Legislative History of NRS § 201.205

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This memo briefly summarizes some of the legislative history of Nevada's HIV crimes notably Nev. Rev. Stat. § 201.358(a) and (b) (prostitution), and NRS § 201.20 (other conduct that is likely or intended to transmit HIV).

While the legislative history does indicate that the intent of the legislators at the time was to slow the spread of HIV in Nevada, it is also clear that they had questions about what the actual impact of these crimes would be and whether they would be constitutional. Today we know HIV crimes impact hundreds of people in the state, but do nothing to stop the spread of HIV. In fact, some research indicates quite the opposite.

Further, the information they had about HIV/AIDS at that time was far bleaker than what we know about HIV-disease today. At that time only 84 people in Nevada had been diagnosed with AIDS and 60% of them had died. No effective treatments were available. Today, HIV is a manageable chronic condition allowing most to leave healthy lives. Properly treated, People Living with HIV (PLWH) cannot transmit HIV through sex.

Moreover, it clear that the stigma and discrimination against LGBTQ people, and in particular gay men, greatly influenced the passage of the state's HIV crimes. This is not speculative: NRS § 201.20 was explicitly framed as necessary because in the same legislative session the Nevada legislature repealed the state's sodomy law. Testifying in favor of NRS § 201.20 was the founder of Family Research Council, Paul Cameron, who presented a brochure to

the legislature linking homosexuality to child molestation and serial killers. At the time that he testified, Mr. Cameron had already been kicked out of several professional associations because his research was not based on science.

To get a fuller picture of what the legislature was presented with at the past of the state's HIV laws, we invite the committee to review the following:

Legislative History of AB 55 (1987)

https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1987/AB550,1987.pdf

Legislative History of SB 514 (1993)

https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB514,1993.pdf

Legislative History of SB466 (1993)

https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB466,1993.pdf

See also Special Collection on SB466 at University of Nevada, Law Vegas

https://www.library.unlv.edu/speccol/finding-aids/MS-00726.pdf

I. At the time the Nevada Legislature passed HIV criminal laws they did not know what their impact would be. Today we know that HIV criminal laws have a negative impact on fighting HIV-disease, not a positive one.

The legislative history of Nevada's HIV criminal laws contains a number of instances in which the witnesses and the legislature could not predict the impact of the HIV crimes that they were passing or even whether the new crimes would be constitutional. For example, Nev. Rev. Stat. § 201.358 was passed in 1987.[1] As enacted, the law's first section prohibited any person from engaging in prostitution or solicitation, except for in a licensed house of prostitution.[2] Anyone in violation of section 1 was guilty of a misdemeanor, punishable by up to 6 months imprisonment and/or a fine of up to $1,000. In the next section, the law prohibited people living with HIV from 1) engaging in prostitution in a licensed house of prostitution after testing positive for HIV and 2) engaging in prostitution in violation of the first section of the law.[3] Violation of either crime was charged as a felony.[4]

Assemblyman John DuBois was the prime sponsor of AB 550 with nine other assemblymen co-sponsoring the bill.[5] In the opening minutes of the Senate Judiciary Committee hearing, Assemblyman DuBois sates that while the legislation primarily targets illegal prostitution, the bill "was, in fact, an AIDS bill."[6] DuBois acknowledged that Assembly Bill 550 would not "resolve the problem completely", but "would provide a tool to remove a carrier from circulation for five years".[7]

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[1] NEV. REV. STAT. §201.358.
[2] A.B. 550, 64th Leg. Sess. (Nev. 1987).
[3] *Id*.
[4] *Id*; NEV. REV. STAT. § 193.120 (2019).
[5] *Id*. at 6.
[6] *Id*.
[7] *Id*.

