

HIV

and the Criminal Law in Canada

SACRED RIBBON



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Land acknowledgement

HALCO, the HIV Legal Network, and CAAN are located across this land now called Canada on treaty lands, stolen lands, and unceded territories of many different Indigenous groups and communities who have respected and cared for this land since time immemorial. Together, we work to address the ongoing injustices and resulting health inequities faced by Indigenous Peoples, which contribute to the disproportionate impact of the HIV epidemic on Indigenous communities. We are committed to learning to work in solidarity and to dismantling and decolonizing practices and institutions to respect Indigenous Peoples and Indigenous ways of knowing and being.

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Introduction

Learning you have HIV is an important step for your health. Thanks to medical advances, people who know they have HIV and get access to care — including very effective HIV medications (also known as antiretroviral therapy [ART] or antiretrovirals [ARVs]) — can live long, healthy lives and can no longer transmit the virus to their sex partners.

But knowing you have HIV also affects your life in different ways, including who you decide to tell that you are living with HIV and when you decide to tell them.

Most of the time, whether you tell others that you have HIV is up to you. You may choose not to disclose because you are not sure how to tell people or because of homophobia, racism, transphobia, discrimination against Two-Spirit people, and/or stigma and discrimination against people living with HIV.

You have no obligation to tell your family or friends that you have HIV, but you might decide to do so if you think their support could help. You do not need to tell other people, such as your landlord, and there are very few times that you would have to tell your boss. You also do not have to tell your doctor, dentist, or other health-care workers, but you might decide to as it may be necessary to get the best care possible. For more information, see [Indigenous communities: HIV, privacy and confidentiality – HIV Legal Network](#).

The situation is different when it comes to sex partners. In Canada, the criminal law says that in certain circumstances you have to tell your sex partners that you have HIV before you have sex. This is sometimes referred to as a “legal duty to disclose.”

As of December 2020, there have been at least 224 cases in which a person living with HIV has been criminally charged based on accusations that they did not disclose their HIV status to a sex partner. In recent years, the number of HIV criminalization cases has declined. People are almost always charged with aggravated sexual assault, which is one of the most serious criminal offences in Canada. We know that at least 15 Indigenous people have been charged (and there may be more). Also, we know that at least 19 women living with HIV have been prosecuted to date in Canada, at least five of whom were Indigenous.

This brochure was prepared by Communities, Alliances & Networks (CAAN, formerly known as the Canadian Aboriginal AIDS Network), the HIV & AIDS Legal Clinic Ontario (HALCO), and the HIV Legal Network. It will provide you with important information about the law in Canada. If you need legal advice, [please contact a lawyer \(see page 15\)](#).

This guide explains:

- when you have to tell sex partners you have HIV, according to the criminal law;
- what may happen if you are charged, or at risk of being charged, for not telling them; and
- what steps you can take to protect yourself.

The criminal law in Canada is colonial law that denies Indigenous law and legal traditions. While you may not agree with it, or think it is unfair, it remains the law and is enforced. This information will help you to make informed decisions about HIV disclosure and sex. It will also provide you with information so you can protect yourself from being charged with an HIV non-disclosure criminal offence.

If you have questions about other issues related to the law and HIV, disclosure, privacy, or protection from discrimination, please see our list of resources at the end of this document, reach out to the HIV Legal Network, the HIV & AIDS Legal Clinic if you are in Ontario, Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-Sida) if you are in Québec, or speak to another lawyer who knows about HIV and the law.

If you want to learn about community efforts to end HIV criminalization in Canada, see the website of the Canadian Coalition to Reform HIV Criminalization (www.HIVCriminalization.ca).

In Canada, Indigenous people, especially women and youth, are disproportionately affected by HIV. Even though Indigenous people are only 5% of the total population, studies show Indigenous people represented over 18% of new HIV infections in 2020 and 10% of the approximately 62,790 people living with HIV in Canada in 2020. (See [HIV in Canada - People living with HIV and new HIV infections, 2020 - Canada.ca](#))

Indigenous populations are extremely diverse and have different histories, languages, and cultural traditions. Despite these differences, Indigenous people across Canada are more affected by HIV because of ongoing multigenerational effects of colonialism, the residential school system, and systemic racism.

This guide gives you legal information, not legal advice.

