Sex Is Not a Crime

Science prevails in a recent Canadian court case.

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For years, people with HIV who know but don't disclose their status before engaging in sex—even protected sex—have risked arrest in many places. Some people have been prosecuted and convicted even when no HIV transmission occurred. In some cases, including nonsexual spitting cases, people have been convicted even when there was zero risk of transmission.

Enter common sense on the bench: In May a Canadian judge ruled that an HIV-positive man could not be convicted of sexual assault for being the receptive partner in anal sex with an HIV-negative man. The negative insertive partner ran no real risk of contracting HIV, the judge held, citing a risk of 0.04 percent per act. According to the Canadian HIV/AIDS Legal Network, the judge said the defendant should have disclosed his HIV before sex, "but not every unethical or reprehensible act engages the heavy hand of the law." Here's to replacing senseless punishment with sensible health education—encouraging people to get tested, extinguishing myths and stigma and helping people to disclose their status.

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