

# BAD BLOOD



**Criminalisation of  
Blood Donations by  
People Living with HIV**

September 2022



**HIV JUSTICE  
NETWORK**



# ACKNOWLEDGEMENTS

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# EXECUTIVE SUMMARY

Following recent reports of blood donation-related prosecutions in Russia, Singapore, and the United States, the HIV Justice Network undertook desk-based research, collating and categorising all known country and jurisdictional laws that specifically criminalise blood donations by people living with HIV, and known prosecutions under these laws. We analysed these laws and cases using a global policy guidance and human rights law framework, informed by international and state-level scientific data assessing risks of transmission via blood transfusion.

Globally, 37 jurisdictions in 22 countries maintain laws which either explicitly criminalise successful or attempted blood donations by people living with HIV; or have related provisions which could be interpreted to criminalise this conduct; or have prosecuted people living with HIV who have donated blood under general communicable disease or other criminal laws. Notably, 15 jurisdictions in the United States (US) have laws which specifically criminalise blood donations by people living with HIV,<sup>1</sup> while four US states – California, Illinois, Iowa, and Virginia – have repealed laws which previously criminalised this conduct.

Although prosecutions are relatively rare, we are aware of at least 20 cases relating to blood donation since 1987. Half of these cases have been reported in Singapore, including two as recently as 2021. The circumstances of these cases vary but most were of people who were unaware of their HIV status at the time of donation but withheld information relating to previous sexual encounters. Many only learned of their HIV-positive diagnosis when they were arrested. Reports of people who knowingly concealed their HIV-positive status when giving blood are rare, and from our analysis none involved donating blood with the specific intent to cause harm.

Preventing the transmission of blood-borne infection by imposing limitations on the donation of blood is an important and legitimate public health objective. Since the beginning of the HIV epidemic, certain groups – including, but not limited to, gay men and other men who have sex with men – have been subjected to restrictions on their ability to give blood. Sustained advocacy by gay rights organisations in many high-income countries has focused on the discriminatory nature of these so-called ‘gay blood bans’, highlighting significant advances in blood screening capabilities. This has led to a general softening of restrictions on blood donations for gay men in many of these countries – allowing donations with ‘deferral periods’, or allowing donations based on individual risk assessments.

<sup>1</sup> See: [Annex](#) for a full list of countries which criminalise blood donations by people living with HIV.

However, this advocacy has generally not translated into the removal of HIV-specific criminal laws for donating blood, nor has there been a call for a moratorium on singling out people living with HIV for donating blood using non-HIV-specific general criminal laws – even though many of the same public health and human rights arguments apply to both the so-called ‘gay blood bans’ and to HIV criminalisation more generally.

The criminalisation of donors with HIV has primarily come about – and persists – due to both HIV-related stigma and homophobia and is not supported by science. The criminalisation of blood donations by people with HIV is a disproportionate measure – even if the aim of protecting public health through the prevention of transfusion-transmitted infection is legitimate.

There is no good reason for any country or jurisdiction to have HIV-specific criminal laws – whether they focus on blood donation or on sexual exposure or transmission. HIV-specific criminal laws are discriminatory and stigmatising, especially since people with other serious blood borne infections – including hepatitis B and C and syphilis – are not singled out with specific laws, nor for prosecution under general criminal laws.

Blood donation criminal laws focused on HIV should be repealed, prosecutions based on general laws should end, and instead science-informed measures – such as individual donor risk assessments and universal blood screening – should be relied on to protect the public against transfusion-transmitted infection.



# INTRODU<sup>●</sup>CTION

Preventing the transmission of blood-borne infection by imposing limitations on the donation of blood is an important and legitimate public health objective. Since the beginning of the HIV epidemic, certain groups – including, but not limited to, gay men and other men who have sex with men – have been subjected to restrictions on their ability to give blood.

Sustained advocacy by gay rights organisations in many high-income countries has focused on the discriminatory nature of these so-called ‘gay blood bans’, highlighting significant advances in blood screening capabilities. This has led to a general softening of restrictions on blood donations for gay men in many of these countries – allowing donations with ‘deferral periods’, or allowing donations based on individual risk assessments.

However, this advocacy has generally not translated into the removal of HIV-specific criminal laws for donating blood, nor has there been a call for a moratorium on singling out people living with HIV for donating blood using non-HIV-specific general criminal laws – even though many of the same public health and human rights arguments apply to both the so-called ‘gay blood bans’ and to HIV criminalisation more generally.

This paper considers **two key reasons** why the use of the criminal law in this manner is an inappropriate means of protecting public health, after a brief examination of the current global landscape relating to the criminalisation of blood donation for people living with HIV.

1

The first reason is that using the criminal law to tackle HIV prevention is ineffective as a public health measure. It is, in fact, more likely to cause more harm to public health. Specifically in relation to blood donations, there is a lack of evidence to suggest that criminalisation achieves the stated aim of providing protection against the transmission of HIV through donated blood. Instead, criminalisation gives the illusion of taking action to protect public health, without committing the resources necessary to end the epidemic.

2

Secondly, criminalisation of blood donations by people living with HIV is a disproportionate measure targeted at a particular group due to a shared characteristic - their health status - which is protected under international human rights law. This is discriminatory, contributes to the stigmatisation of an already marginalised group, and potentially violates international human rights obligations.

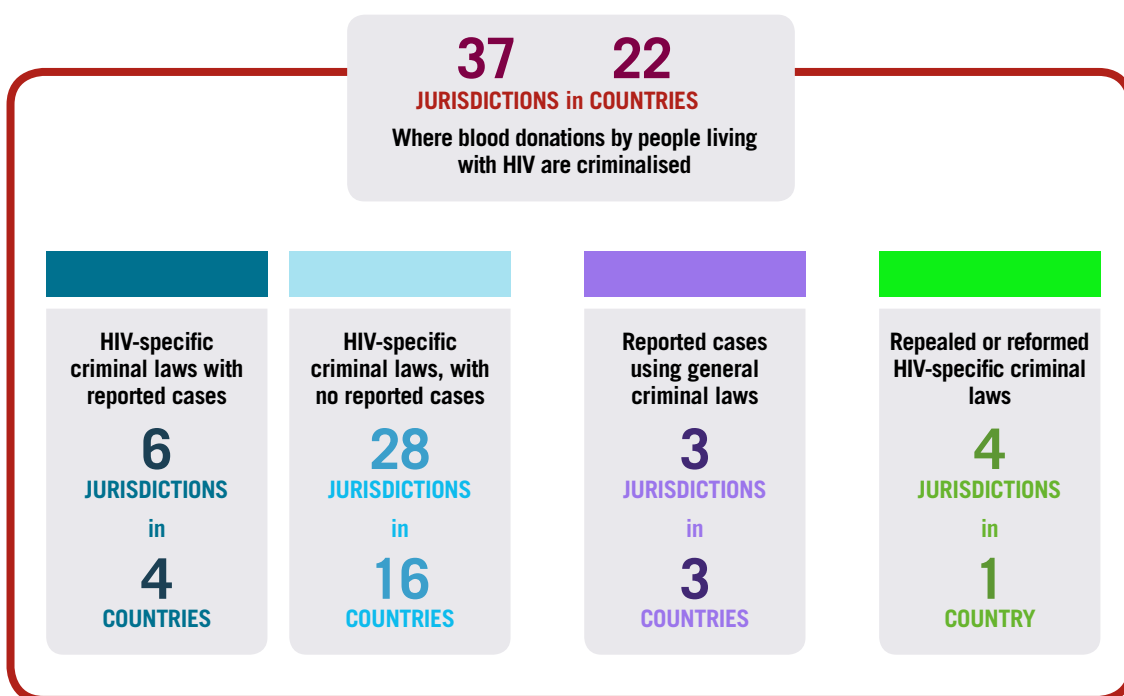


# GLOBAL LANDSCAPE

Countries criminalise people living with HIV in several ways, predominantly in the context of sex through laws which – specifically or in practice – criminalise non-disclosure of known HIV-positive status, perceived or potential HIV exposure, or alleged transmission. Some non-sexual acts – such as biting or spitting, as well as breastfeeding or comfort nursing – may also be covered by these criminalising provisions.<sup>2</sup>

Globally, 37 jurisdictions in 22 countries maintain laws which either explicitly criminalise successful or attempted blood donations by people living with HIV; or have related provisions which could be interpreted to criminalise this conduct; or have prosecuted people living with HIV who have donated blood under general communicable disease or other criminal laws.

