

1 **Suggestions for Nevada’s Advisory Task Force on HIV Exposure Modernization**
2 **The Center for HIV Law & Policy**
3 **August 26, 2020**
4 **With corrections August 31, 2020**

7 **NRS 201. 204**

9 **NRS 201.205 [Move current section, as amended, to Nevada public health code to replace §441A.180**
10 **(below) and replace with new provision:]**

11 NRS.201.205: It is the policy of the state of Nevada to approach fighting disease, including
12 communicable diseases, through a public health, rather than criminal law, approach. HIV and viral
13 hepatitis are not exceptions to this policy. Any allegations involving attempted or actual transmission of
14 disease, or where a person’s disease status is used to satisfy an element of an offense shall not be
15 charged under the penal code but under NRS 441A.180 and related provisions of the Public Health and
16 Safety Code.

18 **Intentional Transmission of Human Immunodeficiency Virus: Penalty; affirmative defenses.**

19 (a) 1. A person who, after testing positive in a test approved by the State Board of Health for
20 exposure to the human immunodeficiency virus (HIV) and receiving actual notice of that fact,
21 intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit
22 the disease to another person is guilty of a category B felony misdemeanor and shall be punished by
23 imprisonment in the state prison county jail for a minimum maximum term of not less than 2 years and a
24 maximum term of not more than 10 years 6 months, or by a fine of not more than \$10,000, or by both fine
25 and imprisonment.

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

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

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

32 (c) Consented to engage in the conduct with that knowledge; or,

33 That the person charged with an offense pursuant to subsection 1 used or attempted to use
34 practical means to prevent transmission.

35 This section does not affect a person’s right to bring any defense available under the common
36 law of this state.

37 In determining whether a person acted intentionally pursuant to subsection 1, the failure to
38 use or attempt to use practical means to prevent transmission is not sufficient to prove that
39 the person acted intentionally.

40 This section does not apply to the following:

41 A person who has tested positive in a test for exposure to HIV and donates or attempts to
42 donate organs, blood, sperm, or tissue;

43 A person who has tested positive in a test for exposure to HIV and becomes pregnant;

44 A person who tests positive in a test for exposure to HIV while pregnant; or

45 (a) A person who declines treatment for HIV while pregnant or giving birth.

46 (Added to NRS by 1993, 1943; A 1995, 1199)

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1 **~~NRS 201.356—Test for exposure to human immunodeficiency virus required; payment of costs;~~**
2 **~~notification of results of test.~~**

3 ~~—1. Any person who is arrested for a violation of [NRS 201.354](#) must submit to a test, approved by~~
4 ~~regulation of the State Board of Health, to detect exposure to the human immunodeficiency virus. The~~
5 ~~State Board of Health shall not approve a test for use that does not provide the arresting law enforcement~~
6 ~~agency with the results of the test within 30 days after a person submits to the test. If the person is~~
7 ~~convicted of a violation of [NRS 201.354](#), the person shall pay the sum of \$100 for the cost of the test.~~

8 ~~—2. The person performing the test shall immediately transmit the results of the test to the arresting~~
9 ~~law enforcement agency. If the results of the test are negative, the agency shall inform the court of that~~
10 ~~fact. If the results of the test are positive, the agency shall upon receipt:~~

11 ~~—(a) Mail the results by certified mail, return receipt requested, to the person arrested at his or her last~~
12 ~~known address and place the returned receipt in the agency's file; or~~

13 ~~—(b) If the person arrested is in the custody of the agency, personally deliver the results to him or her~~
14 ~~and place an affidavit of service in the agency's file.~~

15 ~~Ê If before receiving the results pursuant to this subsection, the person arrested requests the agency to~~
16 ~~inform him or her of the results and the agency has received those results, the agency shall deliver the~~
17 ~~results to the person arrested, whether positive or negative, and place an affidavit of service in the~~
18 ~~agency's file.~~

