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HIV criminalisation laws around the world

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Key points

- HIV criminalisation is a global phenomenon, with problematic legislation in every region of the world.
- Countries criminalise people with HIV for transmission, exposure and/or non-disclosure of HIV status.
- This page provides a brief overview with global examples and a link to more detailed and up-to-date information by country.

What is HIV criminalisation?

HIV criminalisation refers to the use of criminal and similar laws against people living with HIV based on their HIV-positive status. In many countries around the world, criminal laws have been introduced that punish the transmission of HIV, potential or perceived exposure to HIV, and even non-disclosure of HIV status. In some places, HIV has been added to the list of

infectious diseases that were already criminalised, and in others specific legislation has been brought in.

The number of these laws (and their use) is increasing, despite them being ineffective, discriminatory and a significant barrier to HIV prevention, treatment and care. Laws often fail to recognise that HIV is no longer a death sentence, that **effective treatment eliminates the risk of transmission (U=U)** and that, regardless of treatment, the possibility of HIV transmission from a single act of exposure is extremely low.

Intent and recklessness

It is important to distinguish intentional (deliberate) acts and unintentional acts. Globally, most HIV criminalisation prosecutions involve the severe punishment of unintentional, or 'reckless' HIV exposure or transmission. In the **Netherlands**, only intentional HIV exposure or transmission are criminalised, making it one of the most progressive countries in the world when it comes to HIV criminalisation.

It is uncontested that deliberate and actual transmission of HIV to someone as a way to cause them harm is a crime. Cases of people living with HIV intentionally transmitting HIV to others are extremely rare, as are cases of medical negligence by health-workers. Such cases can be prosecuted under existing law, rendering additional legislation that singles out HIV redundant. For this reason, **South Africa** took the decision not to introduce an HIV-specific law in 2001.

HIV-specific criminal laws

The most recent global audit published by the HIV Justice Network found a total of 75 countries with criminal laws that specifically mention HIV. HIV-specific laws are particularly concentrated in three parts of the world: the United States, eastern Europe/central Asia and sub-Saharan Africa.

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The **United States** was the first country in the world to introduce HIV-specific criminal laws, beginning in 1987, and there have been thousands of reported cases since. Over half of the states (27) have HIV criminalisation laws with lengthy sentences, although some including California, Colorado, Iowa, Michigan and North Carolina have modernised these laws in the past few years. (Other states use general laws to prosecute HIV transmission and exposure.)

Following the enactment of HIV-specific criminal laws in the second half of the 1990s, the **eastern European and central Asian** region now has the second-highest number of laws that specifically criminalise HIV. **Russia, Ukraine and Belarus** have some of the most punitive HIV criminalisation systems in the world and very high numbers of reported cases. In **Russia**, any action that may put another person at risk of infection is punishable. The law in the **Ukraine** is very similar: HIV disclosure is mandatory prior to any activity that may risk infection and you may be considered criminally liable based on “risky” behaviour (for example injecting drug use) even without an HIV-positive diagnosis. In 2018 a successful advocacy campaign led to an amendment to the law in **Belarus** that removed individuals from criminal liability if they had disclosed their HIV status to their partner and their partner had agreed to any acts that might have led to HIV transmission. Rates of criminalisation remain high, however.

Sub-Saharan Africa is the region with the most countries that have enacted HIV criminalisation laws, although in most countries, the number of reported cases is not high compared with the number of people living with HIV. As in **eastern European and central Asia**, women are more likely to be prosecuted than men since they are usually the first in a relationship to learn their HIV status due to antenatal HIV testing. There have also been a number of cases in which women have been accused of intentionally passing on HIV to their own child, or the child of someone else, by breastfeeding. Many countries, particularly in **west and central Africa**, introduced very broad HIV-specific legislation in the mid-2000s. In recognition of the damage these laws pose to the fight against HIV, several countries have since decriminalised vertical transmission and limited criminal liability to acts involving a significant risk of transmission. In 2018, the **Democratic Republic of the Congo** repealed its HIV-specific law altogether as a result of community advocacy. **Zimbabwe** has also taken recent steps to repeal its HIV-specific laws and efforts are ongoing to challenge Kenya’s HIV-specific criminal law as unconstitutional.

HIV-specific laws in the rest of the world

Within the **European Union**, only a handful of member states have ever introduced HIV-specific legislation. **Denmark**, which introduced western Europe’s only HIV-specific criminal

law in 2001, suspended it ten years later. Under the guise of COVID-19 prevention, **Poland** amended the country's HIV-specific penal provisions in 2020, increasing the maximum penalty for HIV exposure from three years to eight years' imprisonment. The penalty for exposure to other STIs and/or infectious diseases was also increased. **Romania and Latvia** have also enacted HIV-specific criminal laws, although here have been very few reported cases to date.

Glossary

criminalisation

disclosure

undetectable viral load

oral sex

oral

In **Latin America and the Caribbean**, 14 countries have HIV-specific criminal laws, including a recently enacted law in **El Salvador** (2016) and proposed laws are pending in **Chile** and **Jamaica**. In **Mexico**, laws in several states were proposed and then withdrawn in 2017/2018. Similarly, following concerted advocacy, a proposed law was withdrawn in **Brazil** in 2017. The Constitutional Court of **Colombia** found their HIV-specific criminal law unconstitutional in 2019.

