

Practical applications of Article 157 of the Criminal Code of the Republic of Belarus

Article 157 of the *Criminal Code of the Republic of Belarus* criminalizes HIV exposure and transmission. Despite a reduction in the number of criminal cases brought under this article, Belarus remains among the world's leading countries in prosecutions of people living with HIV.

Appendices to Article 157 of the *Criminal Code of the Republic of Belarus* (CCRB) entered into effect as of July 2019.

With these appendices, the condition of serodiscordant couples improved significantly. Service organizations documented only one case of an investigation into HIV transmission between spouses. One service organization received a phone call from an unknown number. A caller introduced herself as a woman whose HIV status was disclosed to her husband by an unknown source. The woman said that her husband was an important and powerful official. The investigation is still ongoing.

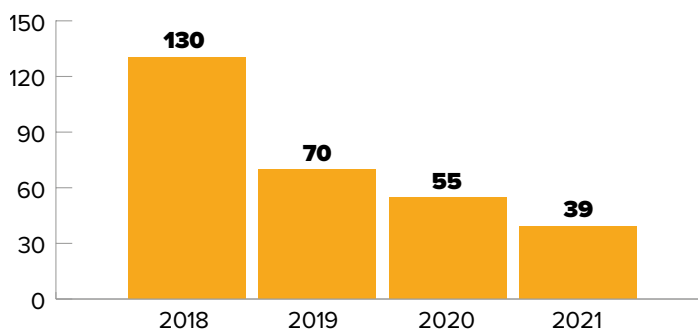
In its current iteration, CCRB Article 157 includes amendments introduced in 2021 that decrease the severity of punishment.

Section 1 – Punishable by fine, arrest, or imprisonment for terms of up to three years. As of 2021, punishable by fine, arrest, restrictions on freedoms or imprisonment for terms of up to two years.

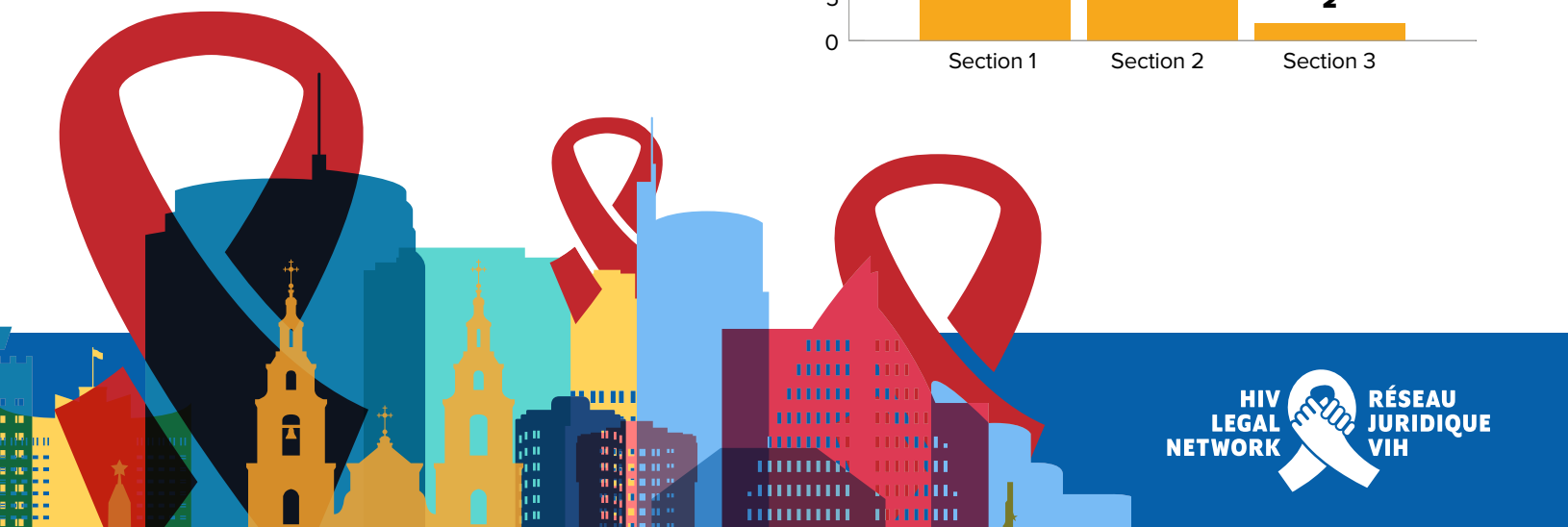
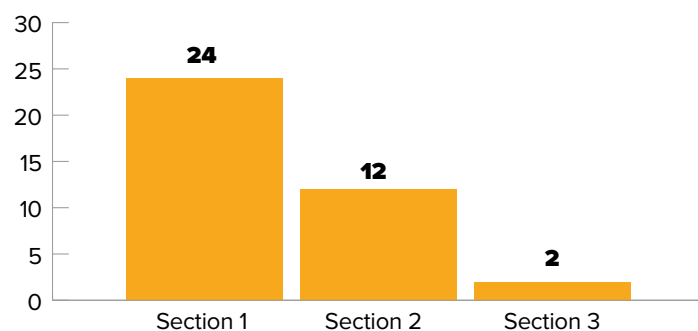
Section 2 – Punishable by imprisonment for terms from two to seven years. As of 2021, punishable by restrictions on freedoms or imprisonment for terms of up to five years.