When the Clark County district attorney who initiated the idea for the bill and drafted "its more expansive language" was questioned about whether the bill would address the problems he identified, he responded that "in essence, this was an area of such total inexperience that [he] did not propose to even guess how the law would operate in practical application."[8] When asked about whether certain parts of the bill would be constitutional, he responded that he did not know all of the answers, he would rather be the public defender than the prosecutor if such a challenge was brought, and that "the Law is like the weather – you don't know what it's going to be tomorrow."[9]

Similarly, in 1993 when NRS § 201.205**,** which criminalized engaging in conduct in a manner that is intended or likely to transmit HIV to another person was enacted,[10] no fiscal impact for the bill was estimated because "it [was] not possible to provide an estimate of the number of persons who will be prosecuted for this crime, and if prosecuted who would be sentenced to prison and for how long."[11]

What we now know is that while HIV criminal laws impact hundreds of people in each state that the Williams Institute has studied (Missouri, Florida, Georgia, and California) they do nothing to prevent the spread of HIV-disease. Some research shows that HIV criminal laws have no public health benefits, while other studies suggest they have a negative impact.

Behaviors: Most studies have found that HIV criminal laws do not impact sexual risk behaviors for either PLWH or people who do not have HIV; a few have found that such laws increase sexual risk behaviors.[12]

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[8] *Id.* at 8.
[9] *Id*. at 9.
[10] S.B. 514, 67th Leg. Sess. (Nev. 1993); NEV. REV. STAT. §201.205 (2019).
[11] S.B. 514, 67th Leg. Sess. (Nev. 1993); NEV. REV. STAT. §201.205 (2019).
[12] O'Byrne*, supra* note **Error! Bookmark not defined.***;* Scott Burris et al., *Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial,* 39 ARIZ. STATE LAW J. 467 (2007), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=977274; Keith J. Hovath et al., *Men Who have Sex with Men*

Testing: While more systematic reviews have found that HIV criminalization laws have little impact on testing rates for people in general, they may lead those from the highest risk groups to avoid testing altogether.[13] Some research suggests that HIV criminalization laws may discourage individuals from getting tested and knowing their HIV-status, since laws, such as Nevada's require knowledge of one's status in order to be convicted.[14] This can undermine prevention efforts since those who do not know their status are more likely than those who do to transmit the virus and are estimated to account for one-third of all new transmissions.[15] One study found higher rates of PWH who don't know their positive status in states with laws criminalizing HIV exposure, suggesting that such laws may be disincentivizing testing among those most at risk.[16] Another study found that testing rates remained stable following enactment of an HIV criminal law but decreased following increased media coverage of HIV criminal exposure prosecutions.[17]

Who Believe that Their State has a HIV Criminal Law Report Higher Condomless Anal Sex than Those Who are Unsure of the Law in Their State, 21 AIDS BEHAV. 51 (2017), *available at* https://doi.org/10.1007/s10461-016-1286-0.

[13] Dini Harsono et al., *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, 21 AIDS BEHAV. 27 (2017), *available at* https://doi.org/10.1007/s10461-016-1540-5; Patrick O'Byrne, Alyssa Bryan, and Marie Roy, *HIV Criminal Prosecutions and Public Health: An Examination of the Empirical Research,* 39 MED. HUMANIT. 85 (2013), *available at* https://doi.org/10.1136/medhum-2013-010366.

[14] *See, e.g.*, Sienna Baskin et al., *Criminal Laws on Sex Work and HIV Transmission: Mapping the Laws, Considering the Consequences,* 93 DENVER L. REV. 355 (2016); Margaret H. Wurth et al., *Condoms as Evidence of Prostitution in the United States and the Criminalization of Sex Work,* 16 J. INT. AIDS SOC. (2013), *available at* https://doi.org/10.7448/IAS.16.1.18626; CENTER FOR HIV LAW AND POLICY & NATIONAL LGBTQ TASK FORCE, THE INTERSECTION OF SEX WORK AND HIV CRIMINALIZATION: AN ADVOCATE'S TOOLKIT (2017), https://www.hivlawandpolicy.org/sites/default/files/Sex Work HIV Toolkit FINAL R2_0.pdf.

[15] Jacek Skarbinski et al., *Human Immunodeficiency Virus Transmission at Each Step of the Care Continuum in the United States*, 175 JAMA INTERNAL MED. 588 (2015), *available at* https://doi.org/10.1001/jamainternmed.2014.8180.

