

1 **Suggestions for Nevada’s Advisory Task Force on HIV Exposure Modernization**
2 **The Center for HIV Law & Policy and the Nevada HIV Modernization Coalition**
3 **Final – September 9, 2020**

4
5
6 **NRS 201.205 [Move current section, as amended, to Nevada public health code to replace §441A.180**
7 **(below) and replace with new provision:]**

8 NRS.201.205: It is the policy of the state of Nevada to approach fighting disease, including
9 communicable diseases, through a public health, rather than criminal law, approach. HIV and viral
10 hepatitis are not exceptions to this policy. Any allegations involving attempted or actual transmission of
11 disease, or where a person’s disease status is used to satisfy an element of an offense shall not be
12 charged under the penal code but under NRS441A.180 and related provisions of the Public Health and
13 Safety Code.

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

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

17 — 1. — Any person who is arrested for a violation of ~~NRS 201.354~~ must submit to a test, approved by
18 regulation of the State Board of Health, to detect exposure to the human immunodeficiency virus. The
19 State Board of Health shall not approve a test for use that does not provide the arresting law enforcement
20 agency with the results of the test within 30 days after a person submits to the test. If the person is
21 convicted of a violation of ~~NRS 201.354~~, the person shall pay the sum of \$100 for the cost of the test.

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

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

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

29 ~~È If before receiving the results pursuant to this subsection, the person arrested requests the agency to~~
30 ~~inform him or her of the results and the agency has received those results, the agency shall deliver the~~
31 ~~results to the person arrested, whether positive or negative, and place an affidavit of service in the~~
32 ~~agency’s file.~~

33 — 3. — The court shall, when the person arrested is arraigned, order the person to reappear before the
34 court 45 days after the arraignment to determine whether the person has received the results of the test.
35 The court shall inform the person that the failure to appear at the appointed time will result in the issuance
36 of a bench warrant, unless the order is rescinded pursuant to this subsection. If the court is informed by
37 the agency that the results of the person’s test were negative, the court clerk shall rescind the order for
38 reappearance and so notify the person. If, upon receiving notice from the agency that the results of the
39 test were positive, the person notifies the court clerk in writing that he or she has received the results,
40 the clerk shall inform the court and rescind the order for reappearance for that determination.

41 — 4. — The court shall, upon the person’s reappearance ordered pursuant to subsection 3, ask the person
42 whether he or she has received the results of the test. If the person answers that he or she has received
43 them, the court shall note the person’s answer in the court records. If the person answers that he or she
44 has not received them, the court shall have the results delivered to the person and direct that an affidavit
45 of service be placed in the agency’s file.

46 — 5. — If the person does not reappear as ordered and has not notified the court clerk of his or her receipt
47 of the results of the test in the manner set forth in subsection 3, the court shall cause a bench warrant to

1 be issued and that person arrested and brought before the court as upon contempt. The court shall also
2 proceed in the manner set forth in subsection 4 to ensure that the person receives the results of the test.
3 — (Added to NRS by [1987, 2027](#); A [1989, 924](#))

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

6 — 1. A person who:

7 — (a) Violates [NRS 201.354](#); or

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

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

13 — 2. As used in this section, “notice” means:

14 — (a) Actual notice; or

15 — (b) Notice received pursuant to [NRS 201.356](#).

16 — (Added to NRS by [1987, 2027](#); A [1989, 589, 925](#); [1995, 1203](#))

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

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

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

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

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

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

29 — (a) The Director;

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

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

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

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

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

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

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

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

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

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

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

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

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

11 2. A health authority may:

12 —(a) ~~Enter private property at reasonable hours to investigate any case or suspected case of a~~
13 ~~communicable disease.~~

14 —(b) ~~Order any person whom the health authority reasonably suspects has a communicable disease in~~
15 ~~an infectious state to submit to any medical examination or test which the health authority believes is~~
16 ~~necessary to verify the presence of the disease. The order must be in writing and specify the name of the~~
17 ~~person to be examined and the time and place of the examination and testing, and may include such~~
18 ~~terms and conditions as the health authority believes are necessary to protect the public health.~~

19 ~~(c) E,~~ except as otherwise provided in subsection 5 and [NRS 441A.210](#), issue an order requiring the
20 isolation, quarantine, testing or treatment of any person or group of persons if the health authority
21 believes that such action is necessary to protect the public health. The order must be in writing and specify
22 the person or group of persons to be isolated or quarantined, the time during which the order is effective,
23 the place of isolation or quarantine and other terms and conditions which the health authority believes
24 are necessary to protect the public health, and documentation as to why the facts of the case support the
25 restrictions and conditions imposed as the least restrictive alternative, except that no isolation or
26 quarantine may take place if the health authority determines that such action may endanger the life of a
27 person who is isolated or quarantined.