This guide is designed to answer some of your questions about HIV disclosure and the criminal law in Canada. The difference between legal information and legal advice is important. Legal information can help you understand the law, but it is general. Legal advice is specifically about your situation and can help you to decide what to do. If you want or need legal advice, you should talk to a lawyer. ([See page 15 for information about how to find a lawyer.](#)) This guide was written in February 2023, but the law may change. You can contact a lawyer to get up-to-date legal information and legal advice.

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BRIAN KOWIKCHUK

Important words and phrases used in this guide

Here are the meanings of some of the words and phrases in this guide:

- **AIDS** refers to Acquired Immunodeficiency Syndrome.
- **HIV** stands for Human Immunodeficiency Virus, the virus that causes AIDS if untreated.
- **HIV disclosure** means telling someone that you have HIV.
- **HIV positive** means having or living with HIV, which is a diagnosis confirmed through different kinds of tests.
- **HIV transmission** is when HIV passes from one person to another. This happens mainly:
 - through certain sexual acts
 - by sharing needles or other equipment to inject drugs
 - during pregnancy or childbirth
- **STI** stands for “sexually transmitted infection,” also sometimes referred to as a sexually transmitted disease (STD). HIV, gonorrhea, chlamydia, herpes, and syphilis are examples of STIs.
- **Viral load** is the amount of HIV in a person’s bodily fluids. It is usually measured per millilitre of blood. One of the goals of HIV treatment is to reduce a person’s viral load as much as possible, so there is less of the virus causing damage to the person’s immune system and organs. When someone has a “suppressed” or “undetectable” viral load, it does not mean that they are cured of HIV. But it does mean that they cannot transmit HIV through sex.
 - **Low viral load** means, for the purposes of the criminal law in Canada, a viral load of under 1,500 copies of HIV per millilitre of blood.
 - **Supressed viral load** means a viral load of under 200 copies of HIV per millilitre of blood.
 - **Undetectable viral load** means a person’s viral load is so low that HIV does not show up in the viral load tests most commonly used to look for it.

HIV disclosure in the context of sex, dating, and relationships

For many people who have access to good-quality medical care and medications, HIV is now a chronic, manageable medical condition. However, there is still no cure for HIV. Without proper medical care and medications, HIV can still lead to AIDS, serious illness, and death.

HIV can be transmitted during sex, but not all sex activities have the same level of risk of HIV transmission. For example:

- There is no possibility of HIV transmission during vaginal, anal, or oral sex where a condom is used correctly and does not break.
- There is also no possibility of HIV being passed on during vaginal, anal, or oral sex when a person who is living with HIV has a suppressed or undetectable viral load, even if a condom is not used.
- Generally, there is a greater chance of transmitting HIV through anal sex rather than vaginal sex.
- There is zero to almost zero risk through oral sex.
- HIV also cannot be passed through kissing or spitting.

In most day-to-day encounters, you do not have to tell others that you have HIV. But because HIV can be transmitted during some sex activities, the situation is different when it comes to sex partners. In Canada, the law says that in certain circumstances, you have to tell your sex partners that you are HIV positive before you have sex. (See below for more details about when you have, or may have, a legal duty to disclose.) This means that because you are HIV positive, the law can affect your sex life. Knowing about the criminal law may help you stay away from legal problems.

Telling someone you have HIV can be really difficult. You may find that disclosing gets easier the more you do it. Or you may never find it easy to disclose. In some cases, there may be a risk of rejection, violence, or discrimination, or you may be worried that the person you tell will tell other people. All of this is particularly hard for people in tight-knit communities and in communities where people do not talk about sex, sexuality, and HIV. Colonialism, racism, gender norms, transphobia, homophobia, economic conditions, and cultural and language barriers are all factors that can also affect a person's ability to disclose their status, to reduce risks of HIV transmission, and to get support.

Contacting an AIDS service organization can be a good first step to finding help and support. There are also a number of health organizations that provide services specifically for Indigenous communities. You may also want to seek legal advice before deciding whether to disclose your HIV status. And you should definitely get legal advice before you speak to the police if you have been charged with not telling a sex partner you have HIV, or if someone tells you that they will be telling the police that you did not disclose that you have HIV before you had sex.

Figuring out if you legally have to disclose you are HIV positive before having sex

You do not always have to disclose your HIV positive status to your sex partner under the criminal law. According to courts in Canada, you are only required to tell your sex partner that you have HIV before you have sex when there is a "realistic possibility" that you could pass it on.

