



Legal Strategies Beyond the Courts

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LAWYERS FOR HIV AND TB JUSTICE

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Alternatives to HIV criminalisation

- Positive health, dignity and prevention
- Public health approaches
- Restorative justice and/or community-based conflict resolution
- Supportive, protective, ‘enabling’ laws and policies
- [See: http://www.hivjustice.net/topic/alternatives/](http://www.hivjustice.net/topic/alternatives/)
- As well as challenging HIV criminalisation through litigation and political advocacy we must also include:
 - Police, judicial, expert witness and media sensitisation and training;
 - Free or low-cost *immediate* access to *adequate* legal representation;
 - Clear policies for healthcare workers regarding 3rd party disclosure including to the police; and
 - **Prosecutorial and police guidelines to limit the overly broad application of general laws to HIV non-disclosure, potential or perceived exposure and/or non-intentional transmission.**

UNAIDS guidance for law enforcement

PROSECUTORIAL AND POLICE GUIDELINES

68. The 2008 UNAIDS/UNDP *Policy Brief* urged governments to “issue guidelines to limit police and prosecutorial discretion in application of criminal law” in the context of HIV non-disclosure, exposure and transmission.¹³⁶ Police and prosecutorial guidelines can ensure the protection of individuals against overly broad, uninformed and/or unfair investigations and prosecutions. These guidelines can help to ensure that any

police investigation or prosecution is based on the best available scientific evidence relating to HIV, upholds legal and human rights principles, treats like harms alike, and aligns with public health strategies. These guidelines should specify the acts that warrant criminal prosecutions and those that do not. They should also provide evidence-informed recommendations regarding risk, harm, mental culpability, proof and defences in relation to HIV-related criminal cases.

Prosecutorial and police guidelines: England & Wales

- OAPA 1861 allows for prosecution of reckless transmission and intentional exposure or *transmission only*
- Importance and limitations of scientific evidence to ‘prove’ transmission, and acceptance that use of successful treatment or condoms are defences to recklessness, as well as disclosure /consent.
- Result of insistent civil society engagement with prosecution and police.
- Prosecution guidelines (2006-2008, updated 2011).
- Watch documentary ‘Doing HIV Justice’ at: www.hivjustice.net/video/doing-hiv-justice
- Police guidelines (2008-10).
- Clarified law; reduced court cases; mutual understanding of science and law.
- But still we have complaints, arrests and prosecutions (8 in the past two years, including our first intentional exposure and transmission convictions) so “shit still happens”.

Intentional or reckless sexual transmission of infection: Policy for prosecuting cases

— Updated 15 July 2011 | *Legal Guidance, Sexual offences, Violent crime*



[Introduction](#)

[The Code for Crown Prosecutors](#)

[The first stage of the Code test - the evidence](#)

[The second stage of the Code test - the public interest](#)

[General propositions](#)

[Relevant offences](#)

[Intentional transmission: Section 18 Offences Against the Person Act 1861](#)

[Attempt to commit section 18](#)

[Reckless transmission: Section 20 Offences Against the Person Act 1861](#)

[Evidential issues](#)

[Public interest issues](#)

[Attempt to commit section 20 Grievous Bodily Harm](#)

[Rape](#)

[Complainant and witness care issues](#)

[Conclusion](#)

Police guidelines (1)