Notably, 15 jurisdictions in the United States (US) have laws which specifically criminalise blood donations by people living with HIV,<sup>3</sup> while four US states – California, Illinois, Iowa, and Virginia – have repealed laws which previously criminalised this conduct.

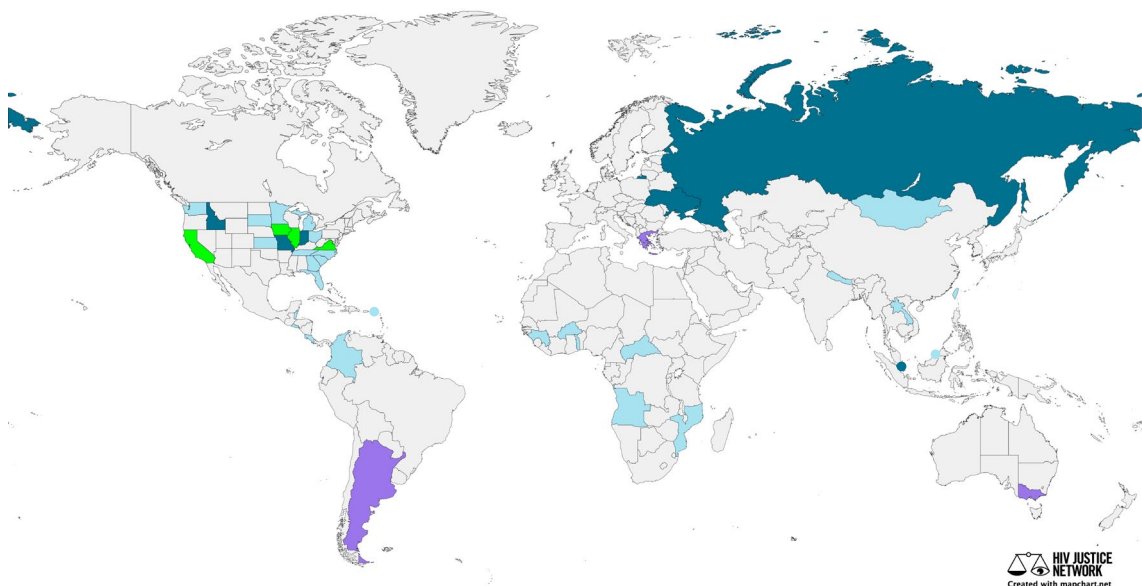


<sup>2</sup> Alison Symington, Edwin J Bernard, et al. *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities*. HIV Justice Network, Amsterdam, July 2022. <https://www.hivjustice.net/advancing4>

<sup>3</sup> See: [Annex](#) for a full list of countries which criminalise blood donations by people living with HIV.

Although reports of people living with HIV being prosecuted for donating blood are relatively rare, there have been at least 20 known criminal proceedings relating to this issue.<sup>4</sup> A review of these case reports shows that circumstances vary and include incidents where people knowingly concealed their status, used false documents to give the donation, or did not know their status but withheld information about previous sexual experiences. The first known case was reported in 1987, and the most recent in 2021. Singapore is the country with the most known prosecutions for blood donations by people living with HIV, with ten reported cases.

**WHERE BLOOD DONATIONS BY PEOPLE LIVING WITH HIV ARE CRIMINALISED**



→ [CLICK HERE TO SEE FULL SIZE MAP](#)

HIV-specific criminal laws, WITH reported cases	HIV-specific criminal laws, with NO reported cases	Reported cases, using general criminal laws	Repealed or reformed HIV-specific criminal laws
<ul style="list-style-type: none"> <li>Russia</li> <li>Singapore</li> <li>Ukraine</li> <li>United States: Idaho, Indiana, Missouri</li> </ul>	<ul style="list-style-type: none"> <li>Angola</li> <li>Belize</li> <li>Brunei Darussalam</li> <li>Burkina Faso</li> <li>Central African Republic</li> <li>Colombia</li> <li>Costa Rica</li> <li>El Salvador</li> <li>Guinea</li> <li>Laos</li> <li>Mongolia</li> <li>Mozambique</li> <li>Nepal</li> <li>Taiwan</li> <li>Togo</li> <li>United States: Federal law, Florida, Georgia, Kansas, Michigan, Minnesota, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Virgin Islands, Washington</li> </ul>	<ul style="list-style-type: none"> <li>Argentina</li> <li>Australia: Victoria</li> <li>Greece</li> </ul>	<ul style="list-style-type: none"> <li>United States: California, Illinois, Iowa, Virginia</li> </ul>

<sup>4</sup> See: HIV Criminalisation Cases, HIV Justice Network. <https://www.hivjustice.net/cases/?cases-search%5Bkeyword%5D=&cases-search%5Bcountry%5D=&cases-search%5Btype%5D=blood-donation&cases-search%5Bfrom%5D%5Bmonth%5D=&cases-search%5Bfrom%5D%5Byear%5D=&cases-search%5Bto%5D%5Bmonth%5D=&cases-search%5Bto%5D%5Byear%5D=>





# CASE STUDY: SINGAPORE

Singapore maintains significant criminal penalties for donating blood while HIV-positive. Section 24 of the *Infectious Diseases Act 1977* specifically prohibits people who know they are living with HIV from making a blood donation, with a maximum sentence of ten years' imprisonment and/or a fine, while section 11 makes it an offence, liable to up to two years' imprisonment and/or a fine, to knowingly supply false information in connection with a blood donation. Two cases reported in 2021 demonstrate the way in which these laws are used in Singapore.