But courts have not clearly defined what "realistic possibility" means for different types of sex. So sometimes it can be really hard to figure out if you have a legal duty to disclose.

When there is no duty to disclose

- You do not legally have to tell your partner that you have HIV before kissing or other activities that have no risk of HIV being passed on.
- You do not legally have to tell your partner before having vaginal, anal, or oral sex if you use a condom **and** your viral load is low, suppressed, or undetectable.

Whether you need to disclose in other circumstances is less clear.

- In recent years, some prosecutors and judges have accepted that people do not have to tell a partner they have HIV if they have a **suppressed or undetectable viral load**, even if they have anal, vaginal, or oral sex without a condom. (In the Yukon, Northwest Territories, and Nunavut, as well as in some provinces, policies for prosecutors say that the person must have a suppressed or undetectable viral load for a minimum period, such as four or six months, before the sex takes place.) This is because the person's suppressed or undetectable viral load means they can't transmit HIV to a sex partner (and this is the case even if no condom is used). We don't know of any prosecutions or convictions in recent years against someone living with HIV who had a suppressed or undetectable viral load at the time they had sex (including vaginal, anal, or oral sex without a condom). However, as explained above, if you have a low viral load, you have to either tell your partner that you have HIV or wear a condom.
- But what about if you don't have a low, suppressed, or undetectable viral load? Do you still have to disclose before anal, vaginal, or oral sex even if you used a **condom**? The situation varies depending on where you live. Nowhere in Canada does the law say that using a condom will be enough to protect you against being prosecuted or convicted if you don't have a low, suppressed, or undetectable viral load and don't disclose:
 - In the Yukon, Northwest Territories, and Nunavut, a federal policy tells prosecutors that people "generally" should not be prosecuted if a condom was worn or they engaged only in oral sex, but people still may be prosecuted.
 - In British Columbia, a provincial policy says that using a condom "may" be a reason not to prosecute people for not telling their sex partner, but people can still be prosecuted. The policy also states that people will not be prosecuted if they only have oral sex and no other "risk factors" are present. The policy describes sores in the mouth, vagina, or penis; bleeding gums; oral contact with menstrual blood; and the presence of other STIs as risk factors. There may be other risk factors that prosecutors could consider, which means that people may still be prosecuted even if they only have oral sex.

- In Nova Scotia, there is one court decision that said using a condom meant there is no legal duty to disclose. This is an important decision. Even so, it does not automatically stop a prosecution or conviction in another case where someone used a condom but did not tell their sex partner they have HIV.
- In Ontario, a 2020 court decision said that just using a condom won't be enough to protect people from being prosecuted and convicted. Unless you have a low, suppressed, or undetectable viral load, you still legally have to disclose that you have HIV to a sex partner, even if a condom is used, during vaginal and anal sex. And even if you only have oral sex, unless your viral load is low, suppressed, or undetectable, there is still a risk of being prosecuted and convicted if you don't tell your sex partner – and this could be the case even if you use a condom. Using a condom for oral sex *might* reduce the chance of being charged and convicted, but we do not know for sure.

For a more detailed summary of the law and prosecutorial policy across the country, see [The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change – HIV Legal Network](#).

Other important information about the duty to disclose HIV to sex partners

- You can be charged with aggravated sexual assault if you do not tell a sex partner you have HIV before you have sex that the courts think lead to a “realistic possibility” of passing on HIV. You can be charged and convicted for not telling your sex partners even if they do not get HIV.
- If there is a “realistic possibility” of passing on HIV, the law says you must disclose. There is no difference between lying about your HIV positive status (you said “I am HIV negative”) and simply not telling your partner that you have HIV (“They did not ask. I did not tell.”). In either case, you can still be charged and convicted.
- You might be charged and convicted even if you did not know or think that you had a legal duty to disclose.
- If there is a “realistic possibility” of passing on HIV, you have a legal duty to disclose:
 - no matter where you meet the person or have sex;
 - no matter how long you have known the person or what they mean to you;
 - whether you have sex because you like or love the person, for fun, to make money, in exchange for drugs or for other reasons.
- You may not want to disclose that you have HIV because the person might tell other people or share it on the internet. Although this may make it harder for you to disclose, it does not change your legal duty under the criminal law.
- For all people, being drunk or high may make it more challenging to disclose that you have HIV, but it does not change your legal duty under the criminal law.
- Even if you know the other person is also HIV positive, you may still have a legal duty to disclose. The law is not clear on this point, but we are not aware of any cases where someone has been prosecuted for not disclosing they have HIV to a sex partner whom they knew is also HIV positive.
- Not getting an HIV test is not a guarantee that you are protected against prosecution. So far, we are only aware of prosecutions against people who had received a positive HIV test result. But we can’t rule out the possibility that you could be charged if you think you may be HIV positive, choose not to get tested, and don’t tell your partner this. It may depend on how aggressive police and prosecutors are in a given case when someone says that someone else didn’t disclose they have HIV and then passed HIV to them.

