

End Unjust HIV Criminalization

Community Consensus Statement

November 2017

Canada's approach to HIV criminalization is unscientific, unjust 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. People have been charged and convicted even when there has been little to no possibility of HIV transmission. Canada has the third-largest absolute number of recorded prosecutions for alleged HIV non-disclosure in the world, and one of the highest rates of prosecution in the world.

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. Canada's approach has come under repeated criticism domestically and internationally, including from United Nations expert agencies, human rights bodies, judges, women's rights advocates and scientists.

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, any such intervention must be based on the best available evidence, be proportionate to an objectively reasonable assessment of risk, and be no more intrusive or restrictive than necessary.

In accordance with international guidance, criminal prosecutions should be limited to cases of actual, intentional transmission of HIV.

In keeping with basic principles of criminal law, any prosecution should require all of the following:

- proof that the person intended to transmit HIV;
- proof that the person engaged in sexual activity that was likely to transmit the virus;
- 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.

HIV-related criminal charges are **not appropriate** where a person living with HIV:

- did not understand how the virus is transmitted;
- disclosed their status to their sexual partner or reasonably believed their sexual partner was aware of their status through some other means;
- did not disclose their status because they feared violence or other serious negative consequences would result from such disclosure;
- was forced or coerced into sex; or
- engaged in activities that, according to the best available scientific evidence, posed no significant risk of transmission, including:
 - oral sex;
 - anal or vaginal sex with a condom;
 - anal or vaginal sex without a condom while having a low viral load; and
 - spitting and biting.

Call to Action

We call upon federal, provincial and territorial Attorneys-General **to take the measures necessary, within their respective areas of jurisdiction and in consultation with people living with HIV, HIV organizations, service providers, women’s rights advocates and scientific experts**, to limit the unjust use of the criminal law **against people living with HIV**.

These measures must include the following:

1. **Federal and provincial Attorneys-General should develop sound prosecutorial guidelines to preclude unjust HIV prosecutions.** Such guidelines must reflect current scientific knowledge and the principle of the least intrusive, most effective response.
2. **The federal government should reform the *Criminal Code* to limit the unjust use of the criminal law against people living with HIV.** Remove HIV non-disclosure 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, but also undermines the law of sexual assault as a means of addressing sexual violence, already a concern given that the criminal justice system is too often ineffective in addressing cases of coercive sex. Reforms must also ensure that other provisions in the *Criminal Code* are not used to further stigmatize people living with HIV and are appropriately limited in accordance with the principles stated above. A criminal conviction based on HIV non-disclosure must not affect immigration status.
3. **All three levels of government should support the development of resources and training to address misinformation, fear and stigma related to HIV.** Training should be conducted by experts in HIV and be extended to judges, police, Crown prosecutors and prison staff nationwide.