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

30 4. If a health authority issues an order to isolate or quarantine a person with a communicable or
31 infectious disease in a medical facility, the health authority must isolate or quarantine the person in the
32 manner set forth in [NRS 441A.510](#) to [441A.720](#), inclusive.

33 5. ~~Except as otherwise provided in [NRS 441A.310](#) and [441A.380](#), a~~ health authority may not issue
34 an order requiring the involuntary treatment of a person without a showing that said treatment is
35 necessary to protect third parties from a serious disease transmitted by casual contact and without a court
36 order requiring the person to submit to treatment.

37 (Added to NRS by [1989, 295](#); A [2003, 2206](#); [2011, 2507](#))

38 **NRS 441A.180 Contagious person to prevent exposure to others; Preventing exposure to serious**
39 **disease transmitted by casual contact: warning by health authority; penalty. Conduct intended to**
40 **transmit a communicable disease: penalty; defenses; definitions.**

41 1. Preventing exposure to serious disease transmitted by casual contact: A person who has a
42 communicable disease in an infectious state serious communicable disease transmissible through
43 casual contact shall not ~~conduct himself or herself in any manner likely to expose others to the~~
44 disease or engage in any occupation in which it is likely that has a significant likelihood of
45 transmitting the disease will be transmitted to others, as proven by current, competent medical
46 or epidemiological evidence. Any restrictions limiting a person’s employment or access to places

1 of public accommodation must be consistent with the American with Disabilities Act and **NRS**
2 **613.330 et. seq.**

- 3 2. Preventing exposure to serious disease transmitted by casual contact, warning by health
4 authority: A health authority who has reason to believe that a person is in violation of subsection
5 1 shall issue a warning to that person, in writing, informing the person of the behavior which
6 constitutes the violation and of the precautions that the person must take to avoid exposing
7 others to the disease. The warning must be served upon the person by delivering a copy to him
8 or her. Any restrictions limiting a person's employment should be consistent with the American
9 with Disabilities Act and **NRS 613.330 et. seq.**
- 10 3. Preventing exposure to serious disease transmitted by casual contact; penalty: A person who
11 violates the provisions of subsection 1 after service upon him or her of a warning from a health
12 authority is guilty of a misdemeanor.
- 13 4. Conduct intended to transmit a communicable disease, penalty: A person who, after testing
14 positive in a test approved by the State Board of Health for a serious communicable disease and
15 receiving actual notice of that fact, intentionally engages in conduct in a manner that is specifically
16 intended and substantially likely to transmit the disease to another person, and as a consequence
17 transmits the disease, is guilty of a misdemeanor. Before a sentence of imprisonment or fine is
18 imposed, all other alternatives that would advance the public health should be considered.
- 19 5. Conduct intended to transmit a communicable disease, defenses:
- 20 (a) It is an affirmative defense to an offense charged pursuant to subsection 4:
- 21 (1) That the person who was exposed to the communicable disease as a result of the
22 prohibited conduct:
- 23 (I) Knew the defendant was infected with a serious communicable disease;
24 (II) Knew the conduct could result in transmission of the serious communicable disease;
25 and
26 (III) Consented to engage in the conduct with that knowledge; or
- 27 (2) That the person charged with an offense pursuant to subsection 4 used or attempted to
28 use practical means to prevent transmission.
- 29 (b) This section does not affect a person's right to bring any defense available under the common
30 law of this state.
- 31 6. Preventing exposure to serious disease transmitted by casual contact, proving intent: In
32 determining whether a person acted intentionally pursuant to subsection 4, the failure to use or
33 attempt to use practical means to prevent transmission is not sufficient to prove that the person
34 acted intentionally.
- 35 7. Conduct intended to transmit a communicable disease: Definitions
- 36 (a) "Conduct that poses a substantial risk of transmitting a communicable disease" means
37 conduct that has a high probability of transmitting a communicable disease as proven by
38 current, competent medical or epidemiological evidence.
- 39 (b) "Practical means to prevent transmission" means the use of any method, device, behavior,
40 or activity that is scientifically proven to measurably limit, reduce, or eliminate the risk of
41 transmission of a communicable disease.
- 42 8. This section does not apply to the following:
- 43 (a) A person who has tested positive in a test for a communicable disease and donates or
44 attempts to donate organs, blood, sperm, or tissue;
- 45 (b) A person who has tested positive in a test for a communicable disease and becomes pregnant;
46 (c) A person who tests positive in a test for a communicable disease while pregnant; or
47 (d) A person who declines treatment for a communicable disease while pregnant or giving birth.