What if disclosing my HIV positive status could result in violence?

Women living with HIV are at high risk of gender-based violence. If a woman is not safe, she may not have power to make choices about sex, including when to have sex, who she has sex with, or whether condoms are used. A court might accept that someone living with HIV is not required to disclose:

- if they fear harm as a result of disclosing, or
- if they are forced to have sex through violence or threats.

However, we are not aware of any cases where a court addressed these issues, so there is no clear answer yet. If you are being abused or fear violence, a local support organization such as a women’s shelter can help you develop a safety plan with steps to take when you are in danger. You and they can also contact the HIV Legal Network or HALCO to find resources and lawyers for women living with HIV who experience sexual violence (see below for links to some of this information online).



Does it matter if I did not have access to HIV treatment at the time of the incident for which I am being charged?

Not all people in Canada have equal access to HIV treatment and care. Indigenous people face barriers related to colonialism, racism, stigma, indifference, and lack of understanding that make it much more difficult to get HIV care, treatment, and support. You may live in a rural or remote area where access to health care, including HIV treatment, is simply not available, or the small size of the community may create concerns about confidentiality. If you have had to move frequently (e.g. between cities and your own community) or if you have been in jail, it may have been difficult for you to continue HIV care and treatment.

In all these scenarios, a lack of consistent access to HIV treatment means that your viral load may not be undetectable or suppressed. So far, courts have not considered access to health care in a case where someone is criminally charged for not disclosing they have HIV to a sex partner. Judges might express sympathy for this situation. But it seems unlikely they would accept it as an excuse for not disclosing and find someone not guilty on this basis.

Sentencing and *Gladue* factors

If you are trying to get bail or have been convicted of a crime and are an Indigenous person, the *Criminal Code* and the Supreme Court of Canada decision in a case called *R. v. Gladue* require judges to consider the unique history that played a part in bringing you to court. The judges are required to consider this history, known as “*Gladue* factors,” in deciding whether you should get bail while waiting for trial and, if your case went to trial and you were convicted, when deciding your sentence, as well as at other stages of the criminal proceedings. This is true for all Indigenous Peoples, including status and non-status First Nation, Inuit, and Métis people, and whether someone is living on or off reserve. This approach is meant to respond to the overrepresentation of Indigenous people in prison.

Judges should always automatically consider *Gladue* factors but sometimes they don't. It is important that you inform your lawyer that you identify as Indigenous and that you work with them to get a strong *Gladue* report,¹ which gives the court information about your unique background, at your bail or pre-sentencing hearing. If you are charged and brought to court and you do not have a lawyer, you should ask to speak to an Indigenous court worker or organizations in the courthouse you are brought to.

¹ A *Gladue* report is a pre-sentencing or bail hearing report, usually prepared by a *Gladue* caseworker at the request of a judge or lawyer. A *Gladue* report contains information about the Indigenous person's background and is often used by the court to determine a fit sentence or appropriate bail plan for the Indigenous person.

What may happen if you get charged by the police for not disclosing you have HIV?