19 ~~—3. The court shall, when the person arrested is arraigned, order the person to reappear before the~~
20 ~~court 45 days after the arraignment to determine whether the person has received the results of the test.~~
21 ~~The court shall inform the person that the failure to appear at the appointed time will result in the issuance~~
22 ~~of a bench warrant, unless the order is rescinded pursuant to this subsection. If the court is informed by~~
23 ~~the agency that the results of the person's test were negative, the court clerk shall rescind the order for~~
24 ~~reappearance and so notify the person. If, upon receiving notice from the agency that the results of the~~
25 ~~test were positive, the person notifies the court clerk in writing that he or she has received the results,~~
26 ~~the clerk shall inform the court and rescind the order for reappearance for that determination.~~

27 ~~—4. The court shall, upon the person's reappearance ordered pursuant to subsection 3, ask the person~~
28 ~~whether he or she has received the results of the test. If the person answers that he or she has received~~
29 ~~them, the court shall note the person's answer in the court records. If the person answers that he or she~~
30 ~~has not received them, the court shall have the results delivered to the person and direct that an affidavit~~
31 ~~of service be placed in the agency's file.~~

32 ~~—5. If the person does not reappear as ordered and has not notified the court clerk of his or her receipt~~
33 ~~of the results of the test in the manner set forth in subsection 3, the court shall cause a bench warrant to~~
34 ~~be issued and that person arrested and brought before the court as upon contempt. The court shall also~~
35 ~~proceed in the manner set forth in subsection 4 to ensure that the person receives the results of the test.~~

36 ~~—(Added to NRS by [1987, 2027](#); A [1989, 924](#))~~

37 **~~NRS 201.358—Engaging in prostitution or solicitation for prostitution after testing positive for~~**
38 **~~exposure to human immunodeficiency virus: Penalty; definition.~~**

39 ~~—1. A person who:~~

40 ~~—(a) Violates [NRS 201.354](#); or~~

41 ~~—(b) Works as a prostitute in a licensed house of prostitution,~~

42 ~~Ê after testing positive in a test approved by the State Board of Health for exposure to the human~~
43 ~~immunodeficiency virus and receiving notice of that fact is guilty of a category B felony and shall be~~
44 ~~punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum~~
45 ~~term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.~~

46 ~~—2. As used in this section, "notice" means:~~

47 ~~—(a) Actual notice; or~~

1 —(b) Notice received pursuant to [NRS 201.356](#).
2 —(Added to NRS by [1987, 2027](#); A [1989, 589, 925, 1995, 1203](#))

3 **NRS 209.385 — Testing offenders for exposure to human immunodeficiency virus; disclosure of name**
4 **of offender whose tests are positive; segregation of offender; duties of Director.**

5 —1.— Each offender committed to the custody of the Department for imprisonment shall submit to such
6 initial tests as the Director determines appropriate to detect exposure to the human immunodeficiency
7 virus. Each such test must be approved by regulation of the State Board of Health. At the time the offender
8 is committed to custody and after an incident involving the offender:

9 —(a) The appropriate approved tests must be administered; and

10 —(b) The offender must receive counseling regarding the virus.

11 —2.— If the results of an initial test are positive, the offender shall submit to such supplemental tests as
12 the Medical Director determines appropriate. Each such test must be approved for the purpose by
13 regulation of the State Board of Health.

14 —3.— If the results of a supplemental test are positive, the name of the offender may be disclosed to:

15 —(a) The Director;

16 —(b) The administrative officers of the Department who are responsible for the classification and
17 medical treatment of offenders;

18 —(c) The manager or warden of the facility or institution at which the offender is confined; and

19 —(d) Any other employee of the Department whose normal duties involve the employee with the
20 offender or require the employee to come into contact with the blood or bodily fluids of the offender.

21 —4.— The offender must be segregated from every other offender whose test results are negative if:

22 —(a) The results of a supplemental test are positive; and

23 —(b) The offender engages in behavior that increases the risk of transmitting the virus as determined
24 by regulation of the Department.