In the first case, a man who was unknowingly living with HIV was charged under section 11 for allegedly lying about his sexual history when he donated blood. He did this, he said, to help increase blood supplies during the COVID-19 pandemic. The man declared in his Donor Health Assessment Questionnaire, a legal document that must be signed prior to donating blood, that he had never had sex with another man. He later confirmed his answers were truthful when asked by a doctor. After his blood later tested positive for HIV, the man told a doctor that he had previously had oral sex with a man but that he did not think this was considered 'sex', having overlooked the first page of the questionnaire which defined 'sex' as including oral sex. Following arrest, the man pleaded guilty to the offence, but his plea was rejected by the judge on the basis that he did not know at the time that the information he was providing was false. The charges were eventually dropped.<sup>5</sup>

In the second reported case a man was sentenced to three months' imprisonment and a fine of S\$10,000 after being found guilty under section 11. When donating blood in 2019 the man declared in his Donor Health Assessment Questionnaire that he had never had sex with another man and that he had not had a body piercing in the previous year. After tests on the donated blood and later himself showed that he was HIV-positive, the man admitted that his declarations were untrue, and that he had had sex with two men and that his ears had been pierced.<sup>6</sup>

5 [Update] Singapore: Charges withdrawn for 37-year-old man indicted for donating blood and unknowingly lying about his sexual history, HIV Justice Network, 12 March 2021. <https://www.hivjustice.net/cases/singapore-man-charged-for-donating-blood-and-unknowingly-lying-about-his-sexual-history/>

6 Singapore: 30-year-old man sentenced to three months in jail for hiding his sexual history before blood donation, HIV Justice Network, 10 March 2021. <https://www.hivjustice.net/cases/singapore-30-year-old-man-sentenced-to-three-months-in-jail-for-hiding-his-sexual-history-before-blood-donation/>



# NO PUBLIC HEALTH BENEFIT

Since the beginning of the HIV epidemic, advocates, experts, and networks of people living with HIV have expressed concern about HIV criminalisation on human rights and public and individual health grounds. Most HIV-specific laws and HIV-related prosecutions are not based on the latest scientific and medical knowledge relating to HIV and the risk of transmission; are often drafted or applied in an overly broad manner; and impose disproportionately long sentences on those who are convicted.<sup>7</sup> The 2018 *Expert consensus statement on the science of HIV in the context of criminal law*, authored by 20 of the world's leading HIV scientists, found that HIV criminal laws have not evolved to reflect advancements in the understanding of HIV and can instead be influenced by societal stigma and fears.<sup>8</sup>

The main rights-based arguments against HIV criminalisation are that HIV-specific criminal laws and HIV-related prosecutions single out people living with HIV based on an immutable characteristic, thereby impeding the rights to non-discrimination, health, privacy, a fair trial, and the presumption of innocence; and rights not to be subject to arbitrary arrest or detention, nor to cruel, inhuman or degrading treatment or punishment.

These laws have also been criticised from a public health perspective, with experts stating that there is no evidence to suggest that the criminal law is an effective tool for HIV prevention and that the fear of prosecution in fact deters people from getting tested or talking openly with medical professionals about their health and prevention needs, damaging both individual and public health.<sup>9</sup>

For these reasons, international bodies have called on states to avoid enacting HIV-specific laws and instead only to apply general criminal laws to very rare cases in which there is deemed to be sufficient criminal culpability to prosecute.<sup>10</sup> According to UNAIDS, the use of the criminal law in relation to HIV can only be legitimate where the activity carries an actual risk of harm which materialises and is intentionally caused to another person, and that this threshold

7 *Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, UNAIDS, 2015. [https://www.unaids.org/sites/default/files/media\\_asset/20130530\\_Guidance\\_Ending\\_Criminalisation\\_0.pdf](https://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf)

8 Francoise Barré-Sinoussi, Salim S Abdoool Karim, et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 25 July 2018. <https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161>

9 Ibid. See further: Sally Cameron and Edwin J Bernard. *Advancing HIV Justice 3: Growing the global movement against HIV criminalisation*. HIV Justice Network, Amsterdam, May 2019. <https://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf>; World Health Organization. *Sexual health, human rights and the law*. 2015. [http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984\\_eng.pdf;jsessionid=A968001B31F6CC1491F2F20B444540D5?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=A968001B31F6CC1491F2F20B444540D5?sequence=1); UNDP. *Guidance for prosecutors on HIV-related criminal cases*. New York, 2021. <https://www.undp.org/publications/undp-guidance-prosecutors-hiv-related-criminal-cases>

10 See for instance: UNAIDS and UNDP, *Policy brief: Criminalization of HIV transmission*. Geneva, August 2008. [https://data.unaids.org/pub/manual/2008/jc1601\\_policy\\_brief\\_criminalization\\_long\\_en.pdf](https://data.unaids.org/pub/manual/2008/jc1601_policy_brief_criminalization_long_en.pdf); World Health Organization. *Sexual health, human rights and the law*. 2015. [http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984\\_eng.pdf;jsessionid=A968001B31F6CC1491F2F20B444540D5?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=A968001B31F6CC1491F2F20B444540D5?sequence=1)

can only be met where conduct results in HIV transmission.<sup>11</sup> If the criminal law is to be used without transmission taking place, this should never be without proof of ‘an appropriate culpable mental state’ and a significant risk of infection.<sup>12</sup>

To consider whether blood donation laws are legitimate according to these UNAIDS recommendations, we must reflect on the two essential aspects: whether there is a risk of transmission that materialises, and whether there is an appropriate level of culpability.

## RISK OF TRANSMISSION

Significantly less attention has been paid to the risk of HIV transmission through blood transfusion compared with sexual intercourse. However, the rate of HIV transmission through blood donations in the general population is vanishingly small. Data vary, but a 2021 estimate by the French health authorities put the rate at 1 in 11.6 million donations.<sup>13</sup>

There may be many contributing factors for this extremely low rate in countries with advanced health systems such as France, which will include donor selection practices, but an important factor is the advancement in blood screening capabilities which significantly reduce the risk of transmission via blood transfusion. Data from the World Health Organization (WHO) shows that at least 99.8% of blood donations in high and middle-income countries are screened following basic quality procedures. The corresponding number for low-income countries however is only 80.3%, and the WHO states that 12 countries are not able to screen all blood for one or more of the infections that it recommends (HIV, hepatitis B and C, syphilis).<sup>14</sup>

In countries with less advanced blood screening procedures there is a much greater risk of blood carrying HIV entering the national supply and in turn a greater risk of transfusion-transmitted infection, meaning that the imposition of tighter donor selection criteria is justifiable. However, in those countries which routinely screen all donated blood for key infections, the risk of transmission dissipates and any donation by a person living with HIV is extremely unlikely to result in transmission. For example, data from 2021 suggests that in the UK, which screens all donated blood for HIV and other communicable diseases, the risk of an HIV-positive blood donation not being detected is as low as 1 in 23 million.<sup>15</sup>

In countries where blood screening is universal, any donation that was given by a person living with HIV for whatever reason would be detected and removed from the blood supply, meaning that any perceived risk would not come about. This therefore falls short of the UNAIDS requirement for an actual risk of transmission which materialises and renders the use of the

<sup>11</sup> See note 7, para 13.

<sup>12</sup> Ibid, para 16.

<sup>13</sup> HIV Justice Network, France: Blood donations to meet the same health safety requirements, regardless of one's sexuality, 11 June 2021. <https://www.hivjustice.net/news-from-other-sources/france-blood-donations-to-meet-the-same-health-safety-requirements-regardless-of-ones-sexuality/>

<sup>14</sup> World Health Organization, Blood safety and availability, 26 May 2022. <https://www.who.int/news-room/fact-sheets/detail/blood-safety-and-availability/>

<sup>15</sup> Jessica Elgot, Blood donation rules changed to attract more donors with rare subgroups, Guardian, 11 October 2021. <https://www.theguardian.com/politics/2021/oct/11/blood-donation-rules-changed-to-attract-more-donors-with-rare-subgroups>

criminal law inappropriate. Countries with less advanced blood screening capabilities should be supported to increase these capabilities as a means to prevent transmission, rather than resorting to criminalisation of individual donors which is not an effective way of achieving this aim.