Here is what may happen when you are accused of not disclosing you have HIV before sex that poses a “realistic possibility of transmission”:

- The police can investigate and charge you with a serious crime, usually aggravated sexual assault, but sometimes other charges as well. If the police want to ask you questions, you do not have to answer them. You should only tell the police your name and date of birth, but nothing else, even if they keep asking questions. Anything you say to the police at any time may be used as evidence against you. You have the right to speak to a lawyer in private before answering questions from the police. The lawyer is the only person you should talk to about this situation. ([See page 15 for more information about legal aid and finding a lawyer.](#))
- The police can arrest you and either let you go with certain conditions or keep you in jail for up to 24 hours. If you are kept in jail, you will be taken to court within 24 hours where you can apply for bail — to be released from jail until your case has been decided. If the court refuses to release you, you will have to stay in jail while your case is ongoing or until you apply for a “bail review” to ask another judge to allow you out of jail and this new judge agrees to let you out.
- You will be fingerprinted and photographed when you are arrested.
- Your picture, HIV status, other personal information, and the crime you are accused of committing may appear in a police press release, in the media, and on the internet. This can happen after you are arrested, but it can also happen before, in situations where someone is wanted for arrest by the police. If a case goes to trial, usually the trial is open to the public and the media. Sometimes a court may put a publication ban in place, which may stop some details from being reported, but this ban does not usually include the name of the person who is on trial.
- You can hire a lawyer to defend you in court. Depending on your income, legal aid may help you pay for the lawyer. You may also be able to get access to legal help through your community. It is important to get a good lawyer who is knowledgeable about HIV. The HIV Legal Network, HALCO, COCQ-Sida, and/or an AIDS service organization may be able to connect you with such a lawyer. Also, you and your lawyer could find it helpful to look at the resources listed below that are intended to help lawyers handling HIV-related cases, and can always contact the HIV Legal Network (and HALCO if you are in Ontario and COCQ-Sida if you are in Québec). If you plead guilty or are convicted you will almost certainly be sentenced to time in prison. You will have a criminal record. Your name will likely be put on a list of sex offenders. A DNA sample will likely be taken from you and placed in a data bank. A person with a criminal record or a person on a sex offender list may not be able to travel to some countries. And they may not be able to get some types of jobs.



Reducing your risk of criminal charges and convictions

In a criminal case, the prosecutor must prove “beyond a reasonable doubt” that the accused person committed the crime they have been charged with. This means that the prosecutor must present the court with evidence.

The prosecutor can use almost anything you tell someone else about your sex life as evidence against you in a criminal case. So think carefully before you talk to anyone about your sex life, including who your partners have been, whether you disclosed your HIV positive status to them, the kind of sex you had, whether condoms were used or not, etc. This includes things you tell your doctor, nurse, counsellor, or other health professional or service provider, including people at an AIDS service organization. The only exception is your lawyer because, other than in extremely rare circumstances, everything you say to your lawyer is confidential and cannot be used against you in court.

Here are some other things that you can do to help reduce the risk of HIV being passed on and that might help reduce your risk of getting into trouble with the law:

- **Tell your sex partners you are HIV positive before sex.** And [try to get proof that you told them](#). Avoid code words or hints. Do not assume they know what words like “poz” and “positive” mean. It is best to tell them “I have HIV,” “I am HIV positive,” or “I am living with HIV.”
- **If you have a doctor, see them regularly and work together to get and keep your viral load as low as possible.** Ask your doctor to test your HIV viral load on a regular basis (e.g. every three to six months) so you can keep track of it. Proof that your viral load was “low,” “undetectable,” or “suppressed” at the time you had sex might reduce your risk of facing criminal charges or being convicted if you are accused by a sex partner of not disclosing that you have HIV.
- **Use condoms** (made from latex or polyurethane) and lube (water-based or silicone-based) to protect your sex partners from being exposed to HIV and to protect both of you from some other STIs. Depending on where in the country you have sex, using a condom may also lower the risk of being prosecuted or convicted for HIV non-disclosure, but it’s not a guarantee anywhere.
- Instead of anal or vaginal sex, you may **choose to have other types of sex that have lower risks of HIV being passed on.**

Do not assume people know you are HIV positive

Do not assume that the person you want to have sex with knows that you are HIV positive. Here are some reasons you might think that they know, and the reasons you might be wrong:

- **You wrote “HIV” in your internet profile.**
They did not read it.
- **You wrote “poz” in your profile.**
They do not know what “poz” means.
- **You wrote “safer sex needs discussion” in your profile.**
This could mean lots of things to them.
- **Their friends know you have HIV.**
But their friends did not tell them this.
- **You left your HIV meds on the counter in your bathroom.**
They do not know what your meds are for.
- **They saw your red ribbon tattoo or some other image or materials about HIV that you have at your place.**
You do not have to be HIV positive to get a tattoo like that or to have a poster or pamphlet about HIV.
- **They know you work or volunteer at a local AIDS service organization.**
HIV negative people work and volunteer at such organizations, too.
- **They know that you get a disability pension or benefits.**
You could have a disability that has nothing to do with HIV, which is the case for most people who get disability benefits.
- **You have body changes from HIV and/or HIV meds.**
They have no idea what causes these types of body changes.

