

CANADIAN
COALITION
TO REFORM
HIV
CRIMINALIZATION
(CCRHC)

CHANGE THE CODE

REFORMING CANADA'S *CRIMINAL CODE*
TO LIMIT HIV CRIMINALIZATION

A COMMUNITY CONSENSUS STATEMENT: JULY 2022



HIV criminalization is unscientific, discriminatory, and undermines public health.

People living with HIV in Canada continue to be singled out for criminal prosecutions, convictions, and imprisonment for allegedly not disclosing their HIV status to sexual partners in consensual sexual encounters. People have been charged and convicted even when there has been little to no possibility of HIV transmission and no intent to transmit.

Police and prosecutors rely most frequently on the charge of *aggravated sexual assault*, one of the most serious offences in the *Criminal Code*. Conviction carries a maximum penalty of life imprisonment and mandatory designation as a sex offender, and almost certain deportation for anyone who is not a citizen. Sentences handed down in such cases appear to be harsher than in cases of convictions for sexual assaults involving coerced sex.

Canada has long been a global “hotspot” for such prosecutions. As of the end of 2021, there had been more than 220 such prosecutions. Researchers have documented, and Justice Canada has recognized, that Black, Indigenous, and gay communities are disproportionately affected by prosecution or the threat of prosecution.¹

Canada has come under repeated, well-deserved criticism, domestically and internationally, not only from HIV community advocates, but from United Nations expert agencies, human rights bodies, judges, women’s rights advocates, and scientists.

In 2017, the Canadian Coalition to Reform HIV Criminalization (CCRHC) issued its [original Community Consensus Statement](#), which included a call for *Criminal Code* reform to limit HIV criminalization. That call has been endorsed by 174 organizations across the country. The federal Attorney General and Minister of Justice has also publicly criticized the “overcriminalization of HIV” as contributing to stigma and undermining an effective HIV response. Justice Canada has recommended changes in the approach and, in 2019, the House of Commons Standing Committee on Justice and Human Rights also recognized legislative changes are warranted.

The criminal law must be used only as a measure of last resort and must be limited in its scope and application.

In the very rare case in which someone intentionally transmits HIV, criminal charges may be appropriate. However, in the vast majority of cases, other interventions, including under existing public health law, may offer a better alternative, meaning there is no need to resort to the criminal law. Unlike criminal charges, these other interventions can and should be tailored to individual circumstances, should involve community organizations with expertise in HIV issues, and should be supportive rather than punitive. To be consistent with human rights, at a minimum, any such intervention must ensure due process safeguards, including access to legal support for those subject to them, and must also be based on the best available evidence, be proportionate to an objectively reasonable assessment of the possibility of transmission, and be no more intrusive or restrictive than necessary.

Criminal prosecutions should be limited to cases of actual, intentional transmission of HIV or another sexually transmitted or bloodborne infection (STBBI).

In accordance with international guidance and recommendations, any prosecution should require:

- proof that the person intended to transmit the infection;
- proof that the person engaged in sexual or other activity that was likely to transmit the infection;
- proof that HIV was actually transmitted; and
- in the case of a conviction, a penalty that is proportionate to the actual harm caused.

Criminal charges should never be used in certain circumstances.

Criminal charges related to an allegation of non-disclosure, exposure, or transmission of HIV or another STBBI are not justified where someone engaged in activities that, according to the best available scientific evidence, posed no significant possibility of transmission, including the following:

- oral sex;
- anal or vaginal sex with a condom;
- anal or vaginal sex without a condom while having a low or suppressed viral load; and
- spitting and biting.

More generally, the stigma and harsh sanction of a criminal prosecution and conviction is not justified in cases where someone:

- did not understand how the infection is transmitted;
- disclosed their status to their sexual partner, or honestly believed their sexual partner was aware of their status through some other means and voluntarily engaged in sex;
- took precautions to prevent transmission (e.g. condom use, being on treatment);
- did not disclose their status, or did not take or insist on precautions, because they feared violence or other serious negative consequences would result from doing so;
- was forced or coerced into sex; or
- did not intend to transmit the infection.

¹ Hastings C et al., *HIV Criminalization in Canada: Key Trends and Patterns (1989-2020)* (HIV Legal Network, 2022); Justice Canada, *Criminal Justice System’s Response to HIV Non-disclosure* (December 1, 2017).

