Editor’s Letter

Crime of Punishment

October 1, 2009 By Regan Hofmann

Criminalization backfires. while it mIght seem to make sense to lock up “dangerous” HIV-positive people who do not disclose their status before potentially exposing another person to the virus, the reality is that it just doesn’t work as an effective strategy to prevent the spread of HIV/AIDS. In fact, I’ll go so far as to say that criminalizing people with HIV is increasing the likelihood that HIV/AIDS will spread.

When you fear you’ll end up in jail—all it takes to land you in front of a judge is one person who claims you never disclosed, even if you actually did—you have less incentive to tell anyone you are living with the virus.

Criminalizing potential HIV transmission is also a disincentive for people to get tested. After all, how can you be prosecuted for nondisclosure if there’s no medical or governmental record of your HIV status? So, one way to stay out of prison is to remain ignorant about your status. If you are positive, however, this decision could deprive you of lifesaving care and treatment. Stay free and die from disease? Seems a bad trade-off if you ask me. But spending 25 years in a state penitentiary for having consensual sex? Maybe death by AIDS is better than that.

Don’t get me wrong. There are some people—homicidal maniacs for example—who intend to harm others, and these people should be incarcerated. But whether someone is brandishing a baseball bat, a gun, a handful of cotton balls or HIV, the key factors to consider in their prosecution and sentencing should be the intent to harm and whether or not harm is done, *not* their HIV status.

If we have laws in place to punish intent to harm, the punishment should match the crime. In some states, potentially exposing someone to other sexually transmitted infections is a misdemeanor, whereas potentially exposing someone to HIV is a felony. This speaks directly to the stigma that continues to surround HIV and people living with it. Stigma is deadly because it hinders our ability to educate people about, prevent, test for and treat HIV. When people with HIV are charged with disproportionate crimes for acts they might not have even committed, it deepens the stigma around those living with the virus and makes stopping the disease more difficult.

The irony is, if there were no laws criminalizing HIV transmission or potential exposure, it would likely increase the number of positive people willing to disclose their status. They would also be

more likely to seek the care that, in turn, could reduce their viral load to an undetectable level—and that, if maintained under certain circumstances, could render them less sexually infectious. So, even if they turned out to be homicidal maniacs, the chance that they could actually inflict the harm they intend would be next to zero.

Until our community can influence lawmakers to abolish these deadly laws and persuade judges to deliver sentences commensurate with actual crimes, we need to protect ourselves—something we show you how to do in our feature story. As a community, we need to come together on this issue. Our laws currently punish people for the potential transmission of HIV through consensual sex when there is no intent to harm—and no harm done. And that's a crime.

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