How to protect yourself against people who might lie

Even if you told a person before sex that you are HIV positive, they might lie after you have sex and say you never told them. They could go to the police and file a criminal complaint against you — even if what they are saying is not true.

Here are some things you can do before you have sex that may protect you against criminal charges. These strategies might help you prove you disclosed that you have HIV to your sex partner. Some of these strategies might not work depending on the situation, but these are some options. It is up to you to decide what strategies would work best for you.

Save online conversations, emails, and text messages: If you disclose to a person in an internet chat or by email or text, be clear about your HIV status. They should acknowledge that you are HIV positive. Save a copy of what you wrote and their response. Print it out or take a screenshot and put it in a safe place. But be careful about what else you write in online chats and conversations. The police and prosecutors have used conversations from chat rooms as evidence when prosecuting people living with HIV.

Have witnesses: Tell the person that you are HIV positive in front of a friend (or someone else you trust). Your friend becomes a witness who can say that you disclosed your HIV positive status before any sexual activity. Or tell the person in front of a group of friends who already know you are positive. This way you will have more witnesses. Ask your friend to write down the date of the discussion, the time, who was present, where the discussion took place, and exactly what was said — on paper or in an email — and send it to you.

Double-check: Before having sex, have a friend ask the person if they know that you are HIV positive. If the person answers that they know, then your friend can be a witness and tell the police, prosecutor, and/or court that your sex partner told them that they knew you have HIV. You could ask your friend to write down the date of the discussion, the time, who was present, where the discussion took place and exactly what was said — on paper or in an email — and send it to you.

Sign a document: Before you have sex, get the person to sign a paper that says that they know you are HIV positive and that they know what it means. Date it, and have them print it and sign their name. This may not be a realistic strategy in many cases, but it is a good way to protect yourself.

Make a video: Before you have sex with the person, ask them if they are willing to let you record a video of them on your smartphone, if you have one, clearly stating that you have not had sex yet, and that they know you are HIV positive. This may also be unrealistic. If you have a computer, download and save a copy of the video there, too, so that you (and your lawyer) can use it later if you need to defend yourself. Do not share the video with anyone else or post it on the internet unless the other person has given you permission to do so — there could be serious legal trouble if you share it without first getting permission.

Create support and counselling records: If you are thinking about getting into a relationship, you and the other person can go for a counselling session with a counsellor, support worker, or your health care provider, before you have sex for the first time. Ask the counsellor, support worker, or health care provider to make notes of the session. During the session, tell the other person that you are HIV positive, even if it's something you have already told them.

Trust your instincts. If a person seems like they cannot be trusted, ask yourself if sex with them is worth the risk.



Are there any obligations outside the criminal law to disclose my HIV positive status to a sex partner?

Yes. For example, public health authorities might require you to tell your sex partner that you are HIV positive.

The information in this section is very general. Public health law, and how public health authorities act and use their powers, may be different depending on where you live. Public health authorities in different parts of the country are legally responsible for protecting public health. One way they protect public health is by taking action to prevent the spread of STIs, including HIV. If you want to know more about public health law where you live, talk to a lawyer ([see page 15](#)).

When you test positive for HIV, the test result is reported to the public health authority responsible for the area where you got tested. The type of information that gets reported to public health, and may be stored in a database, is different depending on the location. For example, in Quebec, only your demographic information, and not your name, is reported (unless you contracted HIV from a blood transfusion or blood products). In other provinces, your name and contact information may be reported. You may be able to get an anonymous HIV test, which generally use a code instead of your name. You should always seek anonymous testing where [this is available](#).

If you test positive for HIV anonymously, the test result and non-identifying information (but not your name) will be reported to the public health authority. Depending on your location, if you test HIV positive, your name may be reported to public health when you begin accessing medical care for HIV, even if you tested anonymously at first.

