

HIV/AIDS and the Law

What you need to know about HIV Disclosure Laws in plain language

On October 5, 2012, the Supreme Court of Canada released its decision about the HIV disclosure law. Now people who are HIV positive must tell a sexual partner that they are positive before having sex with them *if* it poses a “**realistic possibility**” that the other person could get HIV. The Court also

said that almost any risk is “realistic”, no matter how small. If a person doesn’t do this they could be convicted of **aggravated sexual assault** under the criminal law. This has a maximum penalty of life in prison and required registration as a sexual offender.

If you are HIV positive, you do have to disclose (to tell) the person you are having sex with that you are HIV positive when:

Having vaginal or anal sex without using a condom

OR

Having vaginal or anal sex with a condom if your viral load* is not “low”

So if you don’t tell the person you are having sex with that you are HIV positive, using a condom only OR having a low viral load only is not enough to prevent criminal charges.

When do you **not** have to tell your sexual partner about your HIV status?

Vaginal Sex – You do not have to disclose (tell)

the person that you are having sex with that you are HIV positive if:

Your viral load is low or undetectable *

AND

You use a condom

*A “low” viral load still needs to be defined in later court cases. For now it should include any viral load below 1500 copies of the virus per milliliter of blood.

What part of the law is still unclear?

The cases that the Supreme Court dealt with were about vaginal sex so there is still a lot of uncertainty about other sexual acts like **ANAL SEX** and **ORAL SEX**.

ANAL SEX – has a higher risk of transmitting HIV than vaginal sex. So your duty to tell the person you are having sex with that you have HIV is **at least** equal to that of vaginal sex. We don't know yet if a person will be convicted if he/she doesn't tell but does use a condom **and** has a low viral load.

If you're planning on having anal sex

Tell the person you are HIV positive if:

- you have anal sex without a condom OR
- your viral load is higher than 1500 copies of the virus per milliliter of blood

ORAL SEX – has a lower risk for transmitting HIV than vaginal sex. We don't know yet if the courts will have the same requirements if you have oral sex without a condom and you are HIV positive. The courts also didn't decide if it makes a difference whether you are giving or getting oral sex or if the amount of semen or vaginal fluid will make a legal difference.

If you're planning on having Oral sex

Since this hasn't gone before the courts, you may want to take precautions. Tell the person you are HIV positive if:

- you have oral sex without a condom OR
- your viral load is higher than 1500 copies of the virus per milliliter of blood

What if you have a low or undetectable virus load AND use a condom but the condom breaks?

This is another area that the Supreme Court has not addressed yet.

You **may** have to tell the person you are having sex with that you are HIV positive if the condom breaks.

Telling the person that you are HIV positive gives them a chance to get the medications right away that will help to reduce their chances of getting HIV.

The person you are having sex with may be angry or upset to find out that you are HIV positive

- Take care to ensure your own physical safety
- Understand that you might be threatened or criminally prosecuted.

How can you protect yourself against prosecutions?

People may lie or make mistakes about whether you told them about your HIV status and/or if a condom was used.

There are some things you can do to reduce the risk of criminal prosecutions or conviction.

Tell the person that you are having sex with that you are HIV positive in front of a witness (like a doctor or counselor) before having sex. Then it is on record that you told them and can be used as proof.

You could both sign a document that you told the person you are HIV positive. Keep this document in a safe place just in case.

You could record it on a cell phone or a device that takes video. It is important that the other person be in the video with you.

Use a condom when you have vaginal or anal sex.

See your doctor regularly so you have a record of your viral load test results.

Other important things to know

There is no difference between silence and a lie.

There is no difference in the nature or type of relationship for the law about disclosure (having to tell) to apply:

- Having sex with a spouse, a casual partner or a “one night stand” are all the same
- Having sex for love, money, fun, drugs or procreation are all the same

If you are HIV positive you can be prosecuted even if you had no intent to harm the other person.

You can be charged with aggravated sexual assault for not telling the person you are having sex with that you are HIV positive. This carries a maximum of life in prison and you will have to register as a sexual offender.

Please note that any document or proof that shows you had sex with someone before you told them you are HIV positive could work against you; for example if you had vaginal or anal sex before you told your partner about your HIV and did not use a condom or cannot prove that your viral load was low at the time.

Final words: Blood Ties believes that all people have a responsibility to protect themselves from sexually transmitted and blood-borne infections such as HIV and the best way to do this is by always using a latex condom for sex (vaginal and anal). If you are allergic to latex, you can use a polyurethane (non-latex) condom.

TIP: Do not use any kind of massage oils or other oil type products as these will break down the latex condom. Use only water based products such as KY Jelly or Astroglide lubricant.

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