25 —5.— The Director, with the approval of the Board:

26 —(a) Shall establish for inmates and employees of the Department an educational program regarding
27 the virus whose curriculum is provided by the Division of Public and Behavioral Health of the Department
28 of Health and Human Services. A person who provides instruction for this program must be certified to
29 do so by the Division.

30 —(b) May adopt such regulations as are necessary to carry out the provisions of this section.

31 —6.— As used in this section, “incident” means an occurrence, of a kind specified by regulation of the
32 State Board of Health or the Department, that entails a significant risk of exposure to the human
33 immunodeficiency virus.

34 (Added to NRS by [1989, 385](#); A [1993, 6, 516, 517](#); [1997, 906](#); [2013, 1168](#); [2017, 357](#))

35 **NRS 441A.160 Investigation: Powers of health authority to conduct investigation of communicable**
36 **disease; order to require person to submit to examination; order of isolation, quarantine or treatment.**

37 1. A health authority who knows, suspects or is informed of the existence within the jurisdiction of
38 the health authority of any communicable disease shall immediately investigate the matter and all
39 circumstances connected with it, and shall take such measures for the prevention, suppression and
40 control of the disease as are required by the regulations of the Board or a local board of health.

41 2. A health authority may:

42 (a)

43 Except as otherwise provided in subsection 5 and [NRS 441A.210](#), issue an order requiring the
44 isolation, quarantine, [testing](#) or treatment of any person or group of persons if the health authority
45 believes that such action is necessary to protect the public health. The order must be in writing and specify
46 the person or group of persons to be isolated or quarantined, the time during which the order is effective,

1 the place of isolation or quarantine and other terms and conditions which the health authority believes
2 are necessary to protect the public health, and documentation as to why the facts of the case support the
3 restrictions and conditions imposed as the least restrictive alternative, except that no isolation or
4 quarantine may take place if the health authority determines that such action may endanger the life of a
5 person who is isolated or quarantined.

6 3. Each order issued pursuant to this section must be served upon each person named in the order
7 by delivering a copy to him or her.

8 4. If a health authority issues an order to isolate or quarantine a person with a communicable or
9 infectious disease in a medical facility, the health authority must isolate or quarantine the person in the
10 manner set forth in NRS 441A.510 to 441A.720, inclusive.

11 5. A health authority may not issue
12 an order requiring the involuntary treatment of a person without a showing that said treatment is
13 necessary to protect third parties from a serious, airborne disease and without a court order requiring the
14 person to submit to treatment.

15 (Added to NRS by 1989, 295; A 2003, 2206; 2011, 2507)

16 **NRS 441A.180 Preventing exposure to serious airborne disease in the workplace; warning by health**
17 **authority; penalty; Conduct Intended to Transmit a Communicable Disease: Penalty; affirmative**
18 **defenses.;**

19 1. A person who has a serious, airborne communicable disease in an infectious state shall not engage
20 in any job that has a significant likelihood of transmitting the disease to others, as proven by
21 current, competent medical or epidemiological evidence. Any restrictions limiting a person's
22 employment or access to places of public accommodation must be consistent with the American
23 with Disabilities Act and NRS 613.330 et. Seq.

24 2. A health authority who has reason to believe that a person is in violation of subsection 1 shall
25 issue a warning to that person, in writing, informing the person of the behavior which constitutes
26 the violation and of the precautions that the person must take to avoid exposing others to the
27 disease. The warning must be served upon the person by delivering a copy to him or her. This
28 section shall not apply to infectious diseases that are not airborne or not otherwise transmitted
29 through casual contact. Any restrictions limiting a person's employment should be consistent with
30 the American with Disabilities Act and NRS 613.330 et. Seq.

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

33 4. A person who, after testing positive in a test approved by the State Board of Health for exposure
34 to the human immunodeficiency virus (HIV) a serious communicable disease and receiving actual
35 notice of that fact, intentionally engages in conduct in a manner that is specifically intended or
36 and substantially likely to transmit the disease to another person and as a consequence transmits
37 the disease is guilty of a misdemeanor and shall be punished by imprisonment in the county jail
38 for a maximum term of 6 months, or by a fine of not more than \$1,000, or by both fine and
39 imprisonment. Before a sentence of imprisonment or fine is imposed, all other alternatives that
40 would advance the public health should be considered.