[16] Pratha Sah et al., *HIV Criminalization Exacerbates Subpar Diagnosis and Treatment Across the United States: Response to the 'Association of HIV Diagnosis Rates and Laws Criminalizing HIV Exposure in the United States',* 31 AIDS 2437 (2017), *available at* https://doi.org/10.1097/QAD.0000000000001636.

[17] Patricia Sweeney et al., *Association of HIV Diagnosis Rates and Laws Criminalizing HIV Exposure in the United States*, 31 AIDS 1483-1488 (2017), *available at* https://doi.org/10.1097/QAD.0000000000001501; Sun Goo Lee, *Criminal Law and HIV Testing: Empirical Analysis of How At-Risk Individuals Respond to Law*, 14 YALE J. HEALTH POL'Y L. & ETHICS 194, iv (2014), *available at* https://digitalcommons.law.yale.edu/yjhple/vol14/iss1/4/.

Disclosure: Similarly, rather than encouraging disclosure, HIV criminal laws may lead PWH to hide their status from sexual partners out of fear of criminal prosecution, including that a partner may later falsely claim they did not reveal their HIV-status.[18] Other studies suggest that such laws may also make PWH less likely to disclose their HIV status or risk behaviors to health care providers.[19]

Impact on Services for PLWH: For HIV service providers, these laws can shift the focus from having open conversations and providing crucial prevention information toward discussions of legal, rather than health, consequences.[20] By criminalizing sex work, in particular, with much harsher penalties, HIV criminal laws may discourage sex workers from seeking health care services including testing and treatment (for fear of criminal liability) or from negotiating safer sex practices with clients (for fear of being picked up by law enforcement while having longer conversations with clients).[21]

Increasing HIV Stigma: HIV criminalization laws contribute to the stigmatization of PWH in a number of ways. First, they perpetuate inaccurate beliefs about how HIV is transmitted by criminalizing behavior that cannot transmit the virus. Further, by carrying significant criminal penalties, they convey that the consequences of the disease are much more severe, if not fatal, despite the reality that, for most today, HIV is managed much like other

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[18] Carol L. Galletly & Stephen D. Pinkerton, *Conflicting Messages: How Criminal HIV Disclosure Laws Undermine Public Health Efforts to Control the Spread of HIV,* 10 AIDS BEHAV. 451 (2006), *available at* https://doi.org/10.1007/s10461-006-9117-3;

[19] O'Byrne, *supra* note **Error! Bookmark not defined.**; Eric Mykhalovskiy et al., The Public Health Implications of Criminalizing HIV, Non-Disclosure, Exposure, and Transmission: Report of an International Workshop (2014), *available at* https://www.hivlawandpolicy.org/sites/default/files/Public%20Health%20Implications%20of%20Criminalizing%20HIV%20Non-Disclosure,%20Exposure%20and%20Transmission.pdf.

[20] Eric Mykhalovskiy, *The Problem Of "Significant Risk": Exploring The Public Health Impact Of Criminalizing HIV Non-Disclosure*, 73 SOC. SCI. MED. 668 (2011), *available at* https://doi.org/10.1016/j.socscimed.2011.06.051.

[21] *See,* note 14 *supra.*

chronic health conditions.[22] In addition, these laws send the message that PWH are a threat even when engaged in consensual conduct that cannot transmit the virus. This undermines an important public health message created in the earliest days of the AIDS epidemic—that specific types of conduct, not certain types of people, transmit HIV.[23] The negative and inaccurate messages conveyed by these laws serve to reinforce discriminatory attitudes and behavior towards PWH; contribute to PWH having a negative self-image; and lead PWH to isolate themselves because they fear discrimination and harassment.[24] All of these are forms of stigma.