## LEVEL OF CULPABILITY

Although not recommended, UNAIDS does acknowledge the possibility for the criminal law to be used where transmission does not occur but where there is a culpable mental state. However, our analysis of case reports found no evidence of any cases in which someone living with HIV gave blood with a clear intention to transmit HIV. Where donors were aware of their status, motivations for giving blood included a desire to help those in need or to respond to a shortage in the blood supply; or for receipt of monetary rewards provided for donations in some jurisdictions. Where donors were not aware of their status but information about their sexual history was withheld, the most common reason for non-disclosure appears to be a lack of awareness of the possibility of transmission from these behaviours, as well as a desire to avoid stigmatisation and even criminalisation associated with these acts – for instance for engaging in sexual activity with people of the same sex or with sex workers. In all of these cases, the required culpable mental state to justify criminalisation was not present.

In the 2021 cases in Singapore outlined above, for example, in both instances the defendants were unaware of their HIV status and instead the matter turned on the supply of ‘false information’ regarding previous sexual (and other risk) experiences. It is important to note that same-sex sexual activity is criminalised in Singapore – though a moratorium on enforcement has been in effect since 2010, with repeal of the law announced in August 2022<sup>16</sup> – and someone may feel reluctant to provide information admitting to criminal conduct, especially where they are not aware of their status and may therefore deem the information irrelevant. The level of culpability in these cases falls short of the threshold outlined by UNAIDS, as there is a clear lack of intent on the part of the donors.

Similarly, someone who is aware of their HIV status may have a lack of awareness of the risk of transmission through blood transfusions, perhaps because they are on effective antiretroviral treatment and have an undetectable viral load and believe that this protects against transmission via transfusions as it does with sexual activity. Although the protection against transmission provided by having a suppressed viral load is well established for sexual activity, whether this is true with blood transfusions is less clear, as transfusions involve a much higher volume of blood than would be encountered during sex. Some studies have suggested that there is still some, albeit lower, risk of HIV transmission via blood donations from those with an undetectable viral load.<sup>17</sup> However, these studies are not conclusive, and more research is required, though researchers have pointed out that any risk of transmission would be all but eliminated where routine blood screening is undertaken on all donations. In this situation there would again not be a suitably culpable mental state to justify criminalisation.

<sup>16</sup> Human Dignity Trust, Singapore. <https://www.humandignitytrust.org/country-profile/singapore/>

<sup>17</sup> Iain B. Gosbell, Veronica C Hoard, et al. *Undetectable does not equal untransmittable for HIV and blood transfusion*. Vox Sanguinis, May 2019. [https://www.researchgate.net/publication/333220266\\_Undetectable\\_does\\_not\\_equal\\_untransmittable\\_for\\_HIV\\_and\\_blood\\_transfusion](https://www.researchgate.net/publication/333220266_Undetectable_does_not_equal_untransmittable_for_HIV_and_blood_transfusion); Brian Cluster, Claire Quiner, et al. *HIV antiretroviral therapy and prevention use in US blood donors: a new blood safety concern*. Blood, 10 September 2020. <https://ashpublications.org/blood/article/136/11/1351/461295/HIV-antiretroviral-therapy-and-prevention-use-in>



# CASE STUDY: ARGENTINA

In 2011, a man was arrested six years after an incident in which he allegedly gave blood following a request by doctors at a hospital where his father was being treated. The man did not declare that he was living with HIV and used his brother's ID to give the donation. Eventually the blood was transfused to a young woman, and HIV was transmitted to her. The outcome of the case is not known, and it is not clear under which law the defendant was charged, but it may have been Article 202 which criminalises the spread of 'a dangerous and contagious disease'.<sup>18</sup>

This case demonstrates the external pressures that an individual may be put under in opting to donate blood even when aware of their HIV status. Although details are scarce in this case, it seems likely that the defendant was motivated to respond to doctors' requests for blood to assist in his father's treatment. There may also have been a lack of understanding as to the risk of transmission, or a fear of stigmatisation for disclosing his status. The use of the criminal law in this circumstance appears to be a misguided way to respond to these factors.

*This case demonstrates the external pressures that an individual may be put under in opting to donate blood even when aware of their HIV status.*

<sup>18</sup> HIV Justice Network, Argentina: 39-year-old man arrested for donating blood, 12 April 2011. <https://www.hivjustice.net/cases/argentina-39-year-old-man-arrested-for-donating-blood/>



# DISCRIMINATORY MEASURE WHICH ADDS TO STIGMATISATION

HIV and human rights are inextricably linked: a lack of respect for human rights drives the spread of the HIV epidemic and heightens its impacts, while the presence of HIV can undermine the realisation of human rights.<sup>19</sup> This link is apparent when examining transmission rates which show that HIV is most prevalent amongst marginalised populations and in countries where both the general population – but especially marginalised populations – are already at greater risk of human rights violations. This underscores the importance of proper enforcement of human rights law to better protect both public health and people living with HIV.

International human rights law clearly provides for a right not to be subjected to discriminatory treatment on the basis of health status broadly,<sup>20</sup> and under some treaties, HIV status expressly.<sup>21</sup> Although a right to non-discrimination on the basis of health status is well established, this right does not automatically prohibit all differential treatment. Human rights treaties permit states to impose restrictions on certain groups of people where there is a justification for doing so. How exactly a state must prove this justification differs from treaty to treaty, though the conceptualisation is very similar; the UN Human Rights Committee has stated that a difference in treatment based on ‘reasonable and objective criteria’ does not equate to prohibited discrimination under the International Covenant on Civil and Political Rights, while the European Court of Human Rights, in interpreting the European Convention on Human Rights, has stated that any difference must be in pursuance of a legitimate aim and must be a proportional means to achieve that aim.<sup>22</sup>

In the case of HIV criminalisation and blood donation specifically, in attempting to justify criminal penalties states would be able to point to the legitimate aim of protecting public health through the prevention of transfusion-transmitted infection. Whether the measures taken are a proportional means of achieving this legitimate aim is far more questionable,

<sup>19</sup> See further: United Nations Office of the High Commissioner for Human Rights, HIV/AIDS and human rights. <https://www.ohchr.org/en/issues/hiv/pages/hivindex.aspx>

<sup>20</sup> See for example: ECtHR, *Novruk and Others v. Russia*, No. 31039/11 and others, 15 March 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-161379>

<sup>21</sup> The UN Commission on Human Rights (the predecessor to the Human Rights Council) first confirmed in 1995 that the right to non-discrimination includes HIV status under ‘other status’ in the *International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights*: Commission on Human Rights, *The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)*, E/CN.4/RES/1995/44, 3 March 1995. [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4320](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4320)

<sup>22</sup> United Nations Office of the High Commissioner for Human Rights. *The Right to Equality and Non-Discrimination in the Administration of Justice*. New York, 2003. <https://www.un.org/ruleoflaw/files/training9chapter13en.pdf>

because as has been discussed above, there is a lack of evidence to suggest that the criminal law is an effective tool for the prevention of HIV transmission.

Furthermore, these laws treat all people living with HIV identically and assign criminal culpability equally regardless of individual circumstances. Many of these laws make no accommodation for the intention of the person or the risk of transmission, and instead criminalise the mere act of donating blood regardless of whether there was an intention to transmit and whether transmission occurred. Under these laws someone who had a clear intention to transmit HIV would be equally as culpable as a person living with HIV who had no such intention and did not appreciate the potential risk of transmission that could arise from donating blood.

