



Tool 8.13 HIV guidelines for law enforcers, prosecutors and judges

Overview

This tool provides HIV/AIDS guidance to law enforcers, prosecutors and judges with respect to people vulnerable to trafficking in persons. For more information on related issues, see Tool 5.15 and Tools 8.12 to 8.15.

People vulnerable to human trafficking are exposed to significant risks to their personal safety, their physical and psychological health, their economic security and their legal position. In particular, the legal status of trafficked persons in a destination county, usually as unlawful or undocumented arrivals, may have adverse consequences for their access to health and social services, financial support and legal assistance. The legal system as it is applied to persons vulnerable to human trafficking can play an important role in minimizing these risks and preventing further harm, but only where the risks are recognized and properly managed. For these reasons, it is imperative that law enforcement officials, prosecutors and judicial officers are aware of and are able to respond appropriately to these risks, while at the same time carrying out their responsibilities within the justice system.



As soon as the safety of the victim has been secured, his or her psychological and physical health—including HIV/AIDS prevention and care—should take precedence over investigative objectives.



Interviews of victims of trafficking, including those conducted by law enforcers, judges and prosecutors should be guided by the WHO Ethical and Safety Recommendations for Interviewing Trafficked Women, available at:

www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf.

See also Tool 6.12 regarding ethical and safe interviewing conduct.

Law enforcement

As soon as the safety of persons vulnerable to human trafficking has been secured, attention to their psychosocial and physical health should take precedence. This includes assessing needs related to HIV status. They should be offered—with counselling as required in individual cases—the following:

- Rapid voluntary HIV testing
- Other sexually transmitted infection testing
- Post-exposure prophylaxis where indicated

Women and female children should additionally be offered pregnancy testing and/or prenatal care, where appropriate in individual cases. It should also be ascertained whether the person is currently lactating and, if so, breastfeeding.

Where infection is indicated:

- Appropriate sexually transmitted infection and/or HIV management plans should be developed cooperatively with the person or persons concerned. For children, this may be through their parent or guardian if they are accompanied, or through appropriately authorized child welfare officials otherwise.

Management plans should include access to anti-retroviral medication, where indicated, and for pregnant or breastfeeding women, prevention of mother-to-child transmission measures.

HIV prevention education should be offered.

Where reflection periods are available, appropriate prevention and protection means should be provided for the immediate duration and beyond.

Repeat testing should also be offered at regular intervals to detect possible infection during reflection periods (e.g. through further self-harm, injecting drug use, unprotected sexual activity).

- Where it is determined that a mother is HIV-positive, every effort should be made to determine the HIV status of infants so their health needs can also be appropriately met. Where appropriate, health providers may encourage such testing in the interest of patients, but this should not amount to compulsory or mandatory HIV testing.

From a law enforcement perspective, such measures are not only in the interests of the individuals concerned, but may also assist in achieving the aim of being able to present competent and cooperative witnesses in subsequent court proceedings.

Prosecutors

Prosecutors have particular duties to victims of crime who are called as witnesses. Their general responsibilities in this regard are discussed in Tool 5.13. The well-being and safety of such persons must be assured within the limits allowed by the legal system. Prosecutors should seek appropriate court orders to ensure the protection of such persons from further harm arising from their giving evidence, including risks of retribution against either themselves or third persons.

In relation to the HIV status of persons being questioned, protections must be in place to ensure that invasive questioning in relation to health and other intimate matters is avoided if irrelevant to the case. In some jurisdictions, there are barriers to asking alleged sexual assault victims questions about their past sexual experience, where it is not directly relevant to the facts of the case.

Where matters of an intimate nature—including aspects of sexual and reproductive health—are not material to the prosecution’s case, they should not be raised in open court. In general, the HIV, sexually transmitted infection and pregnancy status of a person vulnerable to trafficking in persons should only be revealed during proceedings with the person’s consent. Where consent is obtained, or where lack of consent is not determinative because of overwhelming evidentiary requirements, procedures should be adopted that minimize the distress or embarrassment of the person concerned. For example, pregnancy, HIV, sexually transmitted infection and other health status can be disclosed to the court through documentary evidence rather than through testimony and cross-examination, so that the judge and the opposing party’s lawyers have sufficient information to perform their duties but this information is not disclosed to other persons who may be present. Procedures should be adopted to prevent subsequent unauthorized access to sensitive court records, or their unauthorized disclosure.

Judges

Questioning

- Judges are usually empowered to intervene when questioning of witnesses is unduly aggressive and to prevent irrelevant questioning. For instance, they may need to intervene to prevent questioning about HIV or other health status where the issue is not material to the prosecutor’s case.
- Where judges have discretion to issue orders concerning the manner of questioning, this should be done with due sensitivity to the interests of witnesses, to the extent consistent with ensuring a fair trial for the accused.
- Judges should familiarize themselves with means by which evidence such as that pertaining to HIV status can be disclosed to the court through documentary evidence rather than testimony.

Support persons

- Permission should be granted for support persons to be present in court, unless there are good reasons for not doing so; this may extend to health professionals, including HIV counsellors.

Sentencing

- In sentencing convicted defendants for people trafficking or related offences, judges should take into account any exposure of the victims to cruel, inhuman or degrading treatment, or to serious harm, including HIV infection.
- In appropriate circumstances, such factors may constitute aggravating factors for the purposes of length or type of sentence, or conditions of release. For instance, the trafficking of a person for sexual exploitation which results in HIV infection may qualify for an increased sentence, where provisions allow. In all cases where sentencing discretion exists, judges should be able and required to take into account the harm caused to the victim, including adverse health outcomes such as HIV infection.