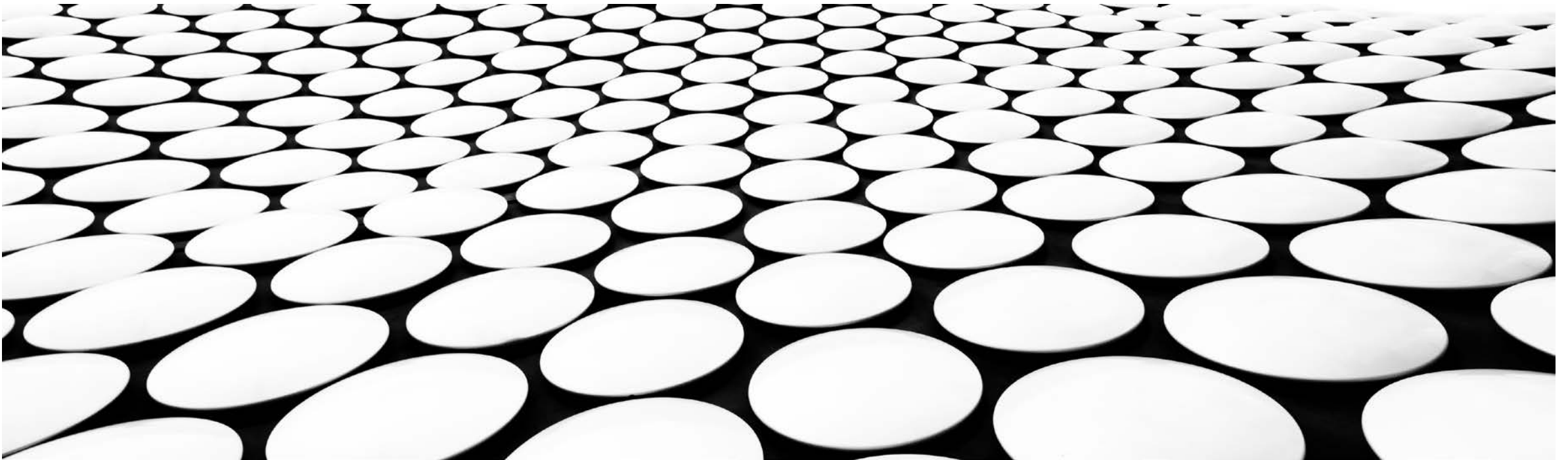

HIV MODERNIZATION AND OTHER 2021 LEGISLATION UPDATES

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PERSONAL BACKGROUND WITH HIV MODERNIZATION

Vectors, polluters, and murderers: Hiv testing policies toward prostitutes in Nevada

Cheryl L. Hadelott, University of Nevada, Las Vegas

Award Date

1-1-2004

Degree Type

Dissertation

Degree Name

Doctor of Philosophy (PhD)

Department

Sociology

First Committee Member

Barbara Brents

Number of Pages

227

Abstract

This case study explores HIV testing policy and prostitution in Nevada. Three general themes emerge from analysis of Nevada's HIV/AIDS policy regarding prostitution. First, HIV testing policies reflect and reproduce hegemonic sexuality-specific gender inequality, heterosexual orientation, and negative stereotypes of prostitutes. Second, Nevada's legalized prostitution industry makes visible the effects of economic dynamics, specifically tourism, on policies related to sexuality. Finally, the policymaking process depicts conflict between two approaches to regulation: the punitive control measures favored by law enforcement, and prevention and public health strategies favored by health bureaucracies. Testing prostitutes for HIV became the dominant policy response to an emerging moral panic about AIDS in the mid-1980s. Nevada's conflicting policy approaches both tend to protect Nevada's economic interests and stigmatize prostitutes. The research examines public documents, newspaper accounts, and interviews with policymakers to describe the emergence of Nevada's regulatory policies, particularly in the context of interplay between sexuality, gender, economics, and political action. Further study of the relationship between moral panics and morality politics is necessary to understand how fear is transformed into policy through legislative processes.

