



## Criminalization of HIV Non-Disclosure in Canada

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At YouthCO, we believe HIV is not a crime.

*“Criminal charges, trials and convictions are not a cure for HIV. They cannot rid anyone’s body of the virus. And they will not stop the HIV epidemic.”*

- Ontario Working Group on Criminal Law and HIV Exposure

Law must be evidence-based. It must also be applied equally by the court to all individuals under its jurisdiction. In criminalizing people living with HIV, Canada’s law violates these basic legal requirements by ignoring current scientific evidence and discriminating against those living with HIV.

Humans have lived with viruses for thousands of years. With modern medical advancements, most viruses are now treatable and do not make the news. When it comes to HIV, however, misinformation about its transmission, prevention, and effective treatment, especially in media reporting, perpetuates a disturbing cycle of fear and stigma around HIV and positive people.

In May 2014, a group of expert Canadian doctors and health professionals released a Consensus Statement in the Canadian Journal of Infectious Disease clearly stating that the criminal law applied to individuals living with HIV is **overly used** and **founded in a poor understanding of science**.<sup>i</sup>

HIV is a fragile virus. The possibility of it being passed between people only happens under very specific circumstances. With knowledge of one’s status and the free and accessible HIV treatment available in British Columbia, people living with HIV can have **undetectable viral loads** and make the **risk of transmission negligible**<sup>ii</sup>. Furthermore, treatment renders HIV a chronic, manageable health condition and the pervasive fear and discrimination that drive charges reflects an outdated understanding of the condition.

As outlined by the “Criminalize Hate, Not HIV” Campaign by the International Planned Parenthood Federation, criminalizing people living with HIV does not protect public health and only serves to:

- **Discourage testing:** compromises sexual health support, misleads the public and marginalizes those most at risk. Most HIV transmissions occur when people **do not** know they are HIV positive<sup>iii</sup>, which is why encouraging testing is so important. Criminalizing non-disclosure of status, however, discourages people from getting tested for fear of criminal retributions.
- **Further marginalizes those most at risk:** marginalized populations disproportionately suffer the consequences of HIV criminalization. Youth, people who use drugs, Aboriginal people,

gay people, people of colour, immigrants and refugees, or any combinations thereof already face systemic and institutional barriers. Criminalizing HIV further excludes people with these barriers from accessing the healthcare everyone deserves.

- **Mislead the public:** Sentencing a person living with HIV who did not disclose this information implies that people will disclose their status for fear of legal action. This undermines the idea that sexual health is everyone's responsibility and may put more people at risk. Furthermore, HIV criminalization also misleads the public through the irresponsible media reporting around criminal trials. Public criminal proceedings and exposing someone's personal history in a society still rife with stigma surrounding HIV does nothing to prevent HIV transmission or provide "justice".

As an organization whose role is in education and support around HIV and Hep C, YouthCO is strongly opposed to HIV criminalization. We call on Canada's justice system to make intelligent, evidence-based decisions around HIV and join us in working towards eliminating fear and stigma and supporting those living with HIV. The court must uphold the ideals of equality, human rights protection, non-discrimination, and social justice in and change the current HIV criminalization law to reflect current scientific evidence.

If you have any questions or concerns related to the criminalization of HIV non-disclosure feel free to contact us at YouthCO:

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<sup>i</sup> Canadian Consensus Statement on HIV and its transmission in the context of criminal law, May 2014  
[http://cfenet.ubc.ca/sites/default/files/uploads/news/releases/Statement%20\(May%202-14\).pdf](http://cfenet.ubc.ca/sites/default/files/uploads/news/releases/Statement%20(May%202-14).pdf)

<sup>ii</sup> Canadian Consensus Statement on HIV and its transmission in the context of criminal law, May 2014  
[http://cfenet.ubc.ca/sites/default/files/uploads/news/releases/Statement%20\(May%202-14\).pdf](http://cfenet.ubc.ca/sites/default/files/uploads/news/releases/Statement%20(May%202-14).pdf)

<sup>iii</sup> Criminalize Hate, Not HIV <http://www.hivandthelaw.com/basic-information/ten-questions/3-how-does-criminalization-impact-public-health/3-how-does#mislead>