FROM THE DOCTOR'S OFFICE TO THE JAIL CELL:

System reforms to protect care, confidentiality, and prevention in the context of HIV criminalisation

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BACKGROUND & METHODS

Efforts to end HIV criminalisation largely focus on reforming criminal laws and limiting prosecutions. But how do cases enter the criminal legal system in the first place? In some countries, prosecutions are complaint-driven and limited by confidentiality protections.

However, healthcare encounters can lead to criminalisation when clinicians, public health authorities or healthcare institutions provide information about a patient's HIV status, treatment, sexual behaviour, or other information to law enforcement; report an allegation of HIV exposure, transmission or non-disclosure; or provide medical records and surveillance data to be used as evidence.

This study examines the pathways from healthcare encounters to criminalisation, and proposes reforms to protect confidentiality, access to care and HIV prevention initiatives.

We analysed case narratives to trace how routine clinical interactions, reporting practices, and disclosure of medical information led to criminal investigations. We also reviewed clinical and medico-legal guidance on confidentiality, partner disclosure, and exceptional disclosure.

Data Source: HIV Justice Network, country legal information and documented criminalisation cases from the *Global HIV Criminalisation Database* up to June 2026.

GLOBAL HIV CRIMINALISATION DATABASE

www.hivjustice.net/global-hiv-criminalisation-database

RESULTS

Our analysis of documented cases and legal frameworks identified **three recurring pathways through which healthcare systems contribute to HIV criminalisation** *(see table to the right)*.

CONCLUSION

Healthcare systems contribute to HIV criminalisation through several distinct but overlapping pathways: state-driven enforcement processes embedded within public health systems, discretionary reporting by healthcare actors, and the use of medical information in criminal investigations through legal compulsion.

Across jurisdictions, these practices place healthcare providers in a conflicted role – expected to provide care while becoming implicated in systems of surveillance and punishment. This undermines confidentiality, trust in healthcare, and engagement in HIV testing, treatment and prevention services.

RECOMMENDATIONS

Interrupting health sector pathways to HIV criminalisation requires reforms that protect confidentiality, limit inappropriate data-sharing, and clearly separate healthcare from criminal enforcement:

- Develop clear clinical guidance on confidentiality and disclosure, with narrowly defined exceptions, alongside institutional protocols and legal support for clinicians responding to police requests and subpoenas.
- Provide healthcare worker training grounded in contemporary HIV science (including "U=U") and the relevant legal context to reduce defensive or morally motivated reporting and misunderstanding of public health obligations.
- Remove or restrict mandatory reporting linked to consensual sex. HIV registration systems and signed legal warnings that feed directly into criminal referral pathways should be reviewed, with public health and law enforcement functions clearly separated.
- Incorporate protections against HIV criminalisation into national HIV strategies and public health policies, thus ensuring access to testing, treatment, reproductive care, and prevention services without fear of criminal consequences.

RECURRING PATHWAYS THROUGH WHICH HEALTHCARE SYSTEMS CONTRIBUTE TO HIV CRIMINALISATION:

1 STATE-DRIVEN REFERRALS

In health systems with centralised HIV registration, documented post-diagnosis "legal warnings", and ongoing administrative monitoring of people living with HIV, criminal investigations can be initiated without a complainant and sometimes proceed despite partner opposition. Criminal offences are framed as "endangering public health".

Seen in, e.g., Belarus, Bénin, Cyprus, Kazakhstan, Russia, Ukraine, Uzbekistan.

Uzbekistan illustrates the clearest state-driven pathway:

Diagnosis → HIV registration and signed legal warning (establishing knowledge and intent) → public-health monitoring → referral or data-sharing → police investigation → prosecution

After diagnosis, people living with HIV are formally registered and asked to sign documents acknowledging their status and legal obligations to disclose their HIV status to sexual partners. HIV-specific health authorities monitor patient follow-up, document behaviour or partner information, and have legal obligations to notify state bodies of alleged HIV exposure, regardless of treatment status or partner consent.

CASE FROM OUR DATABASE

Uzbekistan: In December 2025, a woman living with HIV was convicted for alleged HIV exposure, despite her partner's knowledge of her HIV status prior to the relationship. The health authority's own evidence indicated the woman was on treatment and virally suppressed, yet the consensual sex was still treated as constituting 'endangerment'.

2 DISCRETIONARY REPORTING

Clinicians or institutions contact police based on perceived risk, moral/ethical concern, or legal uncertainty. Voluntary public health reporting can occur without legal basis, driven by misunderstanding of criminal law by health officials.

Seen in, e.g., Argentina, Australia , Bolivia, China (Gansu Province), Czechia, Uganda, USA (Iowa).

CASES FROM OUR DATABASE

Argentina: In 2022, a clinic filed a family-court complaint against a mother living with HIV for breastfeeding. The judge issued an injunction threatening criminal prosecution. ICW-Argentina secured dismissal, but the appeal ruling still declared breastfeeding "not recommended". No transmission occurred.

Czechia: In 2016, Prague's Public Health Authority filed criminal complaints against 30 gay men living with HIV, treating STI co-diagnosis as proof of condomless sex. All charges were dropped. The Authority has since refrained from such referrals.

United States – Iowa: In a well-known 2008 case, a hospital nurse contacted police after a patient sought emergency HIV prophylaxis following consensual sex with a man living with HIV. Although the patient later stated that he had not intended to press charges, the hospital's discretionary report to law enforcement initiated the criminal investigation that led to the man's arrest and prosecution.

3 COMPELLED DISCLOSURE OF MEDICAL INFORMATION

Criminal procedure creates mechanisms through which healthcare information enters prosecutions via subpoenas and court orders for medical records; police requests for clinician testimony, and/or compelled HIV testing or disclosure. Where jurisdictions criminalise alleged HIV 'exposure', records of a relationship can be sufficient evidence to initiate a prosecution.

Seen in, e.g., Australia (New South Wales, Western Australia, Northern Territory, Victoria), Canada, USA.

CASES FROM OUR DATABASE

Australia – Victoria: In a 2008 case in Victoria, health professionals and Department of Health staff were subpoenaed and required to disclose ordinarily confidential medical records. As a result of this warrant, the police were incorrectly supplied with not only the defendant's records, but also the records of 16 other HIV-positive people about whom the health department had concerns.

GOOD PRACTICE EXAMPLES

UK British HIV Association (BHIVA) guidance recommends strict confidentiality protections, multidisciplinary review before any disclosure without consent, and clinician support when responding to police requests. The guidance explicitly recognises zero risk with an undetectable viral load and opposes HIV criminalisation as counterproductive to public health.

Saigal P, Phillips M, Bernard E, et al., *BHIVA position statement on HIV, the law and the work of the clinical team,* Int J STD AIDS. 2022 Dec;33(14):1223-1228, doi: 10.1177/09564624221132407

The *Beyond Do No Harm* initiative developed by Interrupting Criminalization includes practical tools for reducing harmful reporting and surveillance practices in healthcare settings across a range of criminalised and marginalised populations, including a harm-reduction balancing and risk-assessment framework for mandated reporting decisions.

Interrupting Criminalization, *Beyond Do No Harm: 13 Principles for Health Care Providers to Interrupt Criminalization*, 2023
Interrupting Criminalization, *Mandated Reporting Harm Reduction Balancing & Risk Assessment Tool*, 2025

HIV JUSTICE NETWORK
www.hivjustice.net

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