Section 3 – Punishable by imprisonment for terms from five to 13 years. As of 2021, punishable by imprisonment for terms from five to ten years.

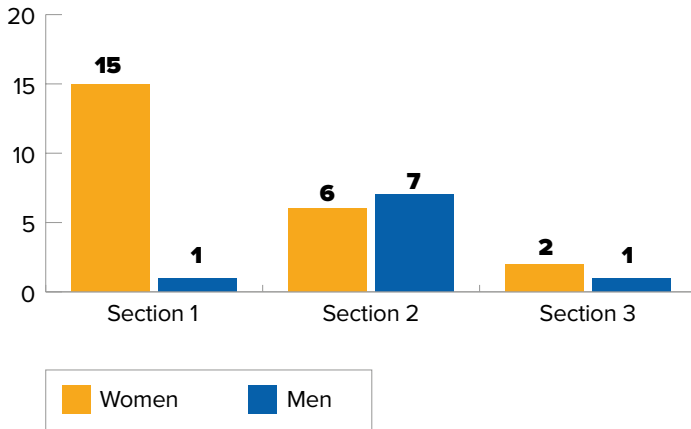
Recorded crime statistics, 2018-2021



Breakdown of recorded crime statistics by Article section in 2021



Breakdown of criminal cases in 2021 by gender



Sessions of the Working Group to Assess the HIV Legal Environment were held in April and November 2022 with the participation of representatives from the Ministries of Health and Internal Affairs, the Prosecutor General, the Supreme Court, the Government Commission on Forensics, the National Centre for Legislation and Legal Research, the World Health Organization (WHO) in Belarus, and the regional NGO Lyudi PLUS. The participants reiterated the need for redaction from the CCRB of articles directly citing HIV and a proposal to review crimes associated with intentional transmission under criminal code articles providing for liability for infliction of personal injury. A proposed alternative was to remove Section 1 of CCRB Article 157. The Ministry of Health of the Republic of Belarus also proposed its inclusion as a bill planned for introduction in 2023. However, the proposal of the Ministry of Health was not accepted due to objections from two key participants — the Supreme Court and the Commission on Forensics. The working group will continue its efforts in 2023 with new discussions of legislative plans.

Below are examples of application of the provisions of CCRB Article 157 in contemporary Belarus.

Application of CCRB Article 157, Section 1

A male with an undetectable viral load is sentenced for exposure to HIV

On July 25, 2022, a message was posted to the site hiv.by by a user named Yevgeniy:

“Hello. I am an HIV-positive male on ART, and have an undetectable viral load. I am currently charged under CCRB Article 157.”

At the time of his diagnosis, the infectious diseases specialist warned Yevgeniy about the prohibition on sexual contact without the use of condoms; he was also warned in 2017 about criminal liability under CCRB Article 157.

For his defense, an HIV service organization decided to provide Yevgeniy legal assistance, and signed an agreement with an attorney and developed a defense built upon the medical assertion, supported by WHO, that people who achieve and maintain an undetectable viral load cannot transmit HIV to their sexual partners.

