

WORK OF THE
ADVISORY TASK FORCE ON HIV EXPOSURE
MODERNIZATION FOR
THE STATE OF NEVADA

ANDRE C. WADE, CHAIR

Background

Senate Bill 284, sponsored by Senator Parks, was signed into law on May 17, 2019 that created a Task Force

Mission

- The Division of Public and Behavioral Health Task Force on HIV Exposure Modernization will conduct a comprehensive examination during the 2019-2020 legislative interim of the statutes and regulations in this State related to the criminalization of exposing a person to the human immunodeficiency virus (HIV)

HIV criminalization is the use of state statutes that either criminalize what would otherwise be legal conduct or by increasing the penalties for illegal conduct based upon an individual's HIV status (Williams Institute)

Appointed Members of the Task Force

André Wade,
Chair

Senator Dallas
Harris,
Co-Chair

Senator David
Parks
(SB284 Bill Sponsor)

Steven Amend,
Esq

Vince Collins

Ruben Murillo,
Jr.

Stephan Page

Octavio Posada
(resigned Sept 2020)

Quentin Savvoir

Cheryl Radeloff
(September 2020)

Connie Schearer
(September 2020)

Jennifer Howell
(September 2020)

Antioco Carillo
(September 2020)

Catherine Elliot
(September 2020)

Cynthia Watson)
(September 2020)

Duties of the Task Force

- a) Identify, review and evaluate the current statutes and regulations of Nevada that criminalize exposure to HIV
- b) Research the implementation and impact of such statutes and regulations
- c) Identify any disparities in arrests, prosecutions, or convictions
- d) Evaluate current medical and scientific research with respect to the modes of HIV transmission
- e) Identify any court decisions enforcing or challenging such statutes and regulations
- f) Assess changes in other states and nationally related to modernizing HIV criminalization laws
- g) Make recommendations
- h) Report due by September 1, 2020

Work of The Task Force

Began meeting July 8, 2020

- Report due September 1, 2020

Identification of Statutes

- Immediately, there were four Nevada Revised Statutes (NRS) that were immediately identified as needing review and discussion
 - NRS 201.205: **Penalty; affirmative defense**
 - NRS 201.358; **Engaging in prostitution or solicitation for prostitution after testing positive for exposure to human immunodeficiency: Penalty; definition**
 - NRS 441A.300: **Confinement of person whose conduct may spread acquired immunodeficiency syndrome**
 - NRS 441A.180: **Contagious person to percent exposure to others; warning by health authority; penalty**
 - NV HIV Modernization Coalition
 - Silver State Equality
 - 8 other statutes identified

Work of The Task Force

Guiding principals: Elements of Modernization from the NV HIV Modernization Coalition

- Lower any penalty to the lowest graded misdemeanor
- Eliminate any sentence enhancement that results from being a PLHIV
- Assign all burdens of proof to the prosecution
- Make the law applicable to all non-airborne contagious or infectious disease, not HIV in isolation.
- Include a requirement that the law apply only to those acts **with specific intent** to transmit and who engage in conduct that carries a **substantial risk of transmission, or actual transmission occurs**
- Include a statement that the prosecution cannot meet its burden of proving specific intent to transmit where PLHIV undertook or attempted to undertake practical means to prevent transmission
- Any penalty must be proportionate to the harm and prioritize alternatives to incarceration, and classification as a sex offender should never result

Presenters at The Task Force Meetings

Chris Reynolds, Co-Chair of the NV HIV Modernization Coalition

Brad Sears, JD., Distinguished Scholar of Law & Policy at the Williams Institute and the Associate Dean of Public Interest Law at UCLA

Cheryl Radeloff, HIV Advocate

Marguerite Schauerer, Interim Staff Attorney, The Center for HIV Law & Policy

Christian Eduardo, Survivor Leader, Sanctuary for Families

An open format of the meetings was created to allow for input from the public

Statutory Recommendations

Move statutes from criminal codes to public health codes

Mention of AIDS vs. HIV

NRS 174.031: **No recommendation**

NRS 201.205: Amend: **Lower to misdemeanor, move to public health code**

NRS 201.354: **No recommendation**

NRS 201.356: **Repeal**

NRS. 201.358: **Repeal**

*NRS.201.385: **Repeal (With more information and deliberation, the Task Force will revise this recommendation for a report to be submitted later in the year).**

NRS: 441A.160: **Amend: Power of health authorities**

NRS: 441A.180: **Amend. Establish clarity and import language from penal code**

NRS. 441A.230: **Amend: Infected to diagnosed**

NRS: 441A.300: **Repeal**

NRS 441A.320: **Amend: Mention of HIV and STDs, offer testing to victim**

NRS 441A.195: **Amend: Require actual exposure**

NRS 441A.910: **No recommendation**

Non-Statutory Recommendations

Extension of deadline to submit report, which was due September 1, 2020 with the Task Force not beginning to meet until July 8, 2020 due to challenges of fully appointing the 15 members of the Task Force and the impact of the COVID-19 pandemic

Appoint additional members of the Task Force to represent segments of the LGBTQ+ community, women, people living with HIV, and sex workers to provide a broader spectrum of representation from the community

Work Still to be Completed

Research the implementation and impact of such statutes and regulations, including without limitation, quantifying their impact through the analysis of the records, information, and data relevant to the State to the extent possible

- To be completed by the Williams Institute

Identify any disparities in arrest, prosecutions or convictions under such state statutes and regulations related to race, color, sex, sexual orientation, gender or expression, age, or national origin

Evaluate current medical and scientific research with respect to the modes of HIV transmission implicated by such statutes and regulations

Identify any court decisions enforcing or challenging such statutes and regulations

- To be completed by the Williams Institute

Request Division of Public and Behavioral Health (DPBH) to review NRS 441A recommended statutory recommendations and their impact on other communicable diseases with varying modes and rates of transmission

Next Steps

Wait to receive research from the Williams Institute

Wait for draft of bill by the Legislative Counsel Bureau

Continue to meet on a monthly basis

Continue to hear from subject matter experts, advocates, stakeholders; etc.

Thank you for your time and attention

Work of the Task Force can be found here:

https://endhivnevada.org/initiatives_and_progress/sb284-task-force/