Keywords

Hiv; Hiv Testing; Murderers; Nevada; Policies; Polluters; Prostitutes; Social Policy; Testing; Vectors

Controlled Subject

Sociology; Women's studies; Public health

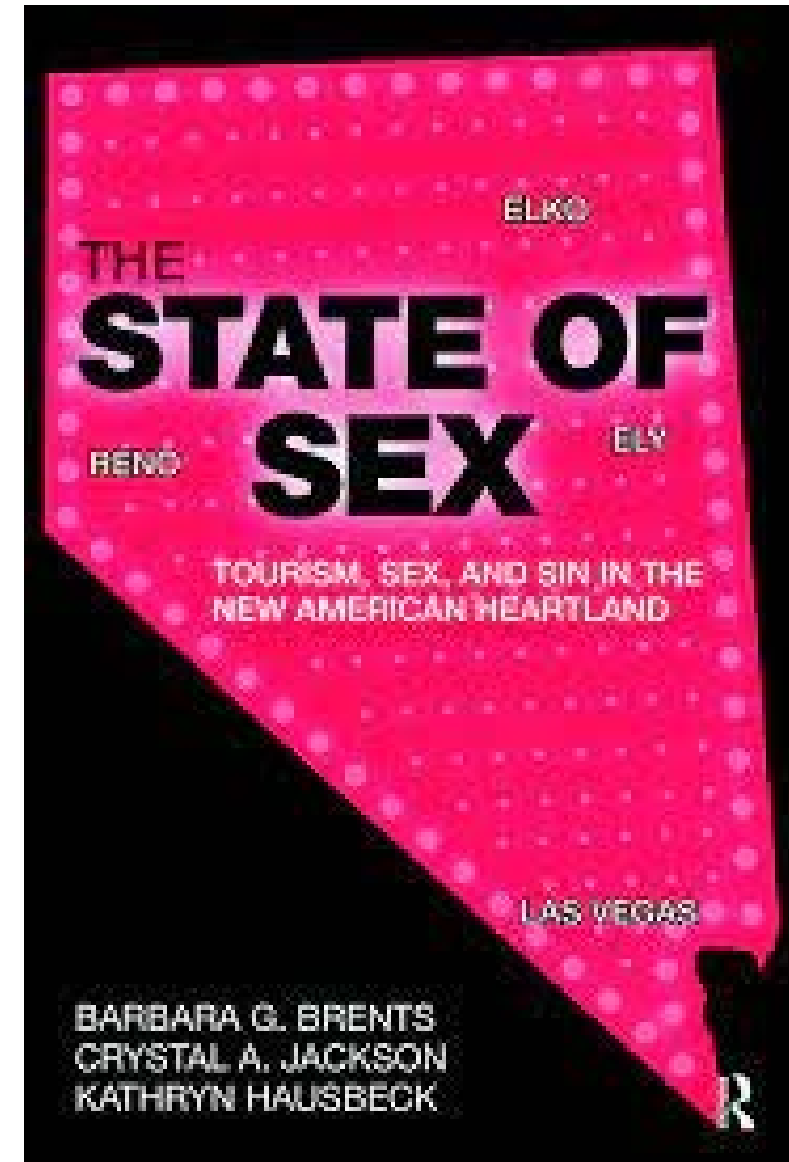
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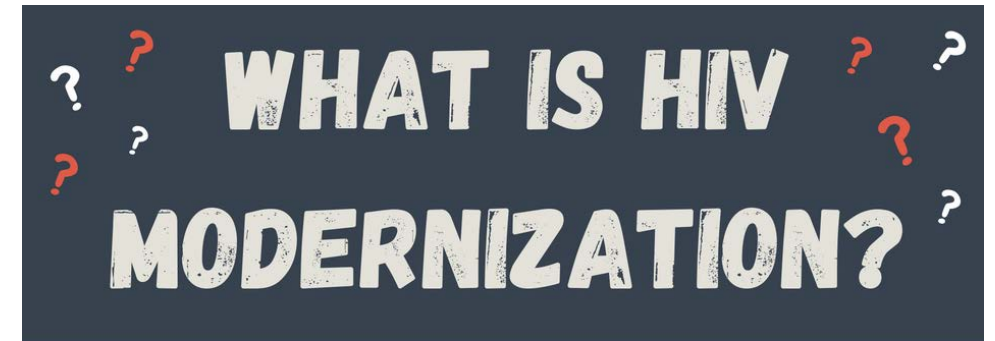
PLUMX METRICS

SHARE



NV HIV MODERNIZATION COALITION AND ADVISORY TASK FORCE ON HIV EXPOSURE MODERNIZATION (SB 284)

