

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.<sup>1</sup>

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.

<sup>1</sup> 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