CALL TO ACTION »»»»»

WE CALL UPON FEDERAL MINISTER OF JUSTICE, THE GOVERNMENT OF CANADA, AND THE PARLIAMENT OF CANADA **TO LIMIT HIV CRIMINALIZATION IN ACCORDANCE WITH INTERNATIONAL RECOMMENDATIONS AND INFORMED BY THE BEST AVAILABLE SCIENTIFIC EVIDENCE.** WE CALL ON THEM TO PASS LEGISLATION, INCLUDING AMENDMENTS TO THE *CRIMINAL CODE*, AS FOLLOWS:



1. **Remove non-disclosure, exposure, or transmission of HIV or other STBBIs from the reach of sexual assault laws, including the current mandatory designation as a sex offender.** Prohibit prosecutions for sexual assault where HIV non-disclosure takes place in the context of sex among otherwise consenting adults. Such misuse of sexual assault charges not only harms people living with HIV or other STBBIs, but also undermines the law of sexual assault as a means of addressing sexual violence, which is already a concern given that the criminal legal system is too often ineffective in addressing cases of forced or coercive sex.
2. **Enact reforms to ensure that any other provisions in the *Criminal Code* are not used to further stigmatize and discriminate against people living with HIV and STBBIs.** Prosecution under any offence in the *Criminal Code* should be limited to cases of actual, intentional transmission.
3. **End the deportation of non-citizens following conviction.** This policy and practice is racist in its effect. A criminal conviction based on HIV/STBBI non-disclosure must not affect immigration status.
4. **Review past convictions.** The law should create an opportunity for past convictions to be reviewed and for a conviction to be expunged if it does not fit within the new limitations on the scope of criminalization.

ENDORSED BY »»»»»

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ACT (AIDS Committee of Toronto)
Action Hepatitis Canada
AIDS ACTION NOW!
AIDS Coalition of Nova Scotia
AIDS Committee Newfoundland and Labrador
AIDS Committee of Cambridge, Kitchener, Waterloo and Area
AIDS Committee of Durham Region
AIDS Committee of Ottawa
AIDS Community Care Montreal
AIDS New Brunswick
AIDS Vancouver
All Nations Hope Network
Alliance for South Asian AIDS Prevention
Asian Community AIDS Services
Avenue B Harm Reduction Inc.
AVI Health and Community Services Society
Black Coalition for AIDS Prevention
BLITSS (Bureau de lutte aux infections transmises sexuellement et par le sang)
CAAN Communities, Alliances & Networks
Canadian AIDS Society
Canadian Association of Nurses in HIV/AIDS Care (CANAC)
Canadian Association of Social Workers
Canadian Positive People Network
Canadian Public Health Association
Casey House
CATIE
Centre d'Action Sida Montréal (CASM)
Centre d'intervention le Rond-Point
Centre for Spanish Speaking Peoples
Centre for Gender & Sexual Health Equity
Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA)
Community-Based Research Centre
Dopamine
Dr. Peter AIDS Foundation
Elevate NWO
ENSEMBLE Services Greater-Grand Moncton
Fife House
GAP-VIES (Groupe d'Action pour la Prévention de la transmission du VIH et l'Éradication du Sida)
Gay Men's Sexual Health Alliance
Gilbert Centre for Social and Support Services
Hamilton Community Legal Clinic
Hébergements de l'Envol
Hemophilia Ontario
HIV & AIDS Legal Clinic Ontario (HALCO)
HIV Legal Network
IRIS Estrie
L'Anonyme
Le BRAS Outaouais – Prévention et intervention en VIH et consommation sécuritaire
Le DISPENSAIRE centre de santé communautaire
Living Positive Resource Centre (Okanagan)
MacEwan Centre for Sexual and Gender Diversity
Mainline Needle Exchange
Maison Dominique
Maison Plein Coeur
Maison Re-Né inc
MIELS-Québec
Northern Healthy Connections Society
Ontario Aboriginal HIV/AIDS Strategy
Ontario AIDS Network (OAN)
Ontario Organizational Development Program
Ontario Positive Asians
Pacific AIDS Network (PAN)
PASAN
PEERS Alliance
Peers Victoria Resources Society
Portail VIH/sida du Québec
Positive Living Niagara
Positive Pathways Community Services
Prairie Harm Reduction
Queen's Prison Law Clinic
Realize
Regional HIV/AIDS Connection (London ON)
Réseau ACCESS Network
Sandy Hill Community Health Centre
Sidalys
Sphère - Santé sexuelle globale
Tandem Mauricie
Toronto HIV/AIDS Network
Toronto People With AIDS Foundation
Unity Health Toronto
Vancouver Island PWA Society (VPWAS)
Women's Health in Women's Hands CHC