Whether you get tested anonymously or provide your name, the testing provider is likely to ask you all sorts of questions about your sex activity such as how many partners you have or have had, what kind of sex you have, whether you always use condoms, etc., to determine the need for testing. You do not need to give this information to get a test for HIV. But the testing provider often asks anyway, and they usually record this information — which can later be used as evidence if you get into legal trouble. Try to provide as little of this information as possible to the testing provider. You can just tell them you do not feel comfortable getting into those details but still want to get tested. There is no good reason for them to deny you the test just because you do not provide this detailed information.

If you test positive for HIV or certain other STIs, public health authorities — depending on where you live — may require that your sex partners be contacted. This is called “contact tracing,” “partner notification,” or “partner counselling.” Someone from public health will probably ask you for information about your sex partners, including their names. They may ask you or your doctor to contact your sex partners to tell them that they may have been exposed to HIV or another STI, and to advise them to get medical care. Or they may contact your partners directly. While public health staff should not share your name with your sex partners, in some situations your sex partners may figure out that you have HIV or another STI. (Needle-sharing partners of someone who tests positive for HIV may also be contacted.)

Aside from notifying previous sex partners, public health authorities may sometimes take action if they think that you are putting others at risk for HIV or another STI. The powers and procedures of public health authorities vary from one province/territory to another, but some may require that in certain circumstances you tell your sex partners you’re HIV positive before you have sex.

If public health authorities take action against you (e.g. issue an “order” requiring that you disclose your HIV positive status), you may be able to challenge this. To find out your rights and responsibilities, talk to a lawyer as soon as possible because there may be very short time limits to respond to the requirements of public health authorities.

The law on HIV disclosure can feel overwhelming. You are not alone and there are resources for you. Contacting an AIDS service organization can be a good first step to finding help and support. Some organizations have specific supports for Indigenous people living with HIV.



For more information on:

- **HIV and Indigenous People in Canada** — see the website of Communities, Alliances & Networks (formerly known as Canadian Aboriginal AIDS Network), and the Ontario Aboriginal HIV/AIDS Strategy.
- **HIV disclosure and the criminal law** — see the website of the HIV Legal Network, at [HIV Criminalization – HIV Legal Network](#). You can also contact the [HIV Legal Network](#), the [HIV & AIDS Legal Clinic Ontario \(HALCO\)](#) or [Coalition des organismes communautaires québécois de lutte contre le sida \(COCQ-Sida\)](#). If you need legal advice, you should contact a lawyer. The Legal Network, HALCO, and COCQ-Sida may be able to provide appropriate referrals.
- **Key trends and patterns in HIV criminalization prosecutions** — see the website of the [HIV Legal Network, at HIV Criminalization in Canada: Key Trends And Patterns \(1989-2020\) – HIV Legal Network](#).
- **HIV criminalization and law reform** — see the website of the [Canadian Coalition to Reform HIV Criminalization](#), a national coalition of people living with HIV, community organizations, lawyers, researchers, and others.
- **Indigenous Communities: HIV, Privacy and Confidentiality** — see [Indigenous communities: HIV, privacy and confidentiality – HIV Legal Network](#).
- **HIV disclosure and women** — see HALCO and HIV Legal Network resource, [Special Considerations for Advising Sexual Assault Complainants Living with HIV](#); and the HIV Legal Network's Resource Kit for Service Providers at www.hivlegalnetwork.ca/site/hiv-disclosure-and-the-law-a-resource-kit-for-service-providers/?lang=en.
- **Public health and HIV testing options** — contact your local AIDS service organization. If you live in Ontario, HALCO can provide legal advice if you have concerns related to HIV public health and issues surrounding HIV testing.
- **HIV risks of transmission, prevention and treatment** — see information available on [CATIE's](#) website.

For more information or legal advice:

Lawyer Referral Services, which can often be found through the different law societies in Canada, refer people to lawyers. Your province or territory may have a lawyer referral service. The service may charge a fee. The fee is much less than what a lawyer would usually charge for services. After you pay the fee, you get a telephone or in-person appointment with a lawyer to discuss your case. For more information about lawyer referral services and any fees they charge, contact the lawyer referral service in your province or territory. If there is no lawyer referral service in your province or territory, contact Legal Aid.