1 9. Pursuant to NRS 201.205, allegations involving attempted or actual transmission of disease, or
2 where a person having a disease is, or is used to satisfy, an element of a crime, should be charged
3 only under this section.
4

5
6 **NRS 441A.195 Testing of person or decedent who exposed law enforcement officer, correctional**
7 **officer, emergency medical attendant, firefighter, county coroner or medical examiner, person**
8 **employed by or volunteering for agency of criminal justice or certain other public employees or**
9 **volunteers to communicable disease.**

10 1. Except as otherwise provided in NRS 259.047, a law enforcement officer, correctional officer,
11 emergency medical attendant, firefighter, county coroner or medical examiner or any of their employees
12 or volunteers, any other person who is employed by or is a volunteer for an agency of criminal justice or
13 any other public employee or volunteer for a public agency who, in the course of his or her official duties,
14 comes into contact with human blood or bodily fluids in a manner that poses a substantial risk of
15 transmission of a serious communicable disease, or the employer of such a person or the public agency
16 for which the person volunteers, may petition a court for an order requiring the testing of a person or
17 decedent for exposure to a serious communicable disease if the person or decedent ~~may have~~ exposed
18 the officer, emergency medical attendant, firefighter, county coroner or medical examiner or their
19 employee or volunteer, other person employed by or volunteering for an agency of criminal justice or
20 other public employee or volunteer for a public agency to a serious communicable disease, and testing of
21 the source person is necessary to determine appropriate treatment for the exposed employee or
22 volunteer following an offer of testing to the exposed individual to determine the individual's baseline
23 health status.

24 2. When possible, before filing a petition pursuant to subsection 1, the person, employer or public
25 agency for which the person volunteers, and who is petitioning shall submit information concerning the
26 ~~possible~~ confirmed exposure to a communicable disease to the designated health care officer for the
27 employer or public agency or, if there is no designated health care officer, the person designated by the
28 employer or public agency to document and verify ~~possible~~ likely exposure to communicable diseases, for
29 verification that there was substantial exposure, and confirmation that the exposed individual has
30 completed voluntary testing to determine baseline health status. Each designated health care officer or
31 person designated by an employer or public agency to document and verify ~~possible~~ likely exposure to
32 communicable diseases shall establish guidelines based on current scientific information to determine
33 substantial exposure.

34 3. A court shall promptly hear a petition filed pursuant to subsection 1 and determine whether there
35 is probable cause to believe that a ~~possible~~ transfer of blood or other bodily fluids occurred between the
36 person who filed the petition or on whose behalf the petition was filed and the person or decedent who
37 exposed him or her to a communicable disease. The court shall determine whether there is probable cause
38 to believe that there was substantial likelihood of any communicable disease being transmitted, and
39 whether testing of the person or decedent is necessary to determine the need for and manner of
40 treatment of the exposed individual, based on current medical or epidemiological evidence. If the court
41 determines that probable cause exists to believe that transfer of blood or other bodily fluids occurred
42 and, that a positive result from the test for the presence of a communicable disease ~~would require the~~
43 ~~petitioner to seek medical intervention~~ is necessary to determine an appropriate course of treatment for
44 the petitioner, the court shall:

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

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

4 4. The local hospital or medical laboratory shall perform the test in accordance with generally
5 accepted medical practices and shall disclose the results of the test in the manner set forth in NRS
6 629.069.

7 ~~45.~~ If a judge or a justice of the peace enters an order pursuant to this section, the judge or justice
8 of the peace may authorize the designated health care officer or the person designated by the employer
9 or public agency to document and verify possible exposure to a communicable disease to sign the name
10 of the judge or justice of the peace on a duplicate order. Such a duplicate order shall be deemed to be an
11 order of the court. As soon as practicable after the duplicate order is signed, the duplicate order must be
12 returned to the judge or justice of the peace who authorized the signing of it and must indicate on its face
13 the judge or justice of the peace to whom it is to be returned. The judge or justice of the peace, upon
14 receiving the returned order, shall endorse the order with his or her name and enter the date on which
15 the order was returned. Any failure of the judge or justice of the peace to make such an endorsement and
16 entry does not in and of itself invalidate the order.

