

Criminalizing Marginalization

The Legal Ramifications of Discriminatory HIV Laws

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The Issue and Context

People with HIV are currently being charged in Ontario with sexual assault under the Criminal Code when not disclosing their HIV positive status to their sexual partner. Since 1989, 179 people have been charged.

HIV is the only medical condition that is criminalized

Person must legally disclose status if there is a realistic possibility of transmission. According to Ontario policy, it is not realistic when:

- A condom is used **AND** they have a low HIV viral load
- Person is on antiretroviral medication and has a suppressed viral load for six months

What Science Says:

- A condom is sufficient in preventing the sexual transmission of HIV
- A low viral load is sufficient in preventing the spread of HIV

Ramifications:

People living with HIV are continuing to be criminally charged with sexual assault, without the intent or actual transmission of the virus. The majority of prosecutions are happening to marginalized populations, particularly black men, Indigenous women and gay men. Since people can only be charged if they know they are HIV positive, the criminalization of it deters people from getting tested in the first place. By people not getting tested, the stigma of HIV/AIDS is continuing to worsen.

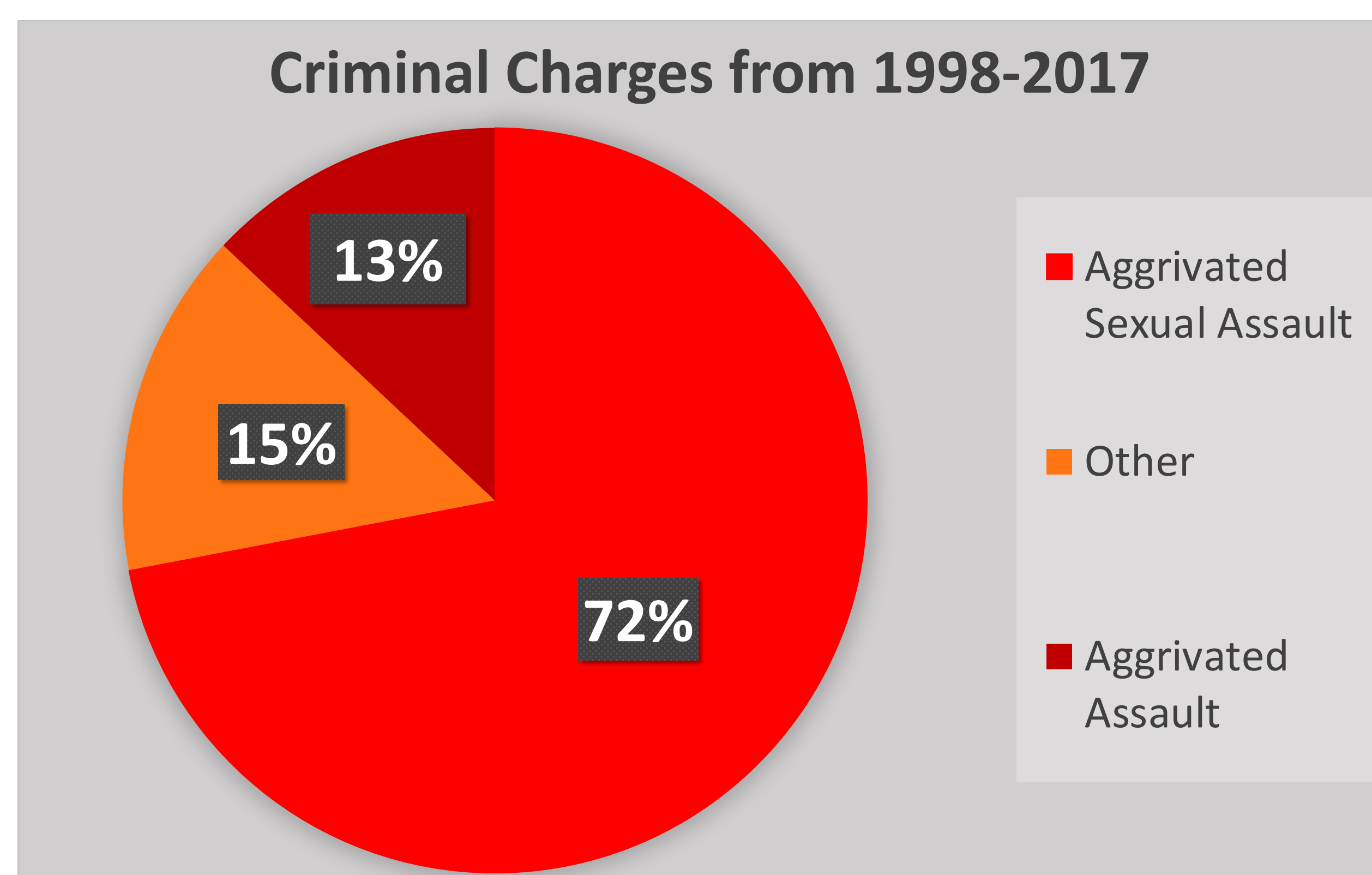


Policy Options

- That the law recognizes the science of what is realistically possible in transmitting HIV
- To create a new criminal law that applies to all infectious health conditions
- To cease all prosecutions regarding to sex with a condom
- To cease all prosecutions regarding a low viral load

Stakeholders:

- Provincial and Federal Governments, Local agencies and HIV/AIDS community members.



What Has Been Done?

Federal prosecutions have acknowledged the science behind HIV transmission and what is realistic. In the territories of Canada only, one will not be charged when not disclosing their HIV positive status when only a condom is used or only having a low viral load. However, majority of the cases of HIV non-disclosure occur within the provinces.

Policy Recommendation

Apply criminal law only to the **intentional** transmission of HIV, and audit the application of general criminal law to ensure it is not used inappropriately in the context of HIV

Create a **new law** under the criminal code that applies to all infectious diseases

Benefits:

- Reduces **stigma** surrounding HIV/AIDS
- Encourages individuals to get tested without the fear of prosecution
- Shows **support** from government within the HIV/AIDS community
- **Validates** the voices from the HIV/AIDS community

Local Context:

Regional HIV/AIDS Connection works hard at reducing the stigma. This organization supports the **U=U** idea of undetectable is untransmittable. The U=U correlates with my policy recommendation for decriminalizing HIV non-disclosure. London has worked tremendously hard at normalizing the act of getting tested for HIV and these **unjust** criminal laws are only prohibiting organizations like this one with moving forward.