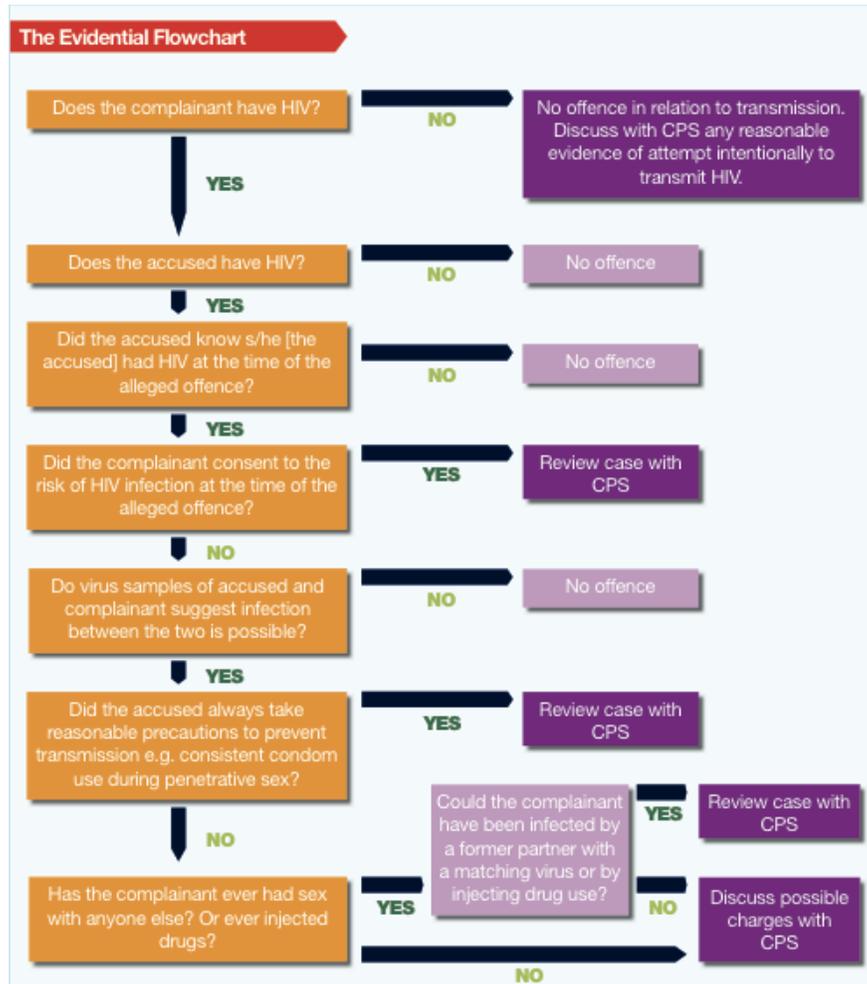
HIV: Key facts for police officers

Six immediate things you need to know

- 1** You cannot get HIV from someone through everyday contact. There is absolutely no need for gloves, masks or any form of additional protection or precaution for normal interaction. For spillages of body fluid or handling of sharps, universal precautions apply as usual.
- 2** It is unlawful to discriminate against someone with HIV. This can include abusive or judgemental comments whether around HIV, sexual behaviours, sexual orientation or race. All communication should be respectful and supportive.
- 3** If someone tells you they are worried they may have been infected in the previous 72 hours, you must advise them to go immediately to either an open sexual health clinic or the nearest hospital Accident and Emergency Department to ask for PEP, which can prevent HIV infection.
- 4** If someone tells you that they or someone else has HIV, take care to protect the confidentiality of the HIV positive person.
- 5** If someone is in custody with HIV it is essential to find out whether they are taking drugs for their HIV treatment, and, if they are, ensure that they have continuing and uninterrupted access to their medication.
- 6** Use the word 'HIV' – avoid using the term 'AIDS'.

- Association of Chief Police Officers (ACPO) approached to develop Investigation Guidance to complement that produced for prosecutors.
- ACPO working group established March 2009 – included police officers, representatives of the CPS and the National Police Improvement Agency, and civil society – under auspices of LGBT ACPO work stream.
- ACPO guidance published May 2010 on Police Online Knowledge Area (POLKA), hosted by the National Police Improvement Agency.

Police guidelines (2)



- HIV key facts for police
- Police investigation flowchart
- Evidential flowchart
- Initial contact via sexual health clinics: This document recommends that where third parties emerge during a police investigation whose HIV status is of interest to the police, initial contact with the individuals should be made by a sexual health clinic rather than by the police themselves.
- Communication strategy: Guidance on communication around an ongoing and completed investigation, and deals with issues of confidentiality and media relations.



[Toolkit home](#) ▶ [Educating Prosecutors](#)

Educating Prosecutors

Prosecutors decide whether a case will proceed to court. Consequently it is vital they understand basic HIV science as well as the health frameworks already in place to deal with the HIV epidemic.

The following section includes resources outlining advocacy for prosecutorial guidelines, and official prosecutorial policy and guidelines.

Advocating for Prosecutorial Guidelines
10 resources



Prosecutorial Guidelines
3 resources



Researching how the police work
2 resources



Police Guidelines
4 resources



Working with Police

Police decide whether or not an HIV-related offence has been committed, and whether a person should be arrested or charged. It is vital that police have a basic understanding of HIV science and awareness of the health systems in place to support people with HIV and those who are concerned they may have been infected.

<http://toolkit.hivjusticeworldwide.org>