

An aerial photograph of a forested island. The island is densely covered with green trees, and a large section in the upper right is filled with bright yellow flowers. The island is surrounded by clear, blue water. A small, isolated tree is visible in the water below the main island.

# Q&A

HIV and the criminal code  
in the Nordic countries



*Ice cave in Iceland*

## **HIV and the criminal code in the Nordic countries**

In a number of countries, criminal law is being applied to people living with HIV who transmit or expose others to HIV infection. However, there is no evidence that broad application of the criminal law to HIV transmission achieves either criminal justice or prevents further infections.

While little is known about the impact of criminalizing HIV transmission, many experts are concerned that it may risk undermining public health by having a negative impact on the uptake of HIV testing and access to HIV prevention, treatment and care services. Sensational media reports can exacerbate stigma and discrimination, and jeopardize HIV prevention strategies currently in place.

There is also concern that criminal proceedings may compromise basic civil rights such as the right to privacy, especially among the most vulnerable.



# Q&A

**Does the criminal code apply to those who transmit HIV or those who expose others to the risk of HIV infection, or both?**

**Which sections of the criminal code apply? Does the criminal code have a specific HIV section?**

**DK:** Section 252 of the Danish criminal code applies to those exposing others to the risk of HIV infection regardless of whether infection occurs. Clause 3 of the mentioned Section 252 reads that the Minister of Justice in co-operation with the Minister of Health resolve which diseases the law applies to. At the moment it only applies to HIV.

**FI:** The Finnish criminal code applies to those who transmit HIV and to those who expose others to the risk of HIV infection. Chapter 21 of the Finnish Criminal Code applies. The Supreme Court has recently applied sections 5 (assault), 6 (aggravated assault) and 13 (imperilment). The criminal code does not have a specific HIV section.

**IS:** The Icelandic criminal code applies to those who transmit HIV. The code has no specific section on HIV.

**NO:** The Norwegian criminal code may apply to both those who transmit HIV and/or expose others to the HIV infec-

tion. People living with HIV who are on antiretroviral treatment (ART) or who use a condom can no longer be prosecuted. Consent to sex with a PLVH frees the person from criminal liability, and exempted for punishment are also infections from sex workers and injecting drug users, as well as transmission from mother to child.

Section 237 of the Norwegian Penal Code applies. The penal code does not have a specific HIV section.

**SE:** The Swedish criminal code may apply to both those who transmit HIV and/or expose others to the HIV infection. People living with HIV who are on antiretroviral treatment (ART) or who use a condom can no longer be prosecuted. But the courts do not acknowledge consent to a potential risk.

Section 3, mainly §5, §8 and §9 of the Swedish Penal Code applies. The penal code does not have a specific HIV section.

**Is the purpose of the section(s) of the criminal code to protect society or the individual?**

**DK:** The purpose is to protect the individual.

**FI:** The purpose is to protect the individual.

**NO:** The purpose is to protect society.

**SE:** The purpose is to protect society.

## **Are both intentional and negligent exposure and/or transmission punishable?**

**DK:** Yes.

**FI:** Yes, although it is likely that taking preventing measures for HIV transmission, such as being on ART or using condoms, are considered not to exposing anyone for HIV. It should be noted that this aspect is not verified by Finland's Supreme Court.

**IS:** Only intentional.

**NO:** Yes, but taking preventing measures for HIV transmission, such as being on ART or using condoms, are considered not to exposing anyone for HIV.

**SE:** Yes, but taking preventing measures for HIV transmission, such as being on ART with unmeasurable viral loads or using condoms, are considered not to exposing anyone for HIV.

## **Does practicing safer sex exclude the use of punishment?**

**DK:** Yes.

**FI:** Exposing someone at risk for HIV is punishable by law. Practising safer sex reduces the risk considerably, but not 100 %. It is likely that being on ART and using condoms exclude the use of punishment, but not verified by the Supreme Court.

**IS/NO/SE:** Yes.



*Lake view in Finland*

**Is it a legal obligation to disclose one's HIV status to sexual partners? If yes, what are the consequences if one fails to disclose?**

**DK:** No.

**FI:** As the practice of safer sex is not 100 percent risk free, there is uncertainties about the legal obligation to disclose HIV status. In Finland the court has interpreted failure to disclose together with unprotected sex as exposing others to the risk of HIV infection. The Criminal Code of Finland does not set a legal obligation to disclose one's HIV status to sexual partners.

**NO:** No.

**SE:** Yes and No, yes there are obligations to disclose HIV status to a sex partner, but people living with HIV who have unmeasurable viral loads or under 50 copies/ml blood can be exempted from this obligation. Failure to disclose has in itself no consequence, but the court has interpreted failure to disclose together with unprotected sex as exposing others to the risk of HIV infection. But we are now seeing a shift after the Supreme court ruling.

**Does disclosure of HIV status exclude the use of punishment or otherwise affect it?**

**DK:** Disclosure excludes possible punishment.



**FI:** Most likely excludes the use of punishment or at least diminish it, but not verified by the Court.

**NO:** Yes. Disclosure of HIV status prior to a sexual relation is regarded as consent that frees the person for criminal liability.