Finally, the link between HIV stigma and worse health outcomes for PWH is well documented. Stigma has been described as a "fundamental cause of health inequalities," serving as a significant source of stress while imposing structural, social, material, and even economic disadvantage on those stigmatized, ultimately leading to poorer health.[25] More specifically, higher rates of HIV stigma have been linked with depression, worse mental and physical health, more severe HIV symptomology, lower medication adherence, and lower social support.[26] By

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[22] Matthew Weait, *HIV Stigma and the Criminal Law,* On Health, BIOMEDCENTERAL.COM (Dec. 1, 2016), https://blogs.biomedcentral.com/on-health/2016/12/01/hiv-stigma-and-the-criminal-law/; Carol L. Galletly & Stephen D. Pinkerton, *Conflicting Messages: How Criminal HIV Disclosure Laws Undermine Public Health Efforts to Control the Spread of HIV,* 10 AIDS BEHAV. 451 (2006), *available at* https://doi.org/10.1007/s10461-006-9117-3; Sienna Baskin et al., C*riminal Laws on Sex Work and HIV Transmission: Mapping the Laws, Considering the Consequences,* 93 DENVER L. REV. 355 (2016).

[23] Aziza Ahmed et al., *Criminalising Consensual Sexual Behaviour in the Context of HIV: Consequences, Evidence, and Leadership*, 6 GLOB. PUBLIC HEALTH S357 (2011), *available at* https://doi.org/10.1080/17441692.2011.623136; Matthew Weait, *HIV Stigma and the Criminal Law,* On Health, BIOMEDCENTERAL.COM (Dec. 1, 2016), https://blogs.biomedcentral.com/on-health/2016/12/01/hiv-stigma-and-the-criminal-law/

[24] Ahmed et al., *supra* note **Error! Bookmark not defined.**; Sergio Rueda et al., *Examining the Associations Between HIV-Related Stigma and Health Outcomes in People Living With HIV/AIDS: A Series of Meta-Analyses,* 6 BMJ OPEN (2016), *available at* https://doi.org/10.1136/bmjopen-2016-011453.

[25] Mark L. Hatzenbuehler et al., *Stigma as a Fundamental Cause of Population Health Inequalities,* 103 AM. J. PUBLIC HEALTH 813 (2013), *available at* https://doi.org/10.2105/AJPH.2012.301069; Patrick W. Corrigan, *Structural Stigma in State Legislation,* 56 PSYCHIATR. SERV. 557 (2005), *available at* https://doi.org/10.1176/appi.ps.56.5.557; Jo C. Phelan et al., *Social Conditions as Fundamental Causes of Health Inequalities: Theory, Evidence, and Policy Implications,* 51 J. HEALTH SOC. BEHAV. S28 (2010), *available at* https://www.jstor.org/stable/20798314.

[26] Rueda, *supra* note **Error! Bookmark not defined.**; C. Logie & T.M. Gadalla, *Meta-Analysis of Health and Demographic Correlates of Stigma Towards People Living With HIV,* 21 AIDS CARE 742 (2009), *available at* https://doi.org/10.1080/09540120802511877; Bulent Turan et al., *How Does Stigma Affect People Living with HIV? The Mediating Roles of Internalized and Anticipated HIV Stigma in the Effects of Perceived Community Stigma on*

furthering HIV stigma, HIV criminalization laws increase the risk of these adverse outcomes, as well as PWH's vulnerability to discrimination, harassment, and violence.[27]

In short, while the legislature did not know the impact of criminalizing HIV when these statutes were passed, we now have three decades of experience and research documenting that they are counterproductive.

II. When Nevada passed its HIV criminal laws it was facing a much different and more frightening AIDS epidemic. Today is HIV is a manageable disease that, for most, does not result in serious illness or an early death.

Nevada's HIV criminal statutes were enacted at a time when little was known about HIV and there was widespread fear of the disease. Nevada's HIV crimes focused on prostitution were enacted in 1987,[28] just three years after the virus itself was identified as the cause of AIDS and one year after the first effective HIV test was developed. At that time, almost everyone known to have HIV was dying. During this period, widespread stigma and fear led to the implementation of policies and practices that excluded PLWH from public life.

All of Nevada's HIV criminal laws were passed when HIV was an untreatable, and almost always fatal, disease. The first drug used to treat HIV, AZT (zidovudine), did not receive FDA approval until 1987—the same year Nevada passed its HIV criminal law focused on prostitution. AZT had very limited long-term effectiveness and caused significant side effects.