- Organizing efforts began in Fall 2018 as lead by Connie Shearer
- Supported by the Sero Project, the Nevada HIV Modernization Coalition first met and organized in Spring 2019
- Coalition is composed of 3 co-chairs, steering committee members, and interested collaborators to review and recommend policies as well as support modernization activities and initiatives



- Term used to describe a movement towards decriminalizing HIV in laws written into legislation across the country.
- In 2019, Senate Bill 284 was passed and signed by Governor Sisolak May 27, 2020. This bill required the newly formed task force to take a comprehensive look at the legislation for Nevada and submit a report of findings and recommendations to the Governor.
- The Task Force then works to identify NV legislation that has outdated language around HIV and legal recourse if found to be HIV positive.

HIV CRIMINALIZATION IN NEVADA AND PROPOSED CHANGES

Prostitution suspect has AIDS virus

Associated Press

RENO — Reno police say a woman arrested on prostitution charges near the downtown area has tested positive for the AIDS virus.

They said the white woman told them she was unaware she was infected carrying HIV, the virus that often leads to the development of AIDS.

Police said they released the information on Thursday to warn anybody who may have had sex recently with a prostitute in Reno to be tested for the virus.

While prostitution is illegal in Reno, a woman infected with HIV faces additional charges only if she continues to work after being informed she is carrying the virus.

ELEMENTS OF MODERNIZATION

If any statute criminalizing HIV must exist, it must meet the following criteria:

Proof of Transmission

Any law criminalizing behavior that poses a risk of transmission or exposure to HIV, should include proof of: 1) a realistic possibility of transmission, 2) the intent of the alleged perpetrator, and 3) non-disclosure.

Based in Science, not Stigma

Laws should not criminalize behavior that poses no risk of transmission. This includes discriminatory penalty enhancing sentences for people with a known HIV status.