Additionally, laws criminalising blood donation often only target HIV and do not apply the same penalties for other infections. As stated above, the WHO recommends that all blood donations should be screened for HIV, hepatitis B, hepatitis C and syphilis.<sup>23</sup> Yet many of the countries which criminalise donations by people living with HIV do so through laws which apply only to HIV and not to these other conditions. If blood donations by people living with other diseases are prosecuted at all, this would occur under general, non-specific criminal provisions. As such, these laws single out people living with HIV for criminalisation in a way not seen for other communicable diseases.

The use of the criminal law in a way which criminalises behaviour regardless of state of mind, risk of transmission, or actual transmission, as well as the lack of evidence that criminalisation in this context actually achieves the intended aim of protecting public health, together lead to a conclusion that the use of the criminal law in this way is a disproportionate means of attempting to achieve the legitimate aim of preventing HIV transmission via blood transfusions. The singling out of people living with HIV for increased punishment under the law adds to already high levels of stigmatisation and legitimises further discriminatory treatment against a group which is often already significantly marginalised. It is therefore foreseeable that laws which criminalise blood donations by people living with HIV could be held as unjustifiable discrimination in violation of human rights law if considered by a human rights body.<sup>24</sup>

*The use of the criminal law in a way which criminalises behaviour regardless of state of mind, risk of transmission, or actual transmission, as well as the lack of evidence that criminalisation in this context actually achieves the intended aim of protecting public health, together lead to a conclusion that the use of the criminal law in this way is a disproportionate means of attempting to achieve the legitimate aim of preventing HIV transmission via blood transfusions.*

<sup>23</sup> World Health Organization, Blood safety and availability, 26 May 2022. <https://www.who.int/news-room/fact-sheets/detail/blood-safety-and-availability>

<sup>24</sup> The European Court of Human Rights, for instance, has found that states have a narrow margin of appreciation in choosing measures which treat PLHIV differently to others: ECtHR, Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention: Prohibition of Discrimination, 30 April 2022. [https://www.echr.coe.int/Documents/Guide\\_Art\\_14\\_Art\\_1\\_Protocol\\_12\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf)



# CASE STUDY: CALIFORNIA

In 2017, Governor Jerry Brown signed SB 239, which repealed the criminalisation of people living with HIV for blood donations. It also decriminalised HIV non-disclosure and ‘exposure’ via sex – making only the intentional transmission of any communicable disease a misdemeanour – and repealed felony charges for solicitation (for sex work) by people with HIV. Writing in the *New England Journal of Medicine* about the rationale behind this, Tony Yang and Kristen Underhill noted: “criminalization of blood donation neglects the fact that donated blood is now screened for HIV before use, resulting in residual risks that are lower than 1 per 1 million donations, and Food and Drug Administration guidelines exclude donors who may be at risk. Criminalizing blood donation by people with HIV doesn’t add to these protections and may discourage donors from disclosing information on risk behaviors.”<sup>25</sup>

<sup>25</sup> Y. Tony Yang and Kristen Underhill. *Rethinking criminalization of HIV exposure – Lessons from California’s New Legislation*. The New England Journal of Medicine. 2018;378(13):1174–5, 29 March 2018. <https://www.nejm.org/doi/full/10.1056/NEJMp1716981>





# CONCLUSION

Although stopping transfusion-transmitted infections by preventing HIV-positive blood entering the blood supply is a legitimate public health concern, the use of the criminal law to penalise individual donors is both an ineffective means of achieving this aim and may violate the right to non-discrimination under international human rights law.

Much like other kinds of HIV-related criminal laws and prosecutions, there is a lack of evidence to suggest that these laws cause transmission rates to be reduced. Advancements in blood screening capabilities, coupled with donor selection criteria based on known risk behaviours, mean that the risk of transmission through blood donation is significantly lowered and even virtually eliminated in some countries. The criminalisation of conduct which does not carry a significant risk of transmission falls short of international standards. Where these laws exist, they have been used to criminalise people who have no intent to cause harm or are unaware of their status. While there may be justification to prosecute people who donate blood with a clear intent to cause harm and transmission takes place, these cases are rare and could be satisfactorily dealt with under general criminal laws.

The right to non-discrimination on the basis of health status is well established under human rights treaties. Differential treatment on the basis of health status can only be justifiable where it is a proportionate means of achieving a legitimate aim, in this case the protection of public health. The lack of evidence to suggest that criminalisation reduces rates of transmission, the singling out of HIV as compared with other infections, and the lack of regard for individual circumstances suggest that these laws amount to a disproportionate measure.

If there is any role for the criminal law, it might be more appropriately used to prosecute the manufacturers and suppliers of blood products that have caused transmission of HIV and other infections through improper procedures.<sup>26</sup> One might argue it is inappropriate for individual donors to be criminally penalised for donating blood while the lack of responsibility of blood suppliers goes unpunished despite causing significant numbers of transmissions.

Instead of resorting to the criminal law in a misguided attempt to prevent transfusion-transmitted infections, which gives only an illusion of protection, states should focus their attentions on improving blood screening capabilities, as well as ensuring appropriate donor selection criteria based on science rather than stigma against certain populations. It is time that HIV-related blood donation criminal laws are repealed, and individual donors are no longer prosecuted for giving blood.

<sup>26</sup> For instance, there have been no criminal repercussions for blood suppliers in a 'contaminated blood scandal' which saw 1,243 people become infected with HIV (and almost three times as many with hepatitis) in the UK in the 1970s and 80s: The Haemophilia Society, The contaminated blood scandal. <https://haemophilia.org.uk/public-inquiry/the-infected-blood-inquiry/the-contaminated-blood-scandal/>



# ANNEX

## COUNTRIES WHICH CRIMINALISE BLOOD DONATIONS BY PLHIV

### ANGOLA

LAW	PROVISION
<b>Law 8/04 on HIV and AIDS 2004</b>	<p>Section 24 – Blood and organ donation</p> <p>(1) Persons infected with HIV cannot donate blood, breast milk, organs or tissue for therapeutic use, except in the scope of experimental research.</p> <p>(2) A violation of the above provision is punishable in terms subsection 1 of section 15 of the present Act.</p>

### ARGENTINA

LAW	PROVISION
<b>Criminal Code of the Argentine Nation - Law 11.179</b>	<p>Article 202</p> <p>Whoever spreads a disease dangerous and contagious to persons shall be punished with imprisonment from three to fifteen years.</p>



<https://www.hivjustice.net/cases/argentina-39-year-old-man-arrested-for-donating-blood/>

### AUSTRALIA

LAW	PROVISION
<b>Public Health and Wellbeing Act 2008</b>	<p>155 – False statements</p> <p>(1) A donor must not, in a statement referred to in the Schedule, knowingly make a statement that is false in a material particular.</p> <p>Penalty: 120 penalty units or imprisonment for 1 year.</p>



<https://www.hivjustice.net/cases/australia-man-living-with-hiv-imprisoned-for-non-disclosure-during-blood-donation/>

### BELIZE

LAW	PROVISION
<b>Criminal Code of Belize</b>	<p>Chapter 101 Sections 43A</p> <p>(1) A person deliberately or recklessly spreads HIV/AIDS if the person does any act specified in subsection (2) or (3)</p> <p>(...)</p> <p>(3) Subsection (1) applies where the person (a) knows that he is infected with HIV/AIDS; and (b) donates blood or does anything not provided in subsection (2) which is likely to cause another person to be infected with HIV/AIDS.</p>