**SE:** Yes and No – see previous answer.

### **When was the first person convicted and how many persons have so far been sentenced?**

**DK:** To the knowledge of Hiv-Denmark 9 persons have been sentenced under Section 252. The first one was in 1999/2000.

**FI:** As criminal cases about HIV transmission are not public in Finland there are no statistics on this. Neither has anyone counted all HIV cases in Finland. It is estimated that there has been a total of 15-20 cases. The Supreme Court of Finland has ruled in total of five cases since 1993.

**IS:** There are no convictions.

**NO:** The first court case in Norway was tried in 1992. In later years, few cases have led to sentences, and as of June 2018, no cases have been tried after the revised penal code of 2017.

**SE:** The Swedish legal system has since the end on the 1980 criminalized HIV. Since 1993 more than 50 convictions have taken place in Sweden. Despite global consensus that crimi-

nalization of HIV is a breach of basic human rights of PLHIV, and the fact that criminalization is counterproductive for effective HIV prevention efforts, Swedish Courts have not changed their view on HIV over time.

### **Is exposure to or transmission of HIV applicable under other laws than the criminal law?**

**DK/FI/NO/SE:** No.

### **How is the law applied in practice? Are there any typical cases?**

**DK:** A young gay HIV positive man, who had sex with three other young gay men recently diagnosed with HIV, was convicted to three years in jail in 2007 despite that the medical and technical tests could not verify that he actually had infected them. In court it was his word against the others' whether safer sex was practised or not. The young man also had to pay EUR 3,330 to each of the three men for damages, as well as the cost of the trial.

**FI:** The first Supreme Court case was in 1993. After that there have been four other cases. A typical case is a person charged with "aggravated assault" or "imperilment" depending on the usage of condoms and whether a transmission has occurred or not. It is not verified by the Supreme Court of Finland, but it is likely that a person who is on ART, uses condoms and discloses his or her status to a sexual partner will be excluded of the use of punishment.

**NO:** In recent years, the provisions of the Penal Code on transmission have been used in connection with other sex offenses such as rape and sex with minors. In one known case, a person charged with exposing someone to the risk of transmission was acquitted due to being on successful ART treatment, and hence not being infectious. No cases have been tried after the revised penal code of 2017.

**SE:** A typical case is a person charged with “induction of danger for other” or “aggravated assault” for having had unprotected sex, with no regards to if a transmission has occurred or not.

### **What relevant changes have happened recently in terms of legislation and application of the law?**

**DK:** The status of criminalization in Denmark is that the number of people being prosecuted since 1993 is 20 persons of whom 15 were convicted under Section 252 of the Danish Criminal Code. It is an HIV specific law under which both exposure and transmission are subject to prosecution. The maximum sentence is eight years imprisonment. The current developments in order to change the situation are as follows: Due to medical improvements that have radically changed the life expectations of PLHIV, the Danish Criminal Code Section 252 is since February 2011 suspended as it is seen to be out of date. The Danish Minister of Justice has formed a working group to look into how to either change or abolish the law. (Update of 2012)

**FI:** In 2015, the accused had used antiretroviral medication and had had unprotected sex without disclosing his status to a sexual partner. The HIV transmission had not happened. The accused was convicted of imperilment.

In 2017, the accused who was aware of her HIV infection and had unprotected sex with her spouse numerous times without disclosing her status was convicted of aggravated assault. In this case the HIV transmission had happened.

There are no recent changes in terms of Finnish legislation.

**NO:** The Norwegian Penal Code was revised in its entirety in 2017.

In summary:

- You cannot be prosecuted if on successful ART treatment.
- You cannot be prosecuted if using condoms.
- Oral sex is not seen as hazardous behaviour.
- Consent to sex with a person living with HIV frees the person from criminal liability.
- Exempted for punishment are also infections from sex workers and injecting drug users, as well as transmission from mother to child.

**SE:** The Supreme Court of Sweden ruled in June 2018 that successful ART with unmeasurable viral loads is no risk for an HIV transmission, meaning that there is no risk for exposure and therefore it cannot be seen as a crime.

In summary:

- You cannot be prosecuted if on successful ART treatment.
- You cannot be prosecuted if using condoms
- You cannot consent to be exposed to a risk.
- The obligation to disclose HIV status can be revised for people on successful ART.
- HIV is still regarded a highly dangerous infection by the courts.



*Street view in Copenhagen, Denmark*



*Trolltunga, Norway*

# HIV-Nordic

HIV-Nordic is the co-operative body of the Nordic organizations for people living with HIV (PLHIV). HIV-Nordic was founded in 1995 and the organizations included in HIV-Nordic are Hiv-Denmark, HivNorway, HivFinland, HIV-Sweden and Hiv-Iceland.

The Board of HIV-Nordic consists of 10 Board Members, 2 from each member organization. The HIV-Nordic secretariat has since 1999 been at HIV-Sweden in Stockholm, where it also has its legal status.

*First Q&A HIV and the criminal code in the Nordic countries was published in 2010, updated in 2012 and 2014.*

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## **HIV-Nordic**

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*A forest in Sweden*