For more information about HIV and the law in Canada:

HIV Legal Network

www.hivlegalnetwork.ca

416-595-1666

For information and advice about HIV and the law in Ontario:

HIV & AIDS Legal Clinic Ontario (HALCO)

www.halco.org

416-340-7790 or 1-888-705-8889

For information and advice about HIV and the law in Québec:

Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-Sida)

www.cocqsida.com

514-844-2477 ext 0 or 1-866-535-0481 (French only)

To contact Legal Aid, a lawyer, human rights agencies, or agencies responsible for access to information/ protection of privacy in your province or territory

Alberta

Legal Aid Alberta

www.legalaid.ab.ca

1-866-845-3425

Law Society of Alberta's Lawyer Referral Service

www.lawsociety.ab.ca/public/lawyer-referral/lawyer-referral-request

1-800-661-1095

British Columbia

Legal Aid BC

www.lss.bc.ca

Greater Vancouver: 604-408-2172

Elsewhere in BC: 1-866-577-2525

Lawyer Referral Service

www.accessprobono.ca/our-programs/lawyer-referral-service

1-800-663-1919

The Indigenous Community Legal Clinic

www.allard.ubc.ca/community-clinics/indigenous-community-legal-clinic

604-822-5421

Manitoba

Legal Aid Manitoba

www.legalaid.mb.ca

1-800-261-2960

Community Legal Education Association's Lawyer Referral Program

www.communitylegal.mb.ca/programs/law-phone-in-and-lawyer-referral-program

1-800-262-8800

New Brunswick

New Brunswick Legal Aid Services Commission

www.legalaid-aidejuridique-nb.ca

Saint John: 506-633-6030

Fredericton: 506-444-2777

See website for more local offices or call 506-444-2776.

Newfoundland & Labrador

Newfoundland and Labrador Legal Aid Commission

www.legalaid.nl.ca

1-800-563-9911

Public Legal Information Association of Newfoundland and Labrador

www.publiclegalinfo.com

1-888-660-7788

Northwest Territories

Legal Aid Northwest Territories

www.justice.gov.nt.ca/en/legal-aid/

1-844-835-8050

Law Society of the Northwest Territories' Lawyer Referral Service

www.lawsociety.nt.ca/for-the-public/

867-873-3828

Nova Scotia

Nova Scotia Legal Aid Commission

www.nslegalaid.ca

1-877-420-6578

Legal Information Society of Nova Scotia's Lawyer Referral Service

www.legalinfo.org

1-800-665-9779

Nunavut

Legal Services Board of Nunavut

www.nulas.ca

Kitikmeot: 1-833-913-2549

Kivalliq: 1-833-913-2551

Qiktaaluk: 1-833-913-2459

Law Society of Nunavut

www.lawsociety.nu.ca/en/for-the-public/lawyer-referrals

844-979-2330

Ontario

HIV & AIDS Legal Clinic Ontario (HALCO)

www.halco.org

1-888-705-8889

Aboriginal Legal Services (ALS)

www.aboriginallegal.ca

1-844-633-2886

Legal Aid Ontario

www.legalaid.on.ca

1-800-668-8258

Law Society of Ontario's Lawyer Referral Service

www.findlegalhelp.ca

1-855-947-5255

Prince Edward Island

Prince Edward Island Legal Aid

www.princeedwardisland.ca/en/information/justice-and-public-safety/legal-aid

1-800-236-5196

Community Legal Information Association

www.legalinfopei.ca

1-800-240-9798

Québec

Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-Sida)

www.cocqsida.com

1-866-535-0481

Québec Legal Aid

www.csj.qc.ca/commission-des-services-juridiques/aide-juridique/Quest-ce-que-aide-juridique/en

514-873-3562

Barreau du Québec's Lawyer Referral Service

www.barreau.qc.ca/en/find-lawyer/referral-services/

Montréal: 514-866-2490

Québec, Beauce, and Montmagny: 418-529-0301 ext 21

www.referencebarreaulongueuil.ca/en (Longueuil)

Bar de Montréal's Referral Service

www.barreaudemontreal.qc.ca/en/public/referral-service

514-866-2490

Saskatchewan

Legal Aid Saskatchewan

www.legalaid.sk.ca

1-800-667-3764

Pro Bono Law Saskatchewan

www.pblsask.ca

1-855-833-7257

Yukon

Yukon Legal Services Society "Legal Aid"

www.yukonlegalaid.ca

1-800-661-0408 ext 5210

Law Society of Yukon's Lawyer Referral Service

www.lawsocietyyukon.com/lawyer-referral-service

867-668-4231 (outside Whitehorse, call collect)



For more information:

hivlegalnetwork.ca/IndigenousCommunities



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