## BRUNEI DARUSSALAM

LAW	PROVISION
Infectious Diseases Act 2010	<p>Section 25 – Blood donation and other acts by persons with AIDS or HIV infection</p> <p>(1) Any person who knows that he has AIDS or HIV infection shall not –</p> <p>(a) donate blood at any blood bank in Brunei Darussalam;</p> <p>(...)</p> <p>(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 2 years or both.</p>

## BURKINA FASO

LAW	PROVISION
Act No. 030-2008/AN on combating HIV/AIDS and protecting the rights of PLHIV/AIDS	<p>Article 1</p> <p>HIV transmission – contamination of a healthy person by another person already infected with HIV, most often through sexual intercourse, blood transfusion, use of needles or other objects already contaminated or from mother to child</p> <p>Article 22</p> <p>Anyone who has voluntarily transmitted HIV-infected substances by any means whatsoever is guilty of the deliberate transmission of HIV.</p>

## CENTRAL AFRICAN REPUBLIC

LAW	PROVISION
Act No. 06.030 of 12 September 2006 entitled Law on the Rights and Obligations of PLWHA	<p>Article 40</p> <p>Any person living with HIV/AIDS who donates blood, semen or organs shall be punished by imprisonment of 6 months to 2 years and/or a fine of 50,000 to 500,000 francs.</p>

## COLOMBIA

LAW	PROVISION
Decree 1543 of June 12, 1997	<p>Article 41 – Duty not to infect</p> <p>The person informed of their status as a carrier of the Human immunodeficiency virus, HIV, should refrain from donating blood, semen, organs or in general any anatomical component, as well as performing activities that carry a risk of infecting other people.</p>

## COSTA RICA

LAW	PROVISION
Law No. 7771 of April 29, 1998, General Law on HIV/AIDS	<p>Article 262 – Propagation of infectious-contagious diseases</p> <p>Prison will be imposed from three to sixteen years to those who knowing that they are infected with an infectious-contagious disease that involves serious risk to life, physical integrity or health, infect another person, in the following circumstances:</p> <p>a) Donating blood or its derivatives, semen, breast milk, tissues or organs.</p>

## EL SALVADOR

LAW	PROVISION
<b>Decree 562 of 2017 – Law on the Control and Prevention of Infection Caused by the Human Immunodeficiency Virus</b>	<p>Article 16 – Prohibition of donation</p> <p>No one living with HIV/AIDS may be a donor of organ, blood, or other human tissue for therapeutic use; nor can donate semen, ovules, breast milk or breastfeed, except for research purposes.</p> <p>Anyone who makes improper, reckless or negligent use of human fluid or derivative resulting in the infection of other persons with HIV, will be punished in accordance with the Criminal Code and other respective laws.</p>

## GREECE

LAW	PROVISION
<b>Penal Code 1950</b>	<p>Article 314 – Physical injury due to negligence</p> <p>(1) Whoever by negligence causes bodily injury or damage to the health of another is punished with imprisonment of up to three years. If the bodily injury caused is completely minor, detention is imposed for up to three months or with a fine of up to three thousand Euros.</p>

## GUINEA

LAW	PROVISION
<b>Ordinance No. 056/2009/PRG/SGG amending Act L/2005/025/AN of 22 November 2005 on the prevention, care and control of HIV/AIDS in the Republic of Guinea</b>	<p>Article 34</p> <p>Any deliberate transmission of HIV through sexual or blood transmission is considered a crime.</p>

## LAOS

LAW	PROVISION
<b>Law on HIV/AIDS Control and Prevention</b>	<p>Article 50</p> <p>PLHIV and AIDS are prohibited to perform the following actions:</p> <p>(...)</p> <p>(2) Donate blood, tissues and organs.</p>

## MONGOLIA

LAW	PROVISION
<b>Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome 2004</b>	<p>11.1 A persons infected with HIV or AIDs shall have the following duties</p> <p>(...)</p> <p>11.1.4 to refuse donation of blood, tissues or organs.</p>

## MOZAMBIQUE

LAW	PROVISION
<p><b>Law No. 19/2014 on Protection of People, Workers and Jobseekers Living with HIV and AIDS</b></p>	<p>Article 13 – Duties and Responsibilities of the Person Living with HIV and AIDS The person living with HIV and AIDS has, among others, the following responsibilities: (...) (h) not donate blood and blood products, breast milk, organs or tissues for therapeutic use, except in the context of scientific research.</p>

## NEPAL

LAW	PROVISION
<p><b>Criminal (Code) Act, 2074</b></p>	<p>Section 105 – Prohibition of transmitting human immuno-deficiency virus (HIV positive) (1) No person, knowing that his or her own body or any other's body contains human immuno-deficiency virus (HIV positive) or the virus of Hepatitis B, shall with intent to transmit such disease to another person, donate his or her blood to such person or cause the donation of such other person's blood (...) or transfuse in any way his or her or such person's blood, semen, saliva, sputum or human organ into other's body. (2) A person who commits, or causes to be committed, the offence referred to in sub-section (1) shall be liable to a sentence of imprisonment for a term not exceeding ten years and a fine not exceeding one hundred thousand rupees. Provided that where such disease has got transmitted with negligence or recklessness, failing any intent to transmit it, the offender shall be liable to a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees.</p>

## RUSSIA

LAW	PROVISION
<p><b>Criminal Code of the Russian Federation 1996</b></p>	<p>Article 122 – HIV transmission (1) Putting another person at risk of HIV infection is punishable by restriction of liberty for up to three years, or compulsory labour for up to one year, or arrest for up to six months, or deprivation of liberty for up to one year. (2) Infection of another person with HIV by a person who knew that he or she had the disease shall be punishable by deprivation of liberty for up to five years.</p>



<https://www.hivjustice.net/cases/russia-criminal-case-initiated-against-woman-living-with-hiv-who-gave-blood/>

## SINGAPORE

LAW	PROVISION
<b>Infectious Diseases Act 1977</b>	<p>Section 11 – Offence for supplying false or misleading information</p> <p>(1) Any person who —</p> <p>(a) donates any blood or blood product at any blood bank or hospital in Singapore for any use or purpose; and</p> <p>(b) directly in connection with such donation of blood or blood product, supplies any material information which he knows to be false or misleading,</p> <p>shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.</p> <p>Section 24 – Blood donation and other acts by person with HIV Infection</p> <p>(1) Any person who knows that he has HIV Infection shall not —</p> <p>(a) donate blood at any blood bank in Singapore; or</p> <p>(b) do any act which is likely to transmit or spread HIV Infection to another person.</p> <p>(...)</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both.</p>



<https://www.hivjustice.net/cases/singapore-five-men-living-with-hiv-jailed-for-hiding-their-status-before-donating-blood/>  
<https://www.hivjustice.net/cases/singapore-man-living-with-hiv-sentenced-to-eight-months-in-jail-for-donating-blood/>  
<https://www.hivjustice.net/cases/singapore-23-year-old-jailed-for-15-weeks-for-not-disclosing-his-sexual-history-before-donating-blood/>  
<https://www.hivjustice.net/cases/singapore-35-year-old-man-was-sentenced-to-four-months-jail-for-donating-blood-and-lying-about-his-sexual-history/>  
<https://www.hivjustice.net/cases/singapore-30-year-old-man-sentenced-to-three-months-in-jail-for-hiding-his-sexual-history-before-blood-donation/>  
<https://www.hivjustice.net/cases/singapore-man-charged-for-donating-blood-and-unknowingly-lying-about-his-sexual-history/>