41 5. It is an affirmative defense to an offense charged pursuant to subsection 4:

42 (a) That the person who was ~~subject to exposure~~ exposed to the communicable disease as a result of the
43 prohibited conduct:

44 (1) Knew the defendant was infected with the human immunodeficiency virus a communicable
45 disease;

46 (2) Knew the conduct could result in transmission of the communicable disease and

47 (3) Consented to engage in the conduct with that knowledge; or

1 [\(b\) That the person charged with an offense pursuant to subsection 1 used or attempted to use](#)
2 [practical means to prevent transmission.](#)

3 [6. Pursuant to NRS.201.20 allegations involving attempted or actual transmission of disease, or](#)
4 [where a person having a disease is, or is used to satisfy, an element of a crime, should be charged](#)
5 [only this section. This section does not affect a person's right to bring any defense available under](#)
6 [the common law of this state.](#)

7 [7. Conduct Intended to Transmit a Communicable Disease: Definitions](#)

8 [a\) "Conduct that poses a substantial risk of transmitting a communicable disease" means](#)
9 [conduct that has a high probability of transmitting HIV as proven by current, competent](#)
10 [medical or epidemiological evidence.](#)

11 [b\) "Practical means to prevent transmission" means the use of any method, device, behavior, or](#)
12 [activity that is scientifically proven to measurably limit, reduce, or eliminate the risk of](#)
13 [transmission of a communicable disease.](#)

14 [c\) In determining whether a person acted intentionally pursuant to subsection 4, the failure to](#)
15 [use or attempt to use practical means to prevent transmission is not sufficient to prove that](#)
16 [the person acted intentionally.](#)

17 [8. This section does not apply to the following:](#)

18 [\(a\) A person who has tested positive in a test for a communicable disease and donates or](#)
19 [attempts to donate organs, blood, sperm, or tissue;](#)

20 [\(b\) A person who has tested positive in a test for a communicable disease and becomes pregnant;](#)

21 [\(c\) A person who tests positive in a test for a communicable disease while pregnant; or](#)

22 [\(d\) A person who declines treatment for a communicable disease while pregnant or giving birth.](#)

23
24 **NRS 441A.195 Testing of person or decedent who exposed law enforcement officer, correctional**
25 **officer, emergency medical attendant, firefighter, county coroner or medical examiner, person**
26 **employed by or volunteering for agency of criminal justice or certain other public employees or**
27 **volunteers to communicable disease.**

28 1. Except as otherwise provided in [NRS 259.047](#), a law enforcement officer, correctional officer,
29 emergency medical attendant, firefighter, county coroner or medical examiner or any of their employees
30 or volunteers, any other person who is employed by or is a volunteer for an agency of criminal justice or
31 any other public employee or volunteer for a public agency who, in the course of his or her official duties,
32 comes into contact with human blood or bodily fluids [in a manner that poses a substantial risk of](#)
33 [transmission of a communicable disease](#), or the employer of such a person or the public agency for which
34 the person volunteers, may petition a court for an order requiring the testing of a person or decedent for
35 exposure to a communicable disease if the person or decedent ~~may have~~ exposed the officer, emergency
36 medical attendant, firefighter, county coroner or medical examiner or their employee or volunteer, other
37 person employed by or volunteering for an agency of criminal justice or other public employee or
38 volunteer for a public agency to a communicable disease, [and testing of the source person is necessary to](#)
39 [determine appropriate treatment for the exposed employee or volunteer following an offer of testing to](#)
40 [the exposed individual to determine the individual's baseline health status.](#)