The following documents were presented as evidence:

- Documentation of completed HIV treatment;
- At his lawyer’s request, Yevgeniy’s treating physician was summoned to explain the results of his treatment;
- Queries were sent and responses received from WHO and the Republic’s Centre for Hygiene and Epidemiology concerning the probability of HIV transmission by a person living with HIV who has undergone antiretroviral therapy, as a result of which HIV replication has been suppressed and viral load has been undetectable over a protracted period of time. The queries involved two scenarios: protected anal sexual contact or unprotected oral sexual contact without ejaculation. The response was unequivocal — the virus is not transmitted in either scenario.

The documents were admitted as part of the investigation materials.

However, the prosecution presented as an expert an epidemiologist who claimed that even if the viral load is suppressed in the blood, it may be high in other areas of the body.

To refute this claim, we petitioned for the testimony of the infectious diseases specialist, who explained the meaning of suppressed viral load and that Yevgeniy had achieved this result during his HIV treatment.

Despite this testimony, the court convicted Yevgeniy of exposure to the risk of infection due to the possibility of virus transmission, but issued a mitigated punishment in the form of a fine of 3,200 Belarussian rubles.

This case presents a disturbing example of how a poorly informed epidemiologist can bring non-scientific evidence in support of prosecutor’s position. After the sentencing the HIV service organization sent a note to the regional centre for hygiene and epidemiology with the information about the statement that was provided in the court by their employee. A proposal was made to conduct additional U=U training. A request was sent to the Ministry of Health to amend language that is used to describe the viral load of patients and include phrases such as “undetectable viral load” where appropriate. Yevgeniy presented two medical certificates to the court, showing that his viral load had progressed from less than 200 cells to less than 500 cells. These numbers required professional interpretation of an epidemiologist, including one who knows about the accuracy of HIV testing systems. The court assessed the medical certificates at face value and concluded that because the phrase “undetectable viral load” was not included on the certificates, the viral load was detectable, thus the accused could transmit HIV. Based on this the court concluded that the charge under Section 1, Article 157 should stand.

Application of CCRB Article 157, Section 2

Charges filed for HIV transmission based only on the testimony of the complainant

On May 4, 2022, the site prava.hiv.by received a request from Aleksandr. He wrote that, three years previously, he'd had protected sexual contact with a male partner and used a condom. In 2022, his partner reported him to the police for exposure to HIV. Preliminary investigations are currently being conducted under CCRB Article 157.

Aleksandr has been under supervised medical care since 2010 because of his HIV status. He was warned about the need to comply with measures to prevent the transmission of HIV — the prohibition on sexual contact without the use of condoms — and also about criminal liability possible under CCRB Article 157 (signature obtained). He adhered to his antiretroviral therapy and his viral load, according to his medical chart at the time of the preliminary investigation, was undetectable.

The complainant took an HIV test in Russia and subsequently in Belarus. Both tests returned a positive result. In his police report, the complainant stated that Aleksandr had been his only sexual partner over the previous three years. A preliminary investigation was initiated upon submission of the report.

A confrontation of parties was held, during which the complainant stated that Aleksandr had raped him in 2019; a criminal case was opened in August 2022. The rape accusation will be investigated and verified. Up to this point, Aleksandr was considered a “witness.” A phylogenetic analysis was conducted, but establishing whether Aleksandr could be the source of the complainant’s HIV was impossible due to his low/undetectable viral load. After studying the case files, the prosecutor’s office quietly changed Aleksandr’s status in the case from “witness” to “suspect.”

Later, the case was transferred to a different investigator, who conducted repeat interviews of Aleksandr and the complainant. New information was uncovered: the complainant revealed that Aleksandr had not been his only sexual partner over the previous three years — he had lived with another man in Russia. In addition, his documents from Russia showing positive HIV test results will be reexamined for authenticity. (The Belarus test was confirmed as authentic, but the Russian test will be useful to understand the timing of transmission.)

The case is suspended. A confrontation of parties is planned.

Dismissal of criminal proceedings against a woman living with HIV suspected of transmitting HIV infection.

Since 2012, Valentina has been under supervised medical care due to her HIV status. She was warned about the necessity of complying with measures for the prevention of HIV transmission — prohibition on sexual contact without condoms — and warned about criminal liability under CCRB Article 157 (signature obtained).

In 2018-2019, she lived in a civil marriage with a man who did not have HIV.

In 2022, the man was hospitalized in the Gomel Regional Tuberculosis Clinical Hospital, where he tested positive for HIV.