## TAIWAN

LAW	PROVISION
<b>HIV Infection Control and Patient Rights Protection Act 2013</b>	<p>Article 21</p> <p>Individuals who are fully aware that they are the infected and supply blood or provide organs, tissues, body fluids or cells for transplantation or for use by others, and thus infect others, shall be sentenced the same.</p> <p>Unaccomplished offenders of the preceding two Paragraphs shall be punished.</p>

## TOGO

LAW	PROVISION
<b>Act No. 2010-018, amending Act No. 2005-012 of 14 December 2005 on the protection of persons with regard to HIV/AIDS</b>	<p>Article 61</p> <p>A person is guilty of an act of wilful transmission of HIV if he or she:</p> <p>(...)</p> <p>knowing that the blood offered for transfusion, tissue or organ donated for transplantation is infected with HIV, will have transfused blood or transplanted tissue or organ onto a person.</p>

## UKRAINE

### LAW

The law on the response to the spread of diseases caused by the human immunodeficiency virus (HIV), and the legal and social protection of PLHIV (AIDS Law) in Ukraine

### PROVISION

Article 12 – Responsibilities of PLHIV

(1) PLHIV are obliged to:

(...)

(3) refuse to donate blood, its components, other biological fluids, cells, organs and tissues for their use in medical practice.



<https://www.hivjustice.net/cases/ukraine-in-odessa-region-man-receives-one-year-suspended-sentence-for-potential-hiv-exposure-via-blood-donation/>

## USA

### LAW

#### FEDERAL

18 U.S.C. § 1122

*Protection against the human immunodeficiency virus*

(a) In general.--Whoever, after testing positive for the Human Immunodeficiency Virus (HIV) and receiving actual notice of that fact, knowingly donates or sells, or knowingly attempts to donate or sell, blood, semen, tissues, organs, or other bodily fluids for use by another, except as determined necessary for medical research or testing (...), shall be fined or imprisoned in accordance with subsection (c).

(b) Transmission not required.--Transmission of the Human Immunodeficiency Virus does not have to occur for a person to be convicted of a violation of this section.

(c) Penalty.--Any person convicted of violating the provisions of subsection (a) shall be subject to a fine under this title of not less than \$ 10,000, imprisoned for not less than 1 year nor more than 10 years, or both.

#### FLORIDA

FLA. STAT. ANN. §381.0041

*11 – Donation and transfer of human tissue; testing requirements*

(...)

(b) Any person who has human immunodeficiency virus infection, who knows he or she is infected with human immunodeficiency virus, and who has been informed that he or she may communicate this disease by donating blood, plasma, organs, skin, or other human tissue who donates blood, plasma, organs, skin, or other human tissue is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

#### GEORGIA

GA. CODE ANN. § 16-5-60

*Reckless conduct causing harm to or endangering the bodily safety of another*

(...)

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV

(...)

(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years.

## USA (continued)

## LAW

## PROVISION

## IDAHO

## IDAHO CODE ANN. § 39-608

*Transfer of body fluid which may contain the HIV virus*

(1) Any person who exposes another in any manner with the intent to infect or, knowing that he or she is or has been afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, transfers or attempts to transfer any of his or her body fluid, body tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years, by fine not in excess of five thousand dollars (\$ 5,000), or by both such imprisonment and fine.

(2) Definitions. As used in this section:

(...)

(b) "Transfer" means (...) giving, whether or not for value, blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person.

(3) Defenses:

(...)

(b) Medical advice. It is an affirmative defense that the transfer of body fluid, body tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious.



<https://www.hivjustice.net/cases/us-man-living-with-hiv-under-criminal-investigation-in-idaho-for-donating-blood/>

## INDIANA

## IND. CODE § 35-45-21-1

*Transferring contaminated body fluids*

(...)

(b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony.

(...)

(d) This section does not apply to:

(1) a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined in IC 16-41-12-3) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose.



<https://www.hivjustice.net/cases/us-31-year-old-man-charged-with-four-felonies-in-indiana-for-donating-blood/>  
<https://www.hivjustice.net/cases/11932/>

## IOWA

## IOWA CODE § 139A.24

*Blood donation or sale*

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to a blood plasma-taking personnel commits a serious misdemeanor.



## USA (continued)

LAW	PROVISION
<b>KANSAS</b>	
<b>KAN. STAT. ANN. § 21-5424</b>	<p><i>Exposing another to a life threatening communicable disease</i></p> <p>(a) It is unlawful for an individual, who knows oneself to be infected with a life threatening communicable disease, to:</p> <p>(...)</p> <p>(2) sell or donate one's own blood, blood products, semen, tissue, organs or other body fluids with the intent to expose the recipient to a life threatening communicable disease; or</p> <p>(...)</p> <p>(b) Violation of this section is a severity level 7, person felony.</p>
<b>MICHIGAN</b>	
<b>MICH. COMP. LAWS ANN. § 333.11101</b>	<p><i>Donation or sale of blood or blood products; knowledge of positive HIV test</i></p> <p>An individual shall not donate or sell his or her blood or blood products to a blood bank or storage facility or to an agency or organization that collects blood or blood products for a blood bank or storage facility knowing that he or she has tested positive for the presence of HIV or an antibody to HIV.</p>
<b>MINNESOTA</b>	
<b>MINN. STAT. § 609.2241</b>	<p><i>Knowing transfer of communicable disease</i></p> <p>2. It is a crime (...) for a person who knowingly harbors an infectious agent to transfer, if the crime involved:</p> <p>(...)</p> <p>(2) transfer of blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms.</p>
<b>MISSOURI</b>	
<b>Mo. Rev. Stat. § 191.677</b>	<p><i>Prohibited acts</i></p> <p>2. It shall be unlawful for any individual knowingly infected with a serious infectious or communicable disease to:</p> <p>(1) Be or attempt to be a blood, blood products, organ, sperm, or tissue donor except as deemed necessary for medical research or as deemed medically appropriate by a licensed physician;</p> <p>(...)</p> <p>3. (1) Violation of the provisions of subdivision (1) or (2) of subsection 2 of this section is a class D felony unless the victim contracts the serious infectious or communicable disease from the contact, in which case it is a class C felony.</p>



<https://www.hivjustice.net/cases/us-31-year-old-man-living-with-hiv-arrested-in-missouri-charged-with-felony-for-donating-blood/>

## USA (continued)

LAW	PROVISION
<b>NORTH CAROLINA</b>	
<b>10A N.C. ADMIN. CODE 41A.0202</b>	<p>1) Persons diagnosed with HIV infection (hereafter “person living with HIV”) shall: (...)</p> <p>c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk, except when:</p> <p>i) The person living with HIV is donating organs as part of a clinical research study that has been approved by an institutional review board under the criteria, standards, and regulations described in 42 USC 274f-5(a) and (b) (...)</p>
<b>OHIO</b>	
<b>OHIO REV. CODE ANN. § 2927.13</b>	<p><i>Sale or donation of blood by AIDS carrier</i></p> <p>(A) No person, with knowledge that the person is a carrier of a virus that causes acquired immune deficiency syndrome, shall sell or donate the person’s blood, plasma, or a product of the person’s blood, if the person knows or should know the blood, plasma, or product of the person’s blood is being accepted for the purpose of transfusion to another individual.</p> <p>(B) Whoever violates this section is guilty of selling or donating contaminated blood, a felony of the fourth degree.</p>
<b>SOUTH CAROLINA</b>	
<b>S.C. CODE ANN. § 44-29-145</b>	<p><i>Penalty for exposing others to Human Immunodeficiency Virus</i></p> <p>It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to: (...)</p> <p>(3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids; (...)</p> <p>A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.</p>
<b>SOUTH DAKOTA</b>	
<b>S.D. CODIFIED LAWS § 22-18-31</b>	<p><i>Criminal exposure to HIV – Penalty</i></p> <p>Any person who, knowing himself or herself to be infected with HIV, intentionally exposes another person to infection by: (...)</p> <p>(2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission; (...)</p> <p>Criminal exposure to HIV is a Class 3 felony.</p>