Health and Psychosocial Outcomes, 21 AIDS BEHAV. 283 (2017), *available at* https://doi.org/10.1007/s10461-016-1451-5; Peter A. Vanable et al., *Impact of HIV-Related Stigma on Health Behaviors and Psychological Adjustment Among HIV-Positive Men and Women,* 10 AIDS BEHAV. 473 (2006), *available at* https://doi.org/10.1007/s10461-006-9099-1.

[27] Peter A. Vanable et al., *Impact of HIV-Related Stigma on Health Behaviors and Psychological Adjustment Among HIV-Positive Men and Women,* 10 AIDS BEHAV. 473 (2006), *available at* https://doi.org/10.1007/s10461-006-9099-1; Aziza Ahmed et al., *Criminalising Consensual Sexual Behaviour in the Context of HIV: Consequences, Evidence, and Leadership*, 6 GLOB. PUBLIC HEALTH S357 (2011), *available at* https://doi.org/10.1080/17441692.2011.623136; Matthew Weait, *HIV Stigma and the Criminal Law,* On Health, BIOMEDCENTERAL.COM (Dec. 1, 2016), https://blogs.biomedcentral.com/on-health/2016/12/01/hiv-stigma-and-the-criminal-law/.

[28] NEV. REV. STAT. §201.358.

By the time Nevada passed its next HIV criminal statute in 1993, AIDS was the leading cause of death in the US for men aged 25 to 44; by 1994 it would go on to be the leading cause of death for all Americans in that age group.

The stark reality of the AIDS epidemic was reflected in the legislature's discussion of Nevada's HIV crimes in 1987 and 1993. For example, comments during the Senate Judiciary Committee Hearing in 1987 included that 30 to 50% of those who tested HIV-positive would develop to "full-blown AIDS;"[29] that in 1985… "AIDS was considered a disease of homosexual and intravenous drug users;"[30] and that the virus was "becoming more viral with time, not less."[31] Of the 84 cases of known AIDS in Nevada at the time, 61% had already died.[32] Only two of those cases were among women and 91% were gay or bisexual men.[33]

Fortunately, the difference between HIV treatment then and now could not be more stark. Today, after three decades of experience with and research on HIV, we have a greater understanding of how hard it is to transmit HIV, even without medical or other precautions to prevent transmission. We now have effective treatments that allow PWH to lead full, healthy lives, with little risk of transmitting the virus to others. Further, advances in prevention such as PrEP (pre-exposure prophylaxis) and PEP (post-exposure prophylaxis) can dramatically reduce the risk of contracting HIV.

In 1995, researchers discovered that using multiple antiretroviral drugs in tandem prevents HIV from both reproducing and acquiring resistance to the drugs.[34] This treatment is

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[29] Legis. His., AB 155, Nev. Leg., 64th Sess. (Nev. 1985) at 4, https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1987/AB550,1987.pdf.
[30] *Id.* at 5
[31] *Id.* at 4
[32] *Id.* at 9
[33] *Id.* at 9.
[34] *Natn'l Inst. of Allergy & Infectious Diseases, Antiretroviral Drug Discovery and Development,* NIAID.NIH.GOV *(Nov. 26, 2018), https://www.niaid.nih.gov/diseases-conditions/antiretroviral-drug-development*;

known as antiretroviral therapy (ART). Recent studies have found that initiating modern ART medication as soon as HIV infection is diagnosed is of great benefit for the patient, resulting in decreased morbidity, especially when medication is initiated early in HIV infection.[35] Soon after starting ART, the vast majority of PWH reach an "undetectable" viral load.[36] ART usually involves only once-daily pills[37] and relatively infrequent checkups.[38] For most people, ART causes few side effects, if any, and those are generally well tolerated.[39] Developing resistance to

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U.S. Dep't of Health and Human Svcs., HIV Overview: FDA-Approved HIV Medicines, AIDSINFO.NIH.GOV, https://aidsinfo.nih.gov/understanding-hiv-aids/fact-sheets/19/58/fda-approved-hiv-medicines; Natn'l Inst. of Allergy & Infectious Diseases, Starting and Staying on Antiretroviral Treatment, NIAID.NIH.GOV (Nov. 27, 2018), https://www.niaid.nih.gov/diseases-conditions/starting-antiretroviral-treatment.