Endorsed by

2-Spirited People of the First Nations
Aamjiwnaang Health Centre
Action Canada for Sexual Health and Rights
Action positive VIH/sida
Action Santé Travesti(e)s et Transexuel(le)s
du Québec
African & Caribbean Council on HIV/AIDS in Ontario
Africans in Partnership Against AIDS
AIDS ACTION NOW!
AIDS Coalition of Nova Scotia
AIDS Committee of Durham Region
AIDS Committee of Kitchener/Waterloo and Area
AIDS Committee of Ottawa
AIDS Committee of Toronto
AIDS Committee of Windsor
AIDS Committee of York Region
Alberta Public Interest Research Group
Angel's Angels Advocacy
Anishinabek Nation-Union of Ontario Indians
Asian Community AIDS Services
Black Coalition for AIDS Prevention
Bracelet of Hope
Bruce House
Bureau local d'intervention traitant du sida
Butterfly Project
Cactus Montréal
Canadian Aboriginal AIDS Network
Canadian AIDS Society
Canadian Association of People Who Use Drugs
Canadian Association of Social Workers
Canadian Harm Reduction Network
Canadian Positive People Network
Casey House
CATIE
Centre d'Action Sida Montréal, Femmes
Centre des R.O.S.É.S. de l'Abitibi-Témiscamingue
Centre des services communautaires Vanier,
Clinique Francophone
Centre for Spanish-Speaking Peoples
Centre Francophone de Toronto
Centre Sida Amitié
COCQ-SIDA
Community-Based Research Centre for
Gay Men's Health
Concordia HIV/AIDS Project
Criminalization and Punishment Education Project,
Ottawa University
Dopamine
Downtown East Side Literacy Roundtable
Edmonton Men's Health Collective
Egale Canada
Elevate NWO
Elgin-Oxford Legal Clinic
EMISS-ère
Family Service Toronto
Fife House
FrancoQueer
Fruit Loop Society of Alberta
Gay Men's Sexual Health Alliance
Gender & Sexual Health Initiative, UBC
Grandmothers Advocacy Network
Groupe d'action pour la prévention de la
transmission de VIH et SIDA
Groupe d'entraide à l'intention des personnes
séropositives et itinérantes
Hemophilia Ontario
HIV & AIDS Legal Clinic Ontario
HIV Community Link
HIV Edmonton
HIV North Society
HIV/AIDS Regional Services
HIV/AIDS Resources and Community Health
Industrial Accident Victims Group of Ontario
International Community of Women Living with HIV
– North America
L'A.R.C.H.E. de l'Estrie
Lake Country Community Legal Clinic
Latinos Positivos Toronto
Le Bureau Régional d'Action SIDA
Legal Clinic of Guelph and Wellington County
Les Hébergements de l'Envol
Living Positive Resource Centre
Maggie's: Toronto Sex Worker Action Project
Maison d'Hérelle

Maison Dominique
 Maison Fraternité
 Maison Plein Cœur
 Maison Re-Né
 Mouvement d'information et d'entraide dans la
 lutte contre le sida à Québec
 Nine Circles Community Health Centre
 OASIS (Sandy Hill Community Health Centre)
 OASIS Centre des femmes (Toronto)
 Ontario AIDS Network
 Ontario Organizational Development Program
 Ontario Coalition of Rape Crisis Centres
 OutLaw at McGill
 PACE Society
 Pacific AIDS Network
 Parkdale / Queen West Community Health Centre
 Peel HIV/AIDS Network
 PEERS Alliance
 Peers Victoria
 Peterborough AIDS Resource Network
 Projet d'intervention auprès des mineurs-es
 prostitués-es
 Point de repères
 Portail VIH/sida du Québec
 Positive Living Fraser Valley
 Positive Living Niagara
 Positive Living Society of BC
 PositiveLite.com
 Positive Voices Caucus, Alberta Community
 Council on HIV
 Prisoners with HIV/AIDS Support Action Network
 Toronto People With AIDS Foundation
 Queer Ontario
 Realize
 Regional HIV/AIDS Connection
 Rel8 Okanagan
 Réseau Access Network
 RÉZO
 Rideauwood Addiction and Family Services
 Sexual Assault Center Hamilton
 Safe Harbour Outreach Project
 Sagitawa Friendship Society
 Sexuality Education & Resource Centre Manitoba
 Sex Professionals of Canada
 Sex Workers Advisory Network Sudbury
 Sex Workers of Winnipeg Action Coalition
 Shining Mountains Living Community Services
 Sida-Vie Laval
 Sida/AIDS Moncton
 Sidaction Mauricie
 Sidalys
 Snowy Owl AIDS Foundation
 Sobriety House
 Société canadienne de l'hémophilie-section Québec
 South Riverdale Community Health Centre
 St. Michael's Hospital HIV Team
 Streetworks
 Sunshine House Inc.
 SWAN Vancouver Society
 Sex Workers of Winnipeg Action Coalition
 Table des organismes communautaires
 montréalais de lutte contre le sida
 The AIDS Network
 The Gilbert Centre
 The SHARP Foundation
 The Teresa Group
 Trans Pride Toronto, Transitioning Together
 Turning Point
 Vancouver AIDS Society
 Vancouver Island PWA Society
 WellFort Community Health Services
 West Toronto Community Legal Services
 Winnipeg Regional Health Authority
 Women's HIV/AIDS Initiative
 Women's Health in Women's Hands
 YouthCO