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

21 ~~67.~~ A court may establish rules to allow a judge or justice of the peace to conduct a hearing or issue
22 an order pursuant to this section by electronic or telephonic means.

23 ~~78.~~ The employer of a person or the public agency for which the person volunteers, who files a
24 petition or on whose behalf a petition is filed pursuant to this section or the insurer of the employer or
25 public agency, shall pay the cost of performing the test pursuant to subsection 3

26 ~~89.~~ As used in this section:

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

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

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

32 **NRS 441A.230 Disclosure of personal information prohibited without consent.** Except as otherwise
33 provided in this chapter and NRS 439.538, a person shall not make public the name of, or other personal
34 identifying information about, a person diagnosed with a communicable disease who has been
35 investigated by the health authority pursuant to this chapter without the consent of the person.

36 (Added to NRS by 1989, 300; A 2007, 1978)

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

42 —(Added to NRS by 1989, 297)

43 **NRS 441A.320 Offer of testing to victim of sexual offense; ~~T~~esting of ~~person alleged to have~~**
44 **~~committed sexual offense~~ alleged assailant; disclosure of results of test; assistance to victim; payment**
45 **of expenses; regulations.**

1 1. If the alleged victim ~~or a witness to~~ of a crime alleges that the crime involved the sexual
2 penetration of the victim's body, the health authority shall ~~perform~~ offer the alleged victim the tests set
3 forth in subsection 23 as soon as practicable after the ~~arrest of the person alleged to have committed~~
4 ~~the crime, but not later than 72 hours after the person is charged with the crime by indictment or~~
5 ~~information, unless the person alleged to have committed the crime is a child who will be adjudicated in~~
6 ~~juvenile court and then not later than 72 hours after the petition is filed with the juvenile court alleging~~
7 ~~that the child is delinquent for committing such an act.~~ alleged sexual offense. The health authority shall
8 also offer the alleged victim:

9 (a) Counseling regarding any commonly contracted sexually transmitted disease to which the
10 health authority determines the alleged victim may have been exposed; and

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

12 2. The alleged victim shall be advised of her or his right to request testing of the defendant if the victim
13 has consented to testing offered pursuant to subsection 1. The health authority shall perform testing
14 of the defendant upon a determination of probable cause that the defendant committed the alleged
15 sexual offense, and that testing of the defendant is necessary to determine appropriate treatment
16 and referrals for the victim.

17 3. If the alleged victim requests testing health authority is required to perform tests pursuant to
18 subsection 1, the health authority must test a specimen obtained from and consented to by the
19 alleged victim arrested person for exposure to the human immunodeficiency virus and any
20 commonly contracted sexually transmitted disease to which the health authority determines the
21 alleged victim may have been exposed, regardless of whether the person or, if the person is a child,
22 the parent or guardian of the child consents to providing the specimen. If the alleged victim requests
23 testing of the defendant and probable cause is found pursuant to subsection 2, the health authority
24 must test a specimen obtained from the defendant for any commonly contracted sexually
25 transmitted disease to which the health authority determines the alleged victim may have been
26 exposed. The agency that has custody of the arrested person shall obtain the specimen and submit
27 it to the health authority for testing. The health authority shall perform the test in accordance with
28 generally accepted medical practices.

29 ~~3. In addition to the test performed pursuant to subsection 2, the health authority shall perform such~~
30 ~~follow-up tests for the human immunodeficiency virus as may be deemed medically appropriate.~~

31 4. As soon as practicable, the health authority shall disclose the results of all tests performed pursuant
32 to subsection 2 or 3 to: ~~(a) The alleged victim or to the alleged victim's parent or guardian if the victim~~
33 ~~is a child.; and (b) The arrested person and, if the person is a child, to the parent or guardian of the~~
34 ~~child.~~

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

38 ~~—(a) An examination for exposure to the human immunodeficiency virus and any commonly~~
39 ~~contracted sexually transmitted disease to which the health authority determines the victim may have~~
40 ~~been exposed;~~

41 ~~—(b) Counseling regarding the human immunodeficiency virus and any commonly contracted sexually~~
42 ~~transmitted disease to which the health authority determines the victim may have been exposed; and~~

43 ~~—(c) A referral for health care and other assistance, as appropriate.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

65. If the court in:

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

(b) A proceeding conducted pursuant to title 5 of NRS determines that a child has committed an act which, if committed by an adult, would have constituted a crime, involving the sexual penetration of a victim's body, the court shall, upon application by the health authority, order that child or other person to pay any expenses incurred in carrying out this section with regard to that child or other person and that victim.

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

67. As used in this section:

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

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

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

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

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