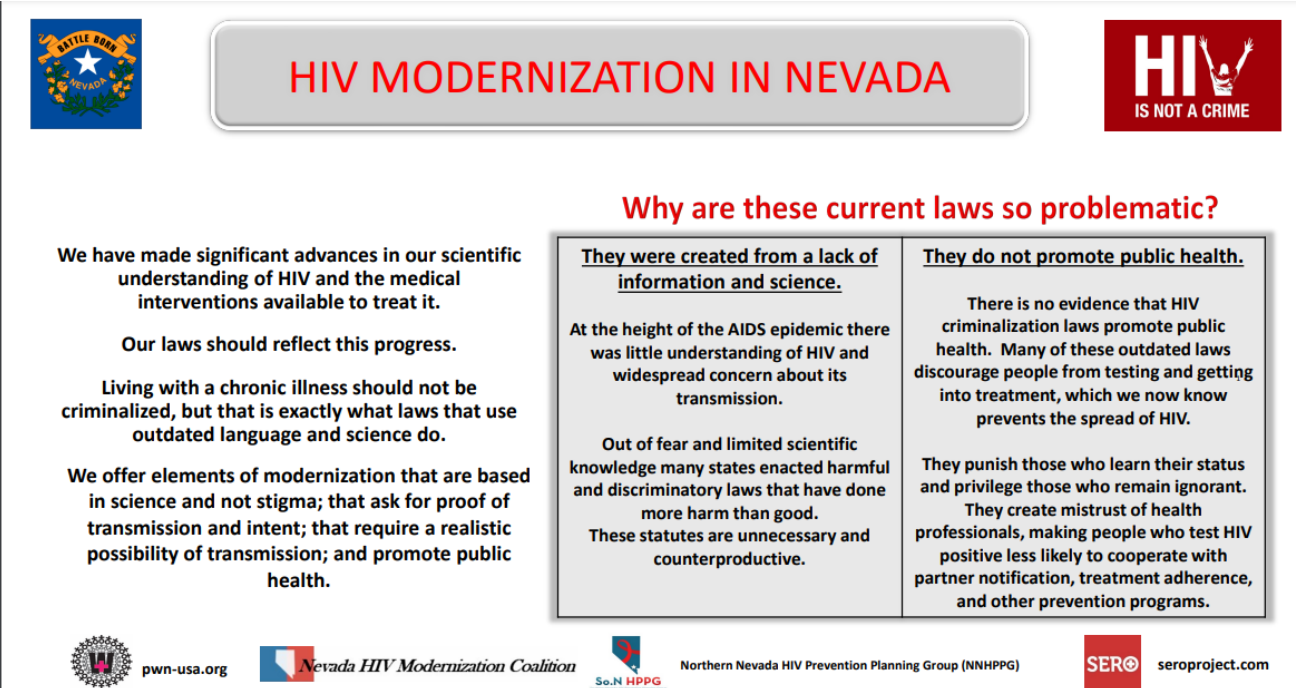
Promote Public Health

Criminalizing HIV in broad terms – or having poorly drafted legislation that allows for inappropriate application – undermines the public health goals of such laws. They further marginalize and isolate communities of color, Latinx and immigrant communities, women, the LGBTQ+ communities, people in the commercial sex trade, and the community of people who use drugs.

All these communities are priority groups in every plan to End The (HIV) Epidemic (EHE) nationwide.

HIV MODERNIZATION IN NEVADA: TASK FORCE, COALITION MEMBERS, AND OTHER VESTED INTERESTS

- Nevada HIV Modernization Coalition
- Sero Project/Positive Women's Network
- Silver State Equality/Equality California
- Center for HIV Law and Policy
- Human Rights Campaign (HRC) Nevada
- Gov. Task Force/NDPHB
- UCLA-Williams Institute



HIV MODERNIZATION IN NEVADA

Why are these current laws so problematic?




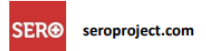
<p><u>They were created from a lack of information and science.</u></p> <p>At the height of the AIDS epidemic there was little understanding of HIV and widespread concern about its transmission.</p> <p>Out of fear and limited scientific knowledge many states enacted harmful and discriminatory laws that have done more harm than good. These statutes are unnecessary and counterproductive.</p>	<p><u>They do not promote public health.</u></p> <p>There is no evidence that HIV criminalization laws promote public health. Many of these outdated laws discourage people from testing and getting into treatment, which we now know prevents the spread of HIV.</p> <p>They punish those who learn their status and privilege those who remain ignorant. They create mistrust of health professionals, making people who test HIV positive less likely to cooperate with partner notification, treatment adherence, and other prevention programs.</p>
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We have made significant advances in our scientific understanding of HIV and the medical interventions available to treat it.

Our laws should reflect this progress.

Living with a chronic illness should not be criminalized, but that is exactly what laws that use outdated language and science do.

We offer elements of modernization that are based in science and not stigma; that ask for proof of transmission and intent; that require a realistic possibility of transmission; and promote public health.

 pwn-usa.org  Nevada HIV Modernization Coalition  So.N HPPG Northern Nevada HIV Prevention Planning Group (NNHPPG)  SERO seroproject.com

HIV MODERNIZATION TASK FORCE RECOMMENDATIONS 9/2020: CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS AND DEPARTMENT OF CORRECTIONS

Removing Acquired Immunodeficiency Syndrome (AIDS) to replace with Human Immunodeficiency Virus (HIV) throughout each NRS highlighted below:

- NRS 201.205–Intentional Transmission-reducing the penalty from a category B felony to a misdemeanor. Additional language change from intentionally, knowingly, OR willfully, changed to intentionally, knowingly, AND willfully. There is also a recommendation to move this from 201.205 under crimes against public decency and good morals to the public health code 441.180.
- NRS 201.356-Testing for exposure to HIV if engaging in prostitution or solicitation for prostitution-move to repeal this completely based on the concern it would lead to excessive punishment for a person living with HIV.
- NRS 201.358-Engaging in prostitution or solicitation for prostitution after testing positive for HIV-move to repeal as statute already exists for those engaging in illegal sex work (NRS 201.354).
- NRS 209.385-Testing of offenders for exposure to HIV, disclosure of name of offender whose tests are positive; segregation of offender (testing of prisoners upon entry and when an exposure to an officer occurs). Concern that this status may not be considered illegal under the ADA and discrimination laws. The task force does recommend offering testing.

