
Statement on COVID-19 and Criminalization

April 27, 2020

Faced with an unprecedented public health crisis, all levels of government in Canada have actively adopted measures and policies to respond to the COVID-19 pandemic. The Canadian Coalition to Reform HIV Criminalization (CCRHC), a national coalition of people living with HIV, community organizations, lawyers, researchers and others, understands and supports the need for sound public health measures to limit the spread of the virus, as well as the call for solidarity to protect ourselves and others. As we are still in the early stages of an unfolding and complicated pandemic, we remind policy makers that any measures taken to respond to COVID-19, as well as their enforcement, must be proportionate, grounded in science, and in compliance with human rights.

Public health approaches across the country to limit the spread of the virus have so far revolved around some seemingly simple instructions: regular handwashing, self-isolation and physical distancing. However, the capacity of individuals to comply with these measures is shaped by underlying inequalities. For numerous reasons such as poverty, job insecurity, unstable or poor housing, abusive relationships and mental health considerations, some people and communities will face barriers and obstacles complying with the measures, either mandated or recommended. This puts them at a greater risk of being exposed to the virus causing COVID-19, but also of being policed, fined and jailed for failure to comply with the mandated requirements. Fining or detaining people who have nowhere to self-isolate, cannot practice physical distancing, and/or do not have the means to pay the fines will not solve the problem.

Public health measures will not work unless governments take concrete steps to level social inequalities by addressing, among other things, poverty and lack of affordable housing. In addition, as [UNAIDS](#) recently highlighted, the HIV epidemic has taught us that key populations must be involved in all response measures in order to ensure suitability and effectiveness. In the context of COVID-19, an informed, community-centered response is essential for creating trust among affected communities, the government and public health officials, and avoids putting vulnerable people in harm's way, whether from the virus or over-policing.

Based on media reports, police press releases, and individual accounts from community organizations, as of April 13, 2020 more than 700 individuals in Canada have faced fines or sanctions for allegedly violating physical distancing or restrictions on gatherings. These sanctions are being enforced by both by police and municipal by-law officers, who have been given temporary enhanced powers to enforce public health and emergency legal orders. In Ontario, tickets for a violation have primarily been in the amount of \$880.00 (including the victim surcharge). In Quebec, authorities have mostly issued tickets in the amount of \$1546.00 (including fees). In Halifax, tickets issued have been in the amount of \$697.00. Groups of homeless people have been ticketed in Hamilton and Montreal for not following social distancing rules. Black men have been targeted by enforcement officers in Ottawa and Halifax. One Indigenous community is being heavily policed in northern Quebec. These reports were all in the media. We also know that a harm reduction worker was arrested and ticketed under the *Quebec Public Health Act* for doing her job. We also have reports that Montreal sex workers have faced increased harassment.

Source: A. McLelland; A. Luscombe. *Policing the Pandemic Enforcement Report*, April 2020, policingthepandemic.ca

As a national coalition against the criminalization of HIV, we are particularly concerned by recent reports of people being arrested, jailed or criminally charged for allegedly exposing others to the risk of getting COVID-19 or for violating public health orders. In Newfoundland, for example, a woman spent the night in jail for allegedly failing to self-isolate. Resorting to detention as a public health measure in the context of a pandemic is highly problematic, as people in prison are at a higher risk of being exposed to the virus and/or exposing others.

We must bear in mind that the police are not trained to deal with complex health issues and that increased policing, left unchecked, may lead to abuse and discrimination, especially against those who are already disproportionately surveilled, policed and criminalized. Instead of mobilizing police to impose public health measures through force, we should increase social and community support to respond to the needs of the most vulnerable, and provide emotional, financial and material resources to curb the epidemic. While physical distancing is needed, social solidarity is key in addressing the crisis.

In other cases, while no actual transmission was alleged, possible exposure to the virus causing COVID-19 has prompted charges against individuals who coughed, spat or uttered threats, usually during altercations with the police. We are especially concerned by the numerous references to HIV criminalization to justify the use of the criminal law in the current crisis. Canada's non-scientific and harshly punitive approach to criminalizing HIV has come under repeated criticism domestically and internationally, including from United Nations expert agencies, judges and scientists. Canada's current government has stated that they recognize the problem of "over-criminalization." Using HIV criminalization as an attempt to justify the criminalization of COVID-19 transmission, exposure or perceived exposure fails to consider the harmful consequences of criminalization.

The criminal law should not be used in the name of public health. While it might give a sense of security, protection and comfort to some, the criminalization of diseases and infections is ultimately bad public health policy. The experience of HIV criminalization also shows that resorting to the criminal law can lead to human rights violations, and have a disproportionate impact on the most marginalized, including people living in poverty, those who are homeless, sex workers, people who use drugs, people in abusive relationships, and Indigenous and racialized communities. As such, we are deeply concerned by some of the harsh and repressive measures that have been reported or that have been called for to address the COVID-19 pandemic.

While all provinces and territories have declared a state of emergency, use of these emergency powers should not exceed what is required to properly and effectively address the pandemic. Any limitation on rights, including those imposed in the name of public health, must be necessary and proportionate. These are basic, widely accepted standards under international human rights law. Based on our experience with HIV criminalization, we urge all levels of government to resist the overly broad and unjust use of the criminal law to respond to the COVID-19 pandemic. Instead of resorting to police and coercive powers that do more harm than good, we urge all levels of government to favour community-based and proportionate measures so that the least coercive and intrusive measures — dialogue, support and awareness to encourage adherence with public health guidance — are prioritized.

The Canadian Coalition to Reform HIV Criminalization (CCRHC)

is a national coalition of people living with HIV, community organizations, lawyers, researchers and others formed in October 2016 to progressively reform discriminatory and unjust criminal and public health laws and practices that criminalize and regulate people living with HIV in relation to HIV exposure, transmission and non-disclosure in Canada. The Coalition includes individuals with lived experience of HIV criminalization, advocates and organizations from across the country. It includes a steering committee on which a majority of members are people living with HIV. www.hivcriminalization.ca

Contact: Alex McClelland, ccrhc.ccrvc@gmail.com