[35] The Insight Start Group, *Initiation of Antiretroviral Therapy in Early Asymptomatic HIV Infection*, 373 N. ENGL. J. MED. 795 (2015).

[36] Natn'l Inst. of Allergy & Infectious Diseases, 10 Things to Know About HIV Suppression, NIAID.NIH.GOV (Nov. 14, 2017), https://www.niaid.nih.gov/news-events/10-things-know-about-hiv-suppression. Suppression of HIV to undetectable levels means that, while a person will retain latent HIV virus in the body, the virus is controlled. U.S. Dep't of Health and Human Svcs., HIV Overview: What is a Latent HIV Reservoir?, AIDSINFO.NIH.GOV (Jul. 3, 2019), https://aidsinfo.nih.gov/understanding-hiv-aids/fact-sheets/19/93/what-is-a-latent-hiv-reservoir; Natn'l Inst. of Allergy & Infectious Diseases, HIV Treatment, the Viral Reservoir, and HIV DNA, NIAID.NIH.GOV (Nov. 27, 2018), https://www.niaid.nih.gov/diseases-conditions/hiv-treatment-viral-reservoir-hiv-dna; U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Limitations to Treatment Safety and Efficacy, AIDSINFO.NIH.GOV (Oct, 17, 2017), https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/30/adherence.

[37] U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Limitations to Treatment Safety and Efficacy, supra note ***Error! Bookmark not defined.***; Natn'l Inst. of Allergy & Infectious Diseases, Starting and Staying on Antiretroviral Treatment, supra note ***Error! Bookmark not defined.***. Each pill contains all three or four of the antiretroviral medications that person needs. These pills have no special storage or handling requirements. Such once-daily treatment regimens are associated with higher levels of adherence.

[38] U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Tests for Initial Assessment and Follow-up, AIDSINFO.NIH.GOV (Dec. 18, 2019), https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/3/tests-for-initial-assessment-and-follow-up (see Table 3); U.S. Dep't of Health and Human Scvs, Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Plasma HIV-1 RNA (Viral Load) and CD4 Count Monitoring, AIDSINFO.NIH.GOV (May 1, 2014), https://aidsinfo.nih.gov/guidelines/html/1/adult-andadolescent-arv/458/plasma-hiv-1-rna--viral-load--and-cd4-count-monitoring (hereinafter "HHS, Viral Load and CD4 Count Monitoring"); U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Limitations to Treatment Safety and Efficacy, supra note ***Error! Bookmark not defined.***; U.S. Dep't of Health and Human Svcs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Laboratory Testing for Initial Assessment and Monitoring of Patients with HIV Receiving Antiretroviral Therapy, AIDSINFO.NIH.GOV (Dec. 18, 2019), https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/3/testsfor-initial-assessment-and-follow-up.

[39] HIV Treatment Overview, HIV.GOV (Mar. 29, 2019), https://www.hiv.gov/hiv-basics/staying-in-hiv-care/hiv-treatment/hiv-treatment-overview; U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Adverse Effects of Antiretroviral Agents, AIDSINFO.NIH.GOV (Dec. 18, 2019), https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/31/adverse-effects-of-arv.

ART is rare,[40] and switching to a different combination can once again suppress the virus to undetectable levels.[41] Those who sustain undetectable HIV levels because of ART can live a healthy life with a normal life expectancy.[42]

An undetectable viral load has significant implications for the risk of transmission: those with an undetectable viral load have virtually no risk of transmitting HIV to an uninfected partner during sex.[43] Research conclusively demonstrates that those who maintain an undetectable viral load have effectively zero chance of transmitting HIV to an uninfected partner, even if no other form of prevention is used.[44] The US federal government has recognized this principle as "firmly established" by "an overwhelming body of clinical evidence."[45] Today, 34% of all PWH in Nevada currently have an undetectable viral load and cannot transmit the virus through sex.[46]