RECOMMENDATIONS CONTINUED: PUBLIC HEALTH STATUTES CHAPTER 441A-INFECTIOUS DISEASES AND TOXIC AGENTS:

- NRS 441A.160-Investigation: Powers of health authority to conduct investigation of communicable disease: order to require person to submit to an examination; order to isolation, quarantine or treatment-recommend amending to include requiring the health authority to document the reasoning for an order and it must show that the recommended treatment is necessary. The task force also recommended testing to be added to the list of items an order may require.
- NRS 441A.180-Contagious person to prevent exposure to others; warning by health authority; penalty-recommend amending language to state that it only applies to communicable diseases and define behaviors or occupations that are likely to expose others. Additionally, there is concern as this NRS is currently written that it may violate ADA.
- NRS 441A.195-Testing of a person or decedent who may have exposed a law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner, or medical examiner, person employed by or volunteering agency of criminal justice or public employees or volunteer to communicable disease-recommend to require actual exposure and to include language that defines the fluids and is transmitted in a manner that poses substantial risk of transmission of a communicable disease. They also recommend documentation of an actual exposure and to offer exposed individuals testing.

RECOMMENDATIONS CONTINUED: PUBLIC HEALTH STATUTES CHAPTER 441A-INFECTIOUS DISEASES AND TOXIC AGENTS

- NRS 441A.230-Disclosure of personal information prohibited without consent-recommend changing language from infected to diagnosed to align with more current language used for HIV diagnosis.
- NRS 441A.300-Confinement of person whose conduct may spread acquired immunodeficiency syndrome-recommend-move to repeal.
- NRS 441A.320-Testing of person alleged to have committed sexual offense; disclosure of results of test; assistance to victim; payment of expenses; regulations-recommend removing language specific to HIV and replace with testing of any common contracted sexually transmitted disease, remove testing of the perpetrator to instead offer testing to victims with consent for testing obtained. It was also recommended to have the health authority test the alleged perpetrator at the determination of probable cause that a STI was likely transmitted, and that testing was necessary.
- NRS 441A.190-Control of disease within schools, childcare facilities, medical facilities, and correctional facilities.

SB: 275 AND AMENDMENTS

- **Purpose:** To add provisions to NRS 441A.180 defining a misdemeanor public health offense for intentional transmission of a communicable disease, to replace the criminal intentional transmission of HIV offense (NRS 201.205) that this bill repeals. This is to ensure there is a public health offense for communicable disease transmission, to better implement purpose of bill (stated in Section 3) to ensure that communicable diseases are addressed through public health measures and that persons living with communicable diseases are not criminalized. Adds and amends language to NRS 439.360, 439.470, 441A.160, and existing provisions of NRS 441A.180 to ensure that actions of public health authorities in all jurisdictions conform to principle of utilizing least restrictive means sufficient to protect the public health and that the rights of individuals with communicable diseases are respected at various stages of public health intervention. Amend language throughout to avoid applying unnecessarily stigmatizing terms to people with communicable diseases and to make provisions gender-neutral. Removes unnecessary mention of HIV in NRS 441A.040.

Conceptual Changes (all detailed below):

- **Section 1** – Amends changes to NRS 439.360 and adds additional provisions.
- **Section 2** – Amends changes to NRS 439.470 and adds additional provisions.
- **Section 3** – Amends changes to new section to be added to NRS 441A.
- **Section 4** – Deletes unnecessary mention of HIV (NRS 441A.040, NRS 441A.120, and NAC 441.040 establish that "communicable disease" includes HIV).
- **Section 5** – Amends changes to NRS 441A.160 and adds additional provisions.
- **Section 6** – Amends changes to NRS 441A.180 and adds additional provisions.
- **Section 7** – Amends changes to NRS 441A.195(1)(a)(1), deleting unnecessary use of "infected."

NEVADA HEALTH DEPARTMENT UPDATES/RECOMMENDATIONS

- SNHD collaborated with Washoe County and internal leadership to address concerns for the NRS proposed language changes that impact public health work.
- Edits were submitted to Senator Harris, who is the primary sponsor for this bill. These included:
 - Terms to be removed such as “dangerous’, ’disinfect’*, and “threat.”
 - Maintains NRS 441 A. 160 or public health’s ability to enter private property at reasonable hours to investigate and determine the infectious state and risk to the health of the public, of any reported case or suspected case of a communicable disease.
 - Asked to remove the word “substantial” in NRS 441A.180–as it is unclear what “substantial” means in this context or who would be defining it.
 - Asked for clarification of delivery methods for isolation notices. The proposed language states “via personal delivery.”
 - Clarified language for affirmative defense to exposure to a communicable disease.
 - Under NRS 441A.320 (Alleged victim or a witness to a crime alleges that the crime involved the sexual penetration of the victim’s body), originally recommended to remove proposed language and leave as is under existing statutes. This is due to concerns around re/traumatizing the victim, the burden on the Health Authority to locate and test all victims within 72 hours, as well as a possible fiscal burden for additional staff, training.
 - NRS 441 A.320 was amended on 4/6/21, “*the victim shall receive information on testing for the human immunodeficiency virus and other commonly contracted sexually transmitted diseases through their receipt of the Sexual Assault Survivors’ Bill of Rights. Information on testing referrals shall be added to the Sexual Assault Survivors’ Bill of Rights and distributed to survivors as set forth in NRS 178A.270 through NRS 178A.290 inclusive.*”

