

# HIV and the Criminal Law in Canada - Update

On December 1, 2018, the government of Canada [announced](#) a new directive to help limit unjust prosecutions against people living with HIV in Canada. The directive, which will take effect on Saturday, December 8, 2018, governs federal prosecutors who handle criminal prosecutions in the three territories in Canada. It does not apply to prosecutions taking place in Ontario or other provinces.

People in Canada who face criminal charges related to HIV non-disclosure are typically charged with sexual assault, on the theory that not disclosing one's HIV-positive status, when legally required, makes their partner's consent to sex invalid.

The announcement indicates that the directive will state that the Director of Public Prosecutions in Canada, who has responsibility for, among other things, conducting federal prosecutions:

- shall not prosecute where the person living with HIV has maintained a suppressed viral load (i.e., under 200 copies of the virus per millilitre of blood) because there is no realistic possibility of transmission;
- shall generally not prosecute where the person has not maintained a suppressed viral load but used condoms or engaged only in oral sex or was taking treatment as prescribed unless other risk factors are present, because there is likely no realistic possibility of transmission in such cases;
- shall prosecute using non-sexual criminal offences instead of sexual offences where this would better align with the individual's situation, such as cases where the individual's conduct was less blameworthy; and
- must take into account whether a person living with HIV has sought or received services from public health authorities, in order to determine whether it is in the public interest to pursue criminal charges.

We congratulate the Attorney General of Canada for taking this action. For many years, the HIV community and others have been urging governments to bring HIV-related criminal prosecutions in line with science and human rights in a manner that is supportive of HIV-related care, treatment and prevention. In particular, and as noted in the Canadian Coalition to Reform HIV Criminalization [Community Consensus Statement](#) signed by over 160 organizations in November 2017, we have been demanding sound prosecutorial guidance as well as legislative reform.

We continue to call on the federal government to reform Canada's *Criminal Code* to ensure that HIV-related prosecutions are removed from sexual assault law and are applied only to actual, intentional transmission.

In addition, as the federal directive does not apply to the provinces, we continue to call on Ontario to immediately update its prosecutorial guidance on HIV-related prosecutions. While we welcome Ontario's [change in prosecutorial policy](#), made on December 1, 2017, to cease prosecutions when a person living with HIV has a viral load of under 200 copies/ml for at least six months, more must be done. Among other changes, Ontario must immediately cease prosecutions in relation to oral sex and sex with a condom. Broader recommendations for Ontario can be found in the [Ontario Working Group on Criminal Law and HIV Exposure brief](#) provided to the government in April 2018.

While there is still much work to be done, the federal government's announcement is a big step forward. We urge Ontario to also move forward.

For a concise update on the law as it stands today in Ontario, please see our new factsheet: **HIV and the Criminal Law in Ontario** <https://www.halco.org/wp-content/uploads/2018/12/HIV-crim-Ont2018Dec.pdf>.

**Anyone living with HIV in Ontario can contact HALCO for free legal advice: 416-340-7790 or toll-free 1-888-705-8889.**

You can find more information on our website: <https://www.halco.org>.

HALCO, in partnership with people living with HIV and others, will continue to engage in law reform activities to ensure that the criminal law is brought in line with science and human rights in a manner that is supportive of HIV-related care, treatment and prevention.