During the epidemiological investigation, the man claimed that Valentina was his only sexual partner during the period of 2018-2022 and the only possible source of HIV transmission. He provided similar information in his victim interview, adding that he did not know about her HIV status.

An investigation under CCRB Article 157 was initiated to establish the facts of the crime.

Valentina was summoned by the investigator. She gave testimony indicating that they had been intoxicated during sexual contact and she does not remember whether they used a condom, but she claimed that her partner had been previously informed of her HIV status.

An agreement was signed with an attorney who would provide legal advice for defending Valentina’s interests. The attorney was also consulted about the various aspects of defending such cases based on the experience of experts at Lyudi PLUS.

A virologic analysis was scheduled by the investigator on July 25, 2022.

In September, Valentina’s former partner called her, stating his intention to change his testimony to admit that Valentina had informed him of her HIV status.

The attorney retained by Lyudi PLUS petitioned the former partner to submit to local police for an additional complainant interview as they needed to add to his previous testimony.

The investigator handling the attorney’s petition also summoned an infectious diseases specialist to testify. The doctor’s testimony stated that the clinical progression of HIV in the complainant indicated a lengthy period of time since infection.



The results of the phylogenetic analysis were received in November 2022.

The results, in accordance with the Decree on Medical and Virological Analyses, were as follows:

- Both the suspect and the complainant are positive for HIV.
- Laboratory analyses are unable to establish who was infected first.
- Due to the low/undetectable levels of HIV in the suspect's blood, it does not seem possible that she could be a source of transmission.
- Due to the low/undetectable levels of HIV in the complainant's blood, it does not seem possible that he could be a source of transmission.

On October 27, 2022, Valentina received notice that the prosecutor had declined to press charges under CCRB Article 178 [sic] in conjunction with a lack of grounds for criminal proceedings.

Application of CCRB Article 157, Section 3

Application of the CCRB in cases of suspected HIV transmission to two or more parties (CCRB Article 157, Section 3).

In 2019, Yelena contacted Lyudi PLUS concerning a criminal case opened against her under CCRB Article 57 [sic], Section 3, for allegedly transmitting HIV to two or more parties.

Currently serving time in a penal colony, her accuser testified that he had had sexual contact with Yelena eight years previously, and that she had not notified him of her HIV status.

During questioning, Yelena testified that she had recommended the use of a condom due to her HIV status, and that the complaint had been submitted only because she had ceased to support him both financially and emotionally during his incarceration.

During the investigation, Yelena's current spouse was tested for HIV.

That test result was positive, and the case was upgraded to CCRB Article 157, Section 3 — transmission to two or more parties.

Her court appearance was in May 2019.

Lyudi PLUS petitioned the court to consider the many evidentiary weaknesses, as well as the testimony of Yelena's spouse, who stated that he knowingly chose to expose himself to the risk of transmission and asked the court to exclude him from the evidence against her, which would reclassify her case to Section 2 of CCRB Article 157.

However, despite their three minor children, and only two weeks before new amendments to the CCRB entered into effect, the court issued its ruling under Section 3.

Appeals submitted argued that, according to the amendment entering into effect as of July 19, the spouse should be excluded from the criminal complaint since he was warned in a timely manner about Yelena's HIV status. His timely knowledge of her status is confirmed in testimony provided by the couple during the investigation and in the courtroom.

Both a writ of appeal and an appeal for supervisory review were dismissed.

At the most recent review of the case by a criminal judicial review board, the prosecution requested sentence mitigation. The court, however, left the sentence unchanged.

On January 10, 2020, an appeal for supervisory review of Yelena's conviction was submitted. The conviction was not reviewed. The Gomel regional court also left the sentence intact. On August 10, 2020, an appeal was submitted to the RB Supreme Court.

On September 9, 2020, the Supreme Court of Belarus issued a decision citing lack of grounds for objection to Yelena's conviction. The decision of the justices was based on the logic that the amendment to CCRB Article 157 applies only to Sections 1 and 2. The defense argued that the definition of body of evidence under CCRB Article 157, Section 3, in essence presupposes two separate criminal episodes as described in CCRB Article 157, Section 2. The defense further asserted that if one of the criminal episodes were reclassified under the Article amendments, then the body of evidence in the case could no longer be subject to CCRB Article 157, Section 3. The Supreme Court disagreed.

Yelena continues to serve her term.