41 2. When possible, before filing a petition pursuant to subsection 1, the person, employer or public
42 agency for which the person volunteers, and who is petitioning shall submit information concerning the
43 ~~possible~~ [confirmed](#) exposure to a communicable disease to the designated health care officer for the
44 employer or public agency or, if there is no designated health care officer, the person designated by the
45 employer or public agency to document and verify [likely](#) exposure to communicable diseases, for
46 verification that there was substantial exposure, [and confirmation that the exposed individual has](#)
47 [completed voluntary testing to determine baseline health status](#). Each designated health care officer or
48 person designated by an employer or public agency to document and verify ~~possible~~ exposure to

1 communicable diseases shall establish guidelines based on current scientific information to determine
2 substantial exposure.

3 3. A court shall promptly hear a petition filed pursuant to subsection 1 and determine whether there
4 is probable cause to believe that a ~~possible~~ transfer of blood or other bodily fluids occurred between the
5 person who filed the petition or on whose behalf the petition was filed and the person or decedent who
6 exposed him or her to a communicable disease. The court shall determine whether there is
7 probable cause to believe that there was substantial likelihood of any communicable disease being
8 transmitted, and why testing of the person or decedent is necessary to determine the need for and
9 manner of treatment of the exposed individual, based on current medical or epidemiological evidence. If
10 the court determines that probable cause exists to believe that transfer of blood or other bodily
11 fluids occurred and, that a positive result from the test for the presence of a communicable disease is
12 necessary to determine an appropriate course of treatment for the petitioner
13 , the court shall:

14 (a) Order the person who exposed the petitioner, or the person on whose behalf the petition
15 was filed, to a communicable disease to submit two appropriate specimens to a local hospital or medical
16 laboratory for testing for exposure to a communicable disease; or

17 (b) Order that two appropriate specimens be taken from the decedent who exposed the
18 petitioner, or the person on whose behalf the petition was filed, to a communicable disease and be
19 submitted to a local hospital or medical laboratory for testing for exposure to the communicable disease.

20 (c) The local hospital or medical laboratory shall perform the test in accordance with generally accepted
21 medical practices and shall disclose the results of the test in the manner set forth in NRS 629.069.

22 4. If a judge or a justice of the peace enters an order pursuant to this section, the judge or justice of
23 the peace may authorize the designated health care officer or the person designated by the employer or
24 public agency to document and verify possible exposure to a communicable disease to sign the name of
25 the judge or justice of the peace on a duplicate order. Such a duplicate order shall be deemed to be an
26 order of the court. As soon as practicable after the duplicate order is signed, the duplicate order must be
27 returned to the judge or justice of the peace who authorized the signing of it and must indicate on its face
28 the judge or justice of the peace to whom it is to be returned. The judge or justice of the peace, upon
29 receiving the returned order, shall endorse the order with his or her name and enter the date on which
30 the order was returned. Any failure of the judge or justice of the peace to make such an endorsement and
31 entry does not in and of itself invalidate the order.

32 5. Except as otherwise provided in NRS 629.069, all records submitted to the court in connection
33 with a petition filed pursuant to this section and any proceedings concerning the petition are confidential
34 and the judge or justice of the peace shall order the records and any record of the proceedings to be
35 sealed and to be opened for inspection only upon an order of the court for good cause shown.

36 6. A court may establish rules to allow a judge or justice of the peace to conduct a hearing or issue
37 an order pursuant to this section by electronic or telephonic means.

38 7. The employer of a person or the public agency for which the person volunteers, who files a petition
39 or on whose behalf a petition is filed pursuant to this section or the insurer of the employer or public
40 agency, shall pay the cost of performing the test pursuant to subsection 3

41 8. As used in this section:

42 (a) "Agency of criminal justice" has the meaning ascribed to it in NRS 179A.030.

43 (b) "Emergency medical attendant" means a person licensed as an attendant or certified as an
44 emergency medical technician, advanced emergency medical technician or paramedic pursuant
45 to chapter 450B of NRS.

