

## Criminal legal system advocacy

**Action Toolkit For:** Human Rights & HIV Advocates

**Topic:** Reducing HIV-related stigma and misinformation in the criminal legal system

HJN uses the term “criminal legal system” instead of “criminal justice system” because we feel it more accurately describes the systems. These systems do not deliver justice.

**Take action! Educate. Train. Provide resources. File complaints. Introduce evidence. Call out. Support.**

HIV criminalisation fuels and is fuelled by HIV-related stigma. Police, lawyers, judges, magistrates and jurors may mistakenly believe that HIV is more easily transmissible than it actually is, that HIV inevitably leads to AIDS, and that people living with HIV are immoral and dangerous. Justice can not be served in a system plagued with such stigma and misinformation.

### ACTION

#### **Action: Demand accountability in the criminal legal system**

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[The role of the judiciary in HIV responses \(UNDP, 2022\)](#)

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[Police must join the fast track to end AIDS by 2030 \(JIAS, 2016\)](#)

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[Practical guide for paralegals: Supporting people living with HIV affected by HIV criminalization in the EECA region \(100% Life, 2021\)](#)

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[Police, law enforcement and HIV \(JIAS, 2016\)](#)

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[Public health fact sheet: Police, harm reduction, and HIV \(Open Society Institute & IHRD, 2008\)](#)

#### **Key resource**

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[Expert consensus statement on the science of HIV in the context of criminal law \(JIAS, 2018\)](#)

**Ten facts every criminal legal system actor should know**

1. How HIV is transmitted.
  - You cannot get HIV through everyday contact.
  - HIV can only be transmitted from semen, vaginal and rectal fluids, blood, and breast milk. It cannot be transmitted through saliva, urine, tears or feces.
  - For transmission to occur, there must be enough HIV in these fluids and they must get into the bloodstream of an HIV-negative person through a mucous membrane, an open cut or sore, or by direct injection.
  - HIV is an unstable virus which does not survive for long outside the body.
2. Under international human rights law, it is unlawful to discriminate against a person with HIV.
  - Many countries also have domestic legislation prohibiting discrimination against people living with HIV (as a health status or disability).
3. Say “HIV.” Avoid using the term “AIDS.”
  - HIV and AIDS are distinct. If left untreated, HIV can develop into AIDS.
  - AIDS describes a number of potentially life-threatening infections and illnesses.
  - With the increasing accessibility of effective treatment, fewer people will develop AIDS.
4. HIV treatment is extremely effective.
  - Antiretroviral medications (ARVs) are used to treat HIV.
  - Most people living with HIV and receiving treatment will lead full, active lives with normal life expectancies.
5. Undetectable = Untransmissible. (“U=U”)
  - Treatment reduces the amount of HIV in the body to the point that it is not picked up by standard tests. Someone with an undetectable viral load cannot transmit the virus to sexual partners.
6. Post-exposure prophylaxis (PEP) treatment taken within 72 hours of exposure can prevent HIV infection.
  - PEP can be prescribed to those exposed to HIV through sexual assault, consensual sex, needle-stick injuries, and other means.
7. HIV treatment should not be interrupted.
  - It is usually a once or twice daily regimen.
  - Missed doses can result in viral rebound and/or drug resistance.
8. The risk of occupational HIV transmission for first responders is extremely low.
  - There is no need to take additional precautions when dealing with a person living with HIV. Universal precautions protect against HIV and other blood-borne viruses when administering first aid.
9. Laws criminalising HIV non-disclosure, exposure and/or transmission should be applied in line with the legal principles of foreseeability, intent, causality and consent, regardless of overly broad or vague wording.
  - Consider the risk of HIV transmission from the specific event and the mental culpability of the accused before prosecuting.
10. The criminalisation of HIV non-disclosure, exposure and/or transmission is ineffective as a public health strategy and runs counter to many principles of justice and criminality.

## **Important information about HIV and privacy**

People living with HIV experience discrimination as a result of the unauthorized disclosure of their health status. It is essential that people living with HIV control access to their personal health information. A breach of the right to privacy often leads to breaches of other human rights, such as the rights to life, liberty, adequate housing and medical care.

Any information regarding a person’s health that is revealed in the course of their interactions with the criminal legal system should be treated as confidential.

Even if a case never goes to court, an investigation can result in widespread disclosure of a person’s HIV status and sexual activity (e.g., questioning witnesses, media coverage).

**ACTION****Action: Educate police**

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[Centering health, respecting rights: A training manual for police \(HIV Legal Network, 2021\)](#)

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[Investigation guidance relating to the criminal transmission of HIV for police forces in England, Wales and Northern Ireland \(NAT, 2018\)](#)

**ACTION****Action: Emphasise intent**

With respect to HIV, criminal legal system actors often stumble on the issue of intent or mental culpability (*mens rea*). Too often, prosecutions and convictions proceed as if simply having sex without prior disclosure of HIV status or use of protection (e.g., condoms) is tantamount to intention to expose or transmit. Countering this myth requires education about the reasons for HIV non-disclosure and/or inability or unwillingness to use protection: HIV-related stigma and violence; lack of capacity; non-verbal disclosure and consent; and differing cultural and sexual norms amongst groups most impacted by HIV.

**ACTION****Action: Develop guidance for prosecutors**

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[Guidance for prosecutors on HIV-related criminal cases \(UNDP, 2021\)](#)

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[HIV Justice Live! – E04: Doing HIV justice: How to advocate for prosecutorial guidance for HIV-related criminal cases \(HJN, 2021 56 min. video\)](#)

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[Prosecuting HIV-related criminal cases in Canada: A model policy \(HIV Legal Network, 2022\)](#)

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[Prosecution policy on the sexual transmission of infection \(Scotland, Crown Office & Procurator Fiscal Service, 2014, Updated 2022\)](#)

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[Guidance for Crown Prosecutors: Intentional or reckless sexual transmission of infection \(U.K. Crown Prosecution Service, 2011\)](#)

**ACTION****Action: Support judges and magistrates**

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[Judging the epidemic: A judicial handbook on HIV, human rights and the law \(UNAIDS & HIV Legal Network, 2013\)](#)

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[Judicial handbook on HIV, human rights, and the law in Uganda \(UGANET, 2021\)](#)

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[HIV criminalisation defence case compendium \(SALC, 2018\)](#)

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[Opinion followed by recommendations on the criminalisation of the sexual transmission of HIV in France \(French National AIDS Council, 2015\)](#)



## Feedback

*We'd appreciate your feedback on this Action Toolkit! Please take a moment to complete this [short survey](#).*