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[40] In almost all cases, resistance to a particular ART regimen develops only if the patient is unable to adhere to the prescribed medications. See, e.g., U.S. Dep't of Health and Human Scvs., Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV: Limitations to Treatment Safety and Efficacy, AIDSINFO.NIH.GOV (Oct, 17, 2017), https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/30/adherence; Resistance is rare in people who achieve an undetectable viral load and continue taking ART as directed. Eric J. Arts & Daria J. Hazuda, *HIV-1 Antiretroviral Drug Therapy,* 2 Cold Spring Harbor Perspectives in Med. a007161 (2012), *available at* https://doi.org/10.1101/cshperspect.a007161.

[41] U.S. Dep't of Health and Human Svcs., HIV Overview: FDA-Approved HIV Medicines, supra note ***Error! Bookmark not defined.***. Resistance to multiple drugs is increasingly uncommon, thus it is unlikely that a PWH would be unable to find an alternate therapeutic option and be unable to retain/maintain viral suppression. See U.S. Dep't of Health and Human Svcs., Guidelines: Drug-Resistance Testing, AIDSINFO.NIH.GOV, https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/6/drug-resistance-testing; Alison F. Feder et al., More Effective Drugs Lead to Harder Selective Sweeps in the Evolution of Drug Resistance in HIV-1, eLife 2016; 5: e10670 (2016), available at https://doi.org/10.7554/eLife.10670.

[42] U.S. Centers for Disease Control & Prevention, About HIV/AIDS, CDC.GOV (Dec. 2, 2019), https://www.cdc.gov/hiv/basics/ whatishiv.html.

[43] *U.S. Centers for Disease Control & Prevention*, *HIV Treatment Can Prevent Sexual Transmission*, CDC.GOV (Jul. 2019), https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-tasp-101.pdf; Natn'l Institute of Allergy and Infectious Diseases, *HIV Undetectable = Untransmittable (U=U), or Treatment as Prevention*, NIAID.NIH.GOV (May 21, 2019), https://www.niaid.nih.gov/diseases-conditions/treatment-prevention; U.S. Centers for Disease Control & Prevention, *HIV Treatment as Prevention*, CDC.GOV (Nov. 12, 2019), https://www.cdc.gov/hiv/risk/art/index.html.

[44] *Id.; U=U Taking Off in 2017*, 4 LANCET HIV e475 (2017), *available at* https://doi.org/10.1016/S2352-3018(17)30183-2.

[45] U.S. Dep't of Health and Human Scvs., *The Science is Clear: With HIV, Undetectable Equals Untransmittable* (Jan. 10, 2019), https://www.nih.gov/news-events/news-releases/scienceclear-hiv-undetectable-equals-untransmittable.

[46] *See* Nev. Dept't of Health and Hum. Svcs., Continuum of Care (2017), http://endhivnevada.org/wp-content/uploads/2018/12/Report_Continuum-of-Care-NV-2017.pdf.

III. Bias against gay and bisexual men permeated the legislative history of the state's HIV criminal laws and was reflected by members of the state legislature

While HIV criminal laws passed in the late 1980s and early 1990s were motivated by a widespread fear of AIDS, it is impossible to disentangle that fear from against gay and bisexual men. This was time when public opinion polls now only showed that a majority of Americans opposed marriage equality but thought same-sex was immoral. As stated above, AIDS was framed as "homosexual disease." Bias against, and stereotypes about, gay and bisexual men greatly influenced both the passage of Nevada's HIV crime focused on prostitution in 1987 and the broader crime passed in 1993.