46 (Added to NRS by 1999, 1122; A 2005, 328; 2007, 88; 2013, 595, 936; 2019, 4167)

1 **NRS 441A.230 Disclosure of personal information prohibited without consent.** Except as otherwise
2 provided in this chapter and [NRS 439.538](#), a person shall not make public the name of, or other personal
3 identifying information about, a person [diagnosed](#) with a communicable disease who has been
4 investigated by the health authority pursuant to this chapter without the consent of the person.

5 (Added to NRS by [1989, 300](#); A [2007, 1978](#))

6 ~~**NRS 441A.300 Confinement of person whose conduct may spread acquired immunodeficiency**~~
7 ~~**syndrome.**~~ A person who is ~~diagnosed as having acquired immunodeficiency syndrome who fails to~~
8 ~~comply with a written order of a health authority, or who engages in behavior through which the disease~~
9 ~~may be spread to others, is, in addition to any other penalty imposed pursuant to this chapter, subject to~~
10 ~~confinement by order of a court of competent jurisdiction.~~

11 ~~—(Added to NRS by [1989, 297](#))~~

12 **NRS 441A.320 Offer of esting to victim of sexual offense; [testing of alleged assailant](#); disclosure of**
13 **results of test; assistance to victim; payment of expenses; regulations.**

14 1. If the alleged victim [of](#) a crime alleges that the crime involved the sexual
15 penetration of the victim's body, the health authority shall [immediately offer the alleged victim](#)
16 the tests set forth in subsection [3](#) as soon as practicable after the [alleged sexual offense](#).

17 the

18 [The health authority shall also offer the alleged victim:](#)

19 [The](#) [health](#) [authority](#)

20 [shall also offer the alleged victim:](#)

21 (a) Counseling regarding the human immunodeficiency virus and any commonly contracted sexually
22 transmitted disease to which the health authority determines the victim may have been exposed; and

23 (b) A referral for health care and other assistance, as appropriate.

24 3. If the health authority is required to perform tests pursuant to subsection 1, it must test a
25 specimen obtained from [and consented to by](#) the [alleged victim, and from the defendant](#)
26 [if permitted pursuant to this subsection](#), for exposure to ~~human immunodeficiency virus~~ and any
27 commonly contracted sexually transmitted disease,
28 [unless the victim objects to](#)
29 [such testing](#)

30 . The health authority shall perform the test in accordance with generally
31 accepted medical practices.

32 —3.

33 . As soon as practicable, the health authority shall disclose the results of all tests performed pursuant
34 to subsection 2 or 3 to [the](#) victim or to the victim's parent or guardian if the victim is a child; and

35 . If ~~the~~ [the](#) health authority ~~determines~~
36 ~~that a victim of sexual assault may have been exposed to~~
37 ~~any commonly contracted sexually transmitted disease, it shall, [with the consent](#) of the~~
38 ~~victim, [also](#) provide him or her with:~~

39 (a)

40 4. If the court in:

41 (a) A criminal proceeding determines that a person has committed a crime; or

42 (b) A proceeding conducted pursuant to title 5 of NRS determines that a child has committed an act
43 which, if committed by an adult, would have constituted a crime,

1 ~~involving~~ the sexual penetration of a victim's body, the court shall, upon application by the health
2 authority, order that child or other person to pay any expenses incurred in carrying out this section with
3 regard to that child or other person and that victim.

4 5. The Board shall adopt regulations identifying, for the purposes of this section, sexually
5 transmitted diseases which are commonly contracted.

6 6. As used in this section:

7 (a) "Sexual assault" means a violation of [NRS 200.366](#).

8 (b) "Sexual penetration" has the meaning ascribed to it in [NRS 200.364](#).

9 (Added to NRS by [1989, 297](#); A [1993, 1208](#); [2003, 1150](#); [2007, 1278](#); [2019, 1915](#))

10 **NRS 441A.910 Criminal penalty for violation of chapter.** Except as otherwise provided, every person
11 who violates any provision of this chapter is guilty of a misdemeanor.

12 (Added to NRS by [1989, 300](#))