

## Response to Federal Justice Committee Report on Criminalization of People Living With HIV

*This communication was adapted from a [statement](#) released by the Canadian HIV/AIDS Legal Network (Legal Network) on June 17, 2019<sup>1</sup>. We thank the Legal Network for their incredible and long-standing work on the issue of criminalization of HIV.*

After hearing from many witnesses, including people living with HIV, the HIV & AIDS Legal Clinic Ontario (HALCO), the Legal Network, and others, Canada's House of Commons Standing Committee on Justice and Human Rights, on June 17, 2019, released a report entitled "[The Criminalization of HIV Non-Disclosure in Canada](#)"<sup>2</sup>.

The report contains several important recommendations to limit the broad, unscientific and unjust use of the criminal law against people living with HIV. We welcome many of the conclusions in this report.

**The first clear stand-out recommendation is to remove HIV non-disclosure from the reach of sexual assault law.** People living with HIV currently face imprisonment for aggravated sexual assault and a lifetime designation as a sex offender for not disclosing their HIV status to sexual partners, even in cases where there is little or even zero risk of transmission. We welcome the Committee's recognition of this unjust reality and their call to remove the offence from the realm of sexual assault law.

**Another stand-out recommendation is limiting the criminalization of HIV to actual transmission of HIV.** But we must go further. As recommended by United Nations' expert health and human rights bodies, and as indicated in a [Canadian community consensus statement](#)<sup>3</sup> endorsed by over 170 organizations, criminal prosecution should be limited to cases of actual and *intentional* transmission. Criminal charges must be limited and used only as a measure of last resort. We welcome the recommendation that the federal government consult with the HIV community, including people who have been charged, prosecuted or convicted of an offence related to HIV non-disclosure, when engaging in legislative reform to restrict HIV criminalization.

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<sup>1</sup> <http://www.aidslaw.ca/site/statement-response-to-justice-committees-report-on-the-criminalization-of-people-living-with-hiv/?lang=en>

<sup>2</sup> <https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/report-28/>

<sup>3</sup> <http://www.hivcriminalization.ca/community-consensus-statement/>

**However, we strongly disagree with the recommendation to extend the criminal law to other infectious diseases.** Infectious diseases are a public health issue and should be treated as such. We will not solve the overuse of the criminal law against people living with HIV by punishing more people and criminalizing more health conditions.

**Outside of legislative reform, we very much welcome the recommendation to review historic convictions as well as prosecutions that did not result in convictions.** Likewise, we welcome the recommendation to **improve access to HIV testing**, including anonymous testing.

**The next step is actual legislative reform.** The report makes clear that change to the criminal law is needed. Any new legal regime must avoid the harms and stigma caused by the law for too many years. In short, the law must be brought in line with science and human rights in a manner that is supportive of HIV care, treatment and prevention.

Access to briefs submitted to the committee, as well as transcripts of testimony, can be found here:

<https://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=10485413> .

**Anyone living with HIV in Ontario can contact HALCO for free legal services at 416-340-7790 or toll-free 1-888-705-8889, <https://www.halco.org/contact-us> .**

[This update is also available on our website:

<https://www.halco.org/2019/news/crim-stand-cttee-report-2019june>]

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