Arrest that woman! She gave me crabs!

January 24, 2008 By David Weiss

Here we go again. The question of whether the government should be telling us how to behave