## USA (continued)

## LAW

## PROVISION

## TENNESSEE

## TENN. CODE ANN. § 39-13-109

*Criminal exposure of another to HIV (human immunodeficiency virus), hepatitis B virus (HBV), or to hepatitis C virus (HCV)*

(a) A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV), to hepatitis B virus (HBV), or to hepatitis C virus (HCV) when, knowing that the person is infected with HIV, with HBV, or with HCV, the person knowingly:

(...)

(2) Transfers, donates, or provides blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV, HBV or HCV transmission;

(...)

(e)

(1) Criminal exposure of another to HIV is a Class C felony.

## WASHINGTON

WASH. ADMIN. CODE  
§246-100-203

*Special diseases—Sexually transmitted diseases—Health officer orders*

(1) A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.024, issue orders for medical examination, testing, and/or counseling, as well as orders to cease and desist

specific activities, when he or she knows or has reason to believe that a person has a sexually transmitted disease and is engaging in conduct endangering the public health.

(...)

(b) “Conduct endangering the public health” for the purposes of RCW 70.24.024 and this section, means:

(...)

(C) Donating or selling blood, blood products, body tissues, or semen.

## US VIRGIN ISLANDS

## V.I. CODE ANN. TIT. 14, § 888

*Exposure by another of HIV*

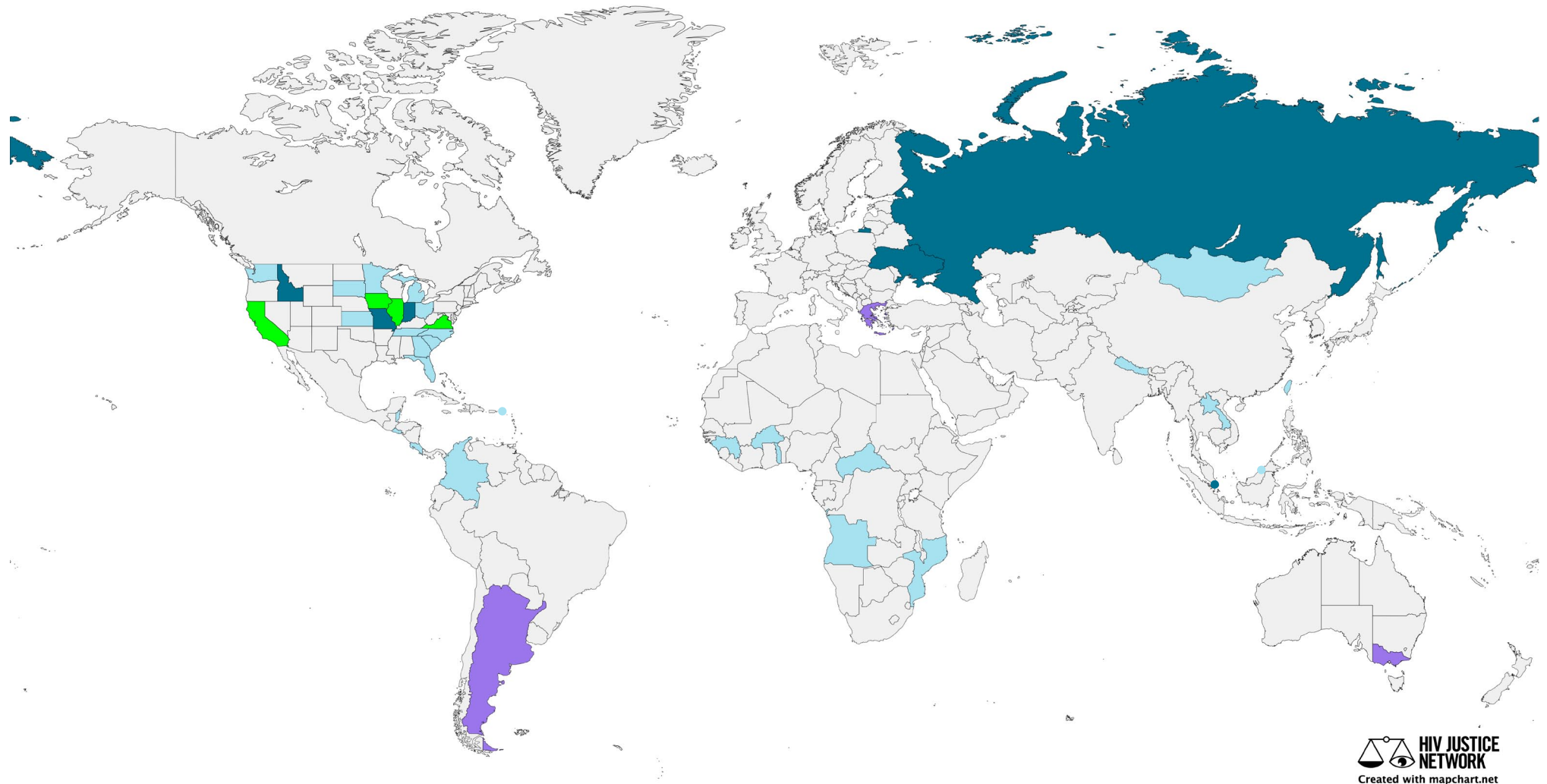
(...)

(b) Any person who exposes another to the human immunodeficiency virus by donating, selling, or attempting to donate or sell blood, semen, tissues, organs, or other bodily fluids for the use of another, except as determined necessary for medical research or testing, and when the infected person knows at the time that he is infected with HIV, has not disclosed his HIV positive status, and acts with the specific intent to infect another person with HIV, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(c) Evidence that the person had knowledge of his HIV positive status, without additional evidence, shall not be sufficient to prove specific intent.

(d) Transmission of the Human Immunodeficiency Virus does not have to occur for a person to be convicted of a violation of this section.

## WHERE BLOOD DONATIONS BY PEOPLE LIVING WITH HIV ARE CRIMINALISED



**HIV-specific criminal laws, WITH reported cases**

- Russia
- Singapore
- Ukraine
- United States: Idaho, Indiana, Missouri

**HIV-specific criminal laws, with NO reported cases**

- Angola
- Belize
- Brunei Darussalam
- Burkina Faso
- Central African Republic
- Colombia

- Costa Rica
- El Salvador
- Guinea
- Laos
- Mongolia
- Mozambique
- Nepal
- Taiwan
- Togo

- United States: Federal law, Florida, Georgia, Kansas, Michigan, Minnesota, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Virgin Islands, Washington

**Reported cases, using general criminal laws**

- Argentina
- Australia: Victoria
- Greece

**Repealed or reformed HIV-specific criminal laws**

- United States: California, Illinois, Iowa, Virginia