

DRAFT 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

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 considered to be 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.

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We recommend that this statute be repealed entirely.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 Consequently, we recommend that this statute be repealed in its entirety.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 a chance 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. Additionally, the term "segregated" is concerning because it is not defined, but 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 laws. The repeal of this statute would resolve all of these issues.

NRS 441A.160: no recommendation

NRS 441A.180: no recommendation

NRS 441A.230: no recommendation

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.

Other than that, this statute is identical to other statutes 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 this statute is subject to a misdemeanor charge). Considering that the type of violation governed by NRS 441A.300 is already covered by other statutes that don't single out HIV or AIDS, we recommend that this statute be repealed. This change conforms to elements of modernization, which states that the law should be applicable to all diseases and not just HIV.

NRS 441A.320: mention of HIV and STDs

While we see no issue with this statute as a whole, 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, and we recommend amending this to remove the unnecessary mention of HIV in the above quoted phrase.

NRS 441A.910: no recommendation

NRS 441A.195: no recommendation