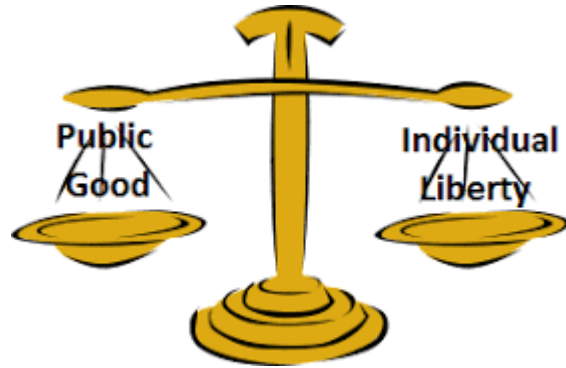
*Disinfect while not appropriate for a person might be the correct term for objects/environment which may be a vector for a communicable disease

LEGISLATIVE PROCESS



- SB 275 was introduced, first reading in the Senate, and distributed via NELIS, and interested parties
- SB 275 4/1/2021-Hearing before Senate Health and Human Services committee
- SB 275 Amendments introduced by Sen. Harris (Drafted on 3/17/21)
- Concerns by Municipal and Country Fire departments and Country and multijurisdictional health departments raised, and discussions are continuing to reach consensus (Ongoing)
- Committee will vote on the bill, consider any amendments, and If adopted in the Senate, SB 275 will go to the Assembly

GOAL OF PUBLIC HEALTH LAW AND HIV MODERNIZATION



- Minimizing the transmission of infectious diseases is a core function of public health law. The appropriate exercise of legal powers will vary according to the seriousness of the disease, the means of transmission, and how easily the disease is transmitted.

- During the early years of the HIV epidemic, many states implemented HIV-specific criminal exposure laws to discourage behavior that might lead to transmission, promote safer sex practices, and in some cases, receive funds to support HIV prevention activities. These laws were passed at a time when very little was known about HIV including how HIV was transmitted and how best to treat the virus. Many of these state laws criminalize behaviors that cannot transmit HIV – such as biting or spitting – and apply regardless of actual transmission, or intent. **After over 30 years of HIV research and significant biomedical advancements to treat and prevent HIV transmission, many state laws are now outdated and do not reflect our current understanding of HIV.** In many cases, this same standard is not applied to other treatable diseases. Further, these laws have been shown to discourage HIV testing, increase stigma, and exacerbate disparities.

NEVADA SENATE BILL 211:



SPONSORS:

Senators Harris and Hardy

ESTABLISHES REQUIREMENTS RELATING TO TESTING FOR SEXUALLY TRANSMITTED
DISEASES HIV AND STDS



ELEMENTS OF THE BILL

Requires medical providers (with exceptions) to offer a patient who is at least 15 years of age if they want to be tested for HIV/STDs

If the patient answers yes (they want testing), the provider helps the patient obtain a test

There are exceptions for those being treated for life threatening emergencies, who have been offered or underwent recent testing or those unable to consent to testing

Recommendations are based on 2019 USPTF (US Preventive Services Task Force) recommendations for clinicians to offer tests to those aged 15-65 and increased risk for HIV