As mentioned above, when the state legislature passed the HIV crime focused on prostitution, only 2 of the 84 documented AIDS cases in the state were among women. Further, the Clark County district attorney who initiated the effort said that he was motivated after watching a "video of a male prostitute in Jackson, Mississippi, who was a known AIDS carrier." The concluding statement of that video was a quote: '"AIDS is something people volunteer for with risky choices, and you can't protect people from themselves.'"[47]

Even when the one witness at the Senate Judiciary Committee who spoke against the bill (Jim Shields, ACLU Director of Nevada) was asked about what he would do "to remove the homosexual AIDS carrier [in the video] from circulation," he replied that the public health department should go to court to get a restraining order against the person and that "he should not be allowed to leave the state."[48] Fortunately, this type of draconian measure was not adopted by Nevada or any state during the history of the AIDS epidemic.

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[47] Legis. His., AB 155, Nev. Leg., 64th Sess. (Nev. 1985) at 7, https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1987/AB550,1987.pdf.
[48] *Id.* at 5.

In 1993, the link between homophobia and the passage of an HIV crime was even more stark as shown in discussion of Senate Bill No. 514.[49] The HIV crime passed in 1993 was intended to shore up the legislator's fears about gay men when decriminalizing sodomy. Bill 466 and Bill 514 were both heard simultaneously as a part of the 67th Senate Session and were both passed in June of 1993, with Bill 466 passing 13 days prior to Bill 514.[50] Bill 515's short introduction states that "this bill was requested after the passage of Senate Bill 466, which decriminalized certain sexual activities"[51]

The hearings on the two bills in the Senate Judiciary Committee also came two weeks apart. The hearing on SB 466 occurred first and included testimony from many anti-LGBTQ organizations in Nevada, including the Nevada Coalition of Concerned Citizens, the Independent American Party, the Research Council, the Family the Nevada Families Eagle Forum, and Nevada Eagle Women.

Some of the same witnesses who opposed SB 466 also testified before the same committee two weeks later in favor of SB 514, including representatives from the Nevada Eagle Forum and the Family Research Council. This time they were successful. For example, the legislature heard testimony from Dr. Paul Cameron, an already discredited psychologist by that time, who led the Family Research Institute. The mission of the Family Research Institute is "to restore a world... where homosexuality is not taught and accepted, but instead discouraged and rejected at every level."[52] Dr. Cameron provided testimony that all of findings from his research

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[49] S.B. 514, 67th Leg. Sess. (Nev. 1993).
[50] *See* S.B. 466, 67th Leg. Sess. (Nev. 1993); S.B. 514, 67th Leg. Sess. (Nev. 1993). Bill 466 passed on June 14, 1993. Bill 514 passed on June 27th, 1993.
[51] *See* NEV. LEGIS. COUNS. BUREAU, SUMMARY OF LEGISLATION, S.B. 514, 67th Leg. Sess. 2 (Nev. 1993). (hereinafter SB 514 LEG. HIS.) The introduction to the bill touts this message.
[52] *See* SB 514 LEG. HIS., *supra* note 45, at 13. Dr. Paul Cameron was one of the first witnesses to speak on the bill. *See also* Family Research Institute, http://www.familyresearchinst.org/about/ (last visited May 11, 2020) The about page of the website contains the institute's mission statement, which is quoted above.

and studies had a bearing on the bill. Dr. Cameron's testimony was based, in part, upon a brochure, Violence and Homosexuality, that he had written. Among other things, this brochure links homosexuality to child sexual abuse and serial killers.

The homophobia was not confined to witnesses during that legislative session. For example, Assemblymembers Tom Collins, Ray Rawson, Bill O'Donnell, and Ann O'Connell were particularly harsh in their opposition to SB 466. That summer, Assemblyman John Bonaventura exhibited a sign at his legislative desk which read, *No Special Rights for Sodomites*. In a letter he wrote about SB 466, he stated: "I will diligently work to not legalize perverted homosexual acts. You can be assured that I will protect our children from being exposed to this socially destructive behavior." Although writing in favor of repealing the state's sodomy law, Assemblymember James Gibbons felt it necessary to clarify that he "personally abhors homosexual conduct, either in public or private" and that "his decision should be in no way taken to support homosexual conduct."

In sum, it is not an overstatement to say that in repealing the state's sodomy laws, the legislature felt it necessary to continue criminalizing the sexual behavior of gay and bisexual men. It did that by passing SB 514. The HIV crimes were the new sodomy laws.