

# Q&A

Updated 2012

## HIV and the criminal code in the Nordic countries





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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.

**Does the criminal code apply to those who transmit HIV or those who expose others to the risk of HIV infection, or both? 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 above 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:** In Finland criminal law applies to those who transmit HIV and to those who expose others to the risk of HIV infection. The Criminal Code of Finland, Chapter 21, Sections 5 (Assault) and 6 (Aggravated Assault) both state that an attempt is also punishable. There are no specific HIV section of the criminal code.

**IS:** The Icelandic criminal code has no specific section on HIV. Neither has there been any cases where the criminal statutes on crime against the person have been used for transmission of HIV or for putting someone at risk for infection.

**NO:** Section 155 of the Norwegian criminal code applies to those exposing others to the risk of HIV infection regardless of transmission. The section applies to a set of communicable diseases that are hazardous to public health. As far as HivNorway knows, the section has so far only been applied to HIV.

**SE:** Both. Different statutes of the criminal code is applicable.

**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:** To protect the society

**SE:** It depends on what sections of the criminal code. But it is mainly to protect the individual.



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

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

## **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 %. No cases have been presented to court that has determined an acceptable level of risk.

**NO:** Yes.

**SE:** In principle no, but in reality yes. There has never been a case before the court where condom has been used.

## **Does disclosure of HIV status exclude the use of punishment?**

**DK:** Disclosure excludes possible punishment.



The little mermaid in Copenhagen, Denmark and a fishing village in the Lofoten islands, Norway. Photos: Scandinavian Photo Stock.

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**FI:** Most likely no, but not verified by the courts.

**NO:** No. This has to do with the fact that the section is meant to protect the society. Hence, a person cannot take the risk of transmission on behalf of the society.

**SE:** No

### **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.

**NO:** No exact number of court cases, but HivNorway estimates around 20 convictions under this section. The first court case was in 1992.

**SE:** 43 convictions – the first one in 1987.



**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.

**NO:** No

**SE:** Yes, according to the behavioural rules in the Swedish Communicable Disease Act. Theoretically one can be sentenced to compulsory isolation or imprisonment.

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

**DK/FI/NO:** No

**SE:** The Communicable Disease Act allows for compulsory isolation in some cases.



## Updates as of November 2012

**Denmark:** The current 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. The work is still in progress (May 2012)

**Finland:** In 2010 a woman who was working as an erotic dancer was sentenced to prison for four and half years. The sentence was endangerment and attempted aggravated assault. This woman had unprotected sex with at least 18 men during the years 2005-2010. No one of these men got infected.

In December 2011 Court of Appeal changed the sentence to

endangerment and the maximum two years imprisonment. In the public report was mentioned that

- She was on medication and took care of herself so it (?) couldn't be intentional. It wasn't even likely that she could infect anyone.
- Having unsafe sex (except one case) was a mutual decision.

But still we can't tell when the infection happens and therefore it can't be only theoretical possibility. And that's why the sentence was endangerment.

**Norway:** The law is under revision, and the recommendations of the Law Committee was released in October 2012. The Law Committee focused on public health, and suggests the use of two new sections replacing the existing one. The Committee also proposed changes in criminal laws and other legislation as well as other measures to reduce the adverse consequences of the current legal regulation in the field.

**Sweden:** The current status of criminalization in Sweden is that the number of people being prosecuted since 1989 under Penal Code of the Swedish Criminal Code Chapter 3 Section 6, Chapter 3 Section 8, and Chapter 3 Section

9 is around 60. It includes both exposure and transmissions of HIV which are subject to prosecution. The courts take the Infectious Disease Act in consideration when they make their decision about criminal code cases, they are two separate laws.

Our impression is that the information requirements of Infectious Diseases Act will not change soon. What we see is a change in the penalty rate to the lower prison sentences than before. This is because the courts are taking more account of the fact that HIV is not currently a fatal disease. One big problem is that the different courts in Sweden don't interpret the law in the same way.

The current developments in order to change the situation are as follows: An HIV positive medical doctor that had been convicted with a penalty of 10 month in lower court had been changed by the higher court to four month imprisonment. The motivation from the court was that it could not be proved that HIV was transmitted from the medical doctor to the victim.

## From the court rooms:

**DENMARK:** 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.

**FINLAND:** A 25 year-old Finnish man, who has been HIV positive since he was 16, was in 2008 sentenced to ten years in prison for five counts of aggravated assault (criminal HIV transmission), 14 counts of attempted aggravated assault (criminal HIV exposure), and one count of rape. He also had to pay the 21 female complainants a total of EUR 330,000 in damages. Of those infected, one woman received EUR 55,000 and four others EUR 45,000 each.

**NORWAY:** During the winter of 2009/2010 a man was convicted to a five-year prison sentence for infecting two other men and putting eleven other men at risk for HIV. He was also convicted of attempted infection having had sex with a man that was already HIV positive, but was unaware

of his status. In addition the court also ordered him to pay one of the complainants a compensation of over one million kroner (EUR 135,000) and 200,000 kroner (EUR 25,000) to another. The court also stated that a person living with HIV cannot perform oral sex on another person without being subject to Section 155 of the criminal code.

**SWEDEN:** In 2004 the Supreme Court convicted a man to imprisonment for one year. He had unprotected sex with 10 other men over a long period. None of the complainants were infected. The court discussed the relationship between effective ARV treatment and intent. The man was well medicated and thus the risk of transmitting HIV to others was very low. Intent was not established for nine of the complainants and the man was convicted of negligently endangering another person. For one of the complainants the court found that he had accepted the risk and hence the risk was not punishable. The man had to pay the complainants compensation from 8,000 Swedish kronor (EUR 830) to 31,000 Swedish kronor (EUR 3,230)





**HIV-Nordic** and its member organizations work with issues involving the violation of human rights for people living with HIV/Aids.

This is being done in cooperation with authorities and organizations with similar objectives – by influencing authorities, members of parliaments and governments so that laws and regulations will improve living conditions for HIV positive people and that respective countries and their laws comply with international conventions and recommendations.



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