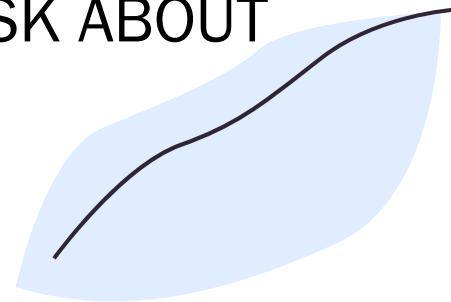
POINTS TO CONSIDER

- NEVADA HAS CONSISTENTLY HAD SOME OF THE HIGHEST RATES OF HIV AND STIS IN THE US, WITH ANNUAL INCREASES.
- THE MAJORITY OF HIV CASES IN NEVADA ARE DIAGNOSED IN INPATIENT/OUTPATIENT HOSPITALS AND PRIVATE PHYSICIAN OFFICES.
- PATIENTS WANT ROUTINE SEXUAL HISTORIES, ACCESS TO ROUTINE, FREE/LOW COST, CONFIDENTIAL AND CONVENIENT TESTING FOR HIV/STIS BY MEDICAL PROVIDERS.
- CDC RECOMMENDS THAT EVERYONE GET TESTED FOR HIV AT LEAST ONCE BETWEEN THE AGES OF 13-64 AS PART OF ROUTINE HEALTH CARE.



PROVIDER CONCERNS

- MANY PROVIDERS OFFER TESTING BASED ON SUBJECTIVE, NOT A ROUTINE, APPROACH
- DEPENDENT ON PATIENTS TO REPORT PRESENTING SYMPTOMS
- LACK SUPPORTIVE POLICIES FOR OFFERING ROUTINE HIV/STI TESTING
- LACK AWARENESS OF HIV/STI RISK
- MAY NOT OFFER TESTING DUE TO STIGMA OR ASSUMPTIONS ABOUT PATIENTS
- ONLY ABOUT 1/3 OF PROVIDERS NATIONALLY ASK ABOUT SEXUAL HISTORY OR RISK
- OFTEN REFER PATIENTS TO THE LOCAL HEALTH DISTRICT/COMMUNITY HEALTH NURSE



PLEASE SUBMIT PUBLIC COMMENTS:

[HTTPS://WWW.LEG.STATE.NV.US/APP/OPINIONS/81ST2021/](https://www.leg.state.nv.us/app/opinions/81st2021/)



BOTH NORTHERN NEVADA HIV PREVENTION PLANNING GROUP (HPPG) AND SOUTHERN NEVADA HPPG VOTED TO SUPPORT THIS BILL IN THE INTENT IN WHICH IT WAS PRESENTED AT THE JOINT MEETING ON 3/19/2021.

AB 192

Provisions regarding Pregnant Women

- Enhances NRS 442 by adding Chlamydia Trachomatis, gonorrhea, Hepatitis B and C testing to existing syphilis testing in first and third trimester
- Specifies time frame for testing for syphilis in first and third trimester (first visit first trimester and third trimester between 27th and 36th week)
- Testing for syphilis at delivery if residing in a high morbidity area, did not receive prenatal care, and delivered a stillborn infant after 20 weeks of gestation

AB 192 AMMENDMENTS

- Removes provisions that certain testing done without charge
- Emergency Department (ED)S and medical facilities must:
 - Ask women of childbearing age if they are pregnant, seek consent and commence treatment if they test positive for syphilis if they are in and notify the local health authority
- Removes that a pregnant woman can object to a blood test for any reason
- Requires a health insurance provider to pay for the exam and testing
- Adds to the list of medical facilities to whom the bill applies



AB 192

- Requires an ED or hospital to examine women for syphilis under certain circumstances
- Replaces the misdemeanor violation against those who violate the testing requirements
- Removes the penalty for a pregnant women who refuses treatment for syphilis

Provisions regarding Preventing HIV SB 325

Act would require the State Board of Pharmacy to prescribe protocol authorizing a pharmacist to prescribe and dispense drugs to prevent HIV (PrEP and PEP), perform certain laboratory tests, and require health plans to include coverage for such drugs.

CONCERNS:

- IF A CLIENT HAS AN ISSUE WITH THE REQUIRED LABS (E.G. HIV+, STI+, LIVER OR KIDNEY FUNCTION),WHAT IS THE REFERRAL PROCESS?
- WHO DOES THE FOLLOW UP TESTING FOR PREP AND PEP?
- WHAT TRAINING OR RESOURCES DO THE PHARMACISTS HAVE IF THIS IS A SEXUAL ASSAULT ISSUE?
- ARE THE PHARMACIES EQUIPPED TO REPORT TO THE LOCAL HEALTH AUTHORITY?

