion of a state plan to address the HIV Epidemic in Nevada. Ms. Radeloff was asked to help identify and invite other presenters to the meeting who have knowledge and expertise about sex workers and someone who identifies as Transgender or Gender Diverse.

Marguerite Schauer spoke to the Task Force about the criminalization of HIV, approaches to reform and consequences that have occurred and are ongoing across the nation.

⁶ Sears, Brad, et al., Williams Institute Research on HIV Criminalization: Statement of Dean Brad Sears. (August 6, 2020).

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Christian Eduardo spoke about his experiences as a survivor of sex trafficking, the inability for victims to negotiate condom use and obtain consent, and the intersections of sex trafficking, immigration, HIV and access to health care.

Moreover, the Task Force heard from many guests and advocates who attended the meeting to share their thoughts on HIV Modernization and the work of the Task Force.

Over the course of the meetings, the Task Force reviewed and identified twelve (12) Nevada Revised Statutes to determine if the statutes needed to be repealed, modernized, reformed/effectively repealed, or left alone. Preliminary recommendations were discussed, which are outlined in the Recommendations section of this report. Progress was noted, on an ongoing basis, on the Task Force Activities Timeline.

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