The **Asia-Pacific** region has 11 countries with HIV criminalisation laws, including **Pakistan, Viet Nam** and a recently enacted law in **Nepal** (2018). In **China**, national regulations state that a person living with HIV must inform a prospective sexual partner of their HIV status and take necessary precautions to prevent HIV transmission, although those precautions are not defined.

Types of HIV criminalisation

Countries may criminalise people with HIV for transmission, exposure or non-disclosure of HIV status. Some countries criminalise all three.

Criminalisation of non-disclosure to sexual partners

In some countries around the world you are legally obliged to inform your partner of your HIV-positive status before you have any sexual contact. A few HIV-specific criminal laws are written in such a way that they assume guilt on your part even if you have not been diagnosed but think you might have HIV. In some places, you can be prosecuted even if you disclosed to your partner that you are HIV-positive before you had sex and gained their informed consent.

In **Singapore** there have been at least ten cases prosecuted under the *Infectious Diseases Act*, which states that a person who knows they have HIV or has reason to believe they have

been exposed to a significant risk of acquiring HIV, must not engage in any sexual activity with another person without informing the person that they have (or may have) HIV. In July 2019, Singapore's High Court confirmed that people aware they are living with HIV must not only disclose their HIV-positive status prior to sex, they must also educate them around any possible risks of HIV transmission to avoid criminal liability.

Criminalisation of potential or perceived HIV exposure

'HIV exposure' refers to an act which may have put another person at risk of HIV infection, even if that person did not acquire HIV. For example, many countries criminalise people living with HIV who have sex without a condom.

However, the criminal law often assumes that HIV exposure always takes place when someone has any kind of sexual contact, or spits or bites or breastfeeds, disregarding up-to-date science. In some countries you can be prosecuted for HIV 'exposure' even if you used a condom, were on effective treatment, performed oral sex, or spat on someone. Increasingly these prosecutions are being challenged, but they still occur far too frequently.

Nigeria's *Sexual Offences Bill* makes it illegal for a person who knows they have HIV to intentionally, knowingly and wilfully do anything or permit anything to be done which they should reasonably know is likely to transmit HIV. The law does not require HIV transmission, or for the person to have an intention to transmit HIV and carries a penalty of between 20 years and life imprisonment. The law specifically states that it applies whether or not the parties were married.

Some states in **Australia** have recently passed laws that allow police to forcibly test anyone they think might have exposed to them HIV via **spitting or biting**, even though expert scientific consensus argues that this only leads to unnecessary worry for police – who will not have been at risk – and violates the rights of the people forcibly tested.

Criminalisation of HIV transmission

Many laws around the world appear to criminalise HIV transmission. However, the laws are often written so broadly or vaguely that they actually criminalise non-disclosure or HIV 'exposure'. Where courts are faced with allegations of actual HIV transmission, they often erroneously assume the person diagnosed first passed it on. They also frequently misunderstand how science is unable to definitely show timing and direction of infection. As the ***Expert Consensus Statement on the Science of HIV in the Context of Criminal Law*** states, it is extremely difficult to conclusively prove HIV transmission directly from one person to

another.

In **Uganda**, the *HIV and AIDS Prevention and Control Act of 2014* criminalises both intentional and attempted transmission of HIV. However, courts have made assumptions about what is intentional and assume that the person on trial, who was diagnosed first, must have passed it to the complainant.

Use of general laws to punish HIV

HIV criminalisation can still occur in countries that do not have laws that specifically mention HIV, instead using laws against endangerment, physical or sexual assault, or even attempted murder. Between 2015 and 2018, half of the globally reported cases of HIV criminalisation were based on general criminal laws.

Canada has one of the highest numbers of reported cases of HIV criminalisation in the world, despite the absence of HIV-specific legislation. Courts there have defined non-disclosure when there is a “realistic possibility” of transmission as aggravated sexual assault, with a maximum penalty of life imprisonment. In some cases, people have been charged and imprisoned for acts with zero to negligible risk of transmission, including sex with an undetectable viral load, oral sex or sex with a condom.

Most countries in **western Europe** also use general criminal laws to unjustly criminalise people living with HIV, although recognition of the prevention benefit of treatment has recently reduced the number of cases. The **UK, France, Germany, Norway, Sweden and Switzerland** are countries in western Europe with unusually high numbers of cases considering the number of people living with HIV. Similarly, **New Zealand** has one of the highest rates of HIV criminalisation *per capita* in the world.

Across the **Middle East** very little is known about the extent of HIV criminalisation due to reporting restrictions. Most of the reported cases of HIV criminalisation in the region have used general or religious laws to prosecute people, who are most often gay men, sex workers and/or migrants. A few cases have been reported in the civil courts in **Algeria, Egypt and Morocco**.

Where to go for further information

It is important not to rely on this general information for legal advice. This is not a comprehensive guide to HIV criminalisation and information can change quickly. The legal situation in any country is never static as countries consider introducing HIV criminalisation,

and others reform or repeal these laws. There are considerable limitations on what is known due to a lack of reporting in many places.

For more specific and recently updated information by country, visit the Global HIV Criminalisation Database by the HIV Justice Network.

Global HIV Criminalisation Database

More specific and recently updated information about the law in each country is available from the HIV Justice Network.

 Go

There is [a detailed description of the criminal law in England and Wales](#) on another page on this website.

Many countries around the world restrict the entry and/or residence of people with HIV. [For more information visit our page on travel restrictions.](#)

References

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This page was last reviewed in June 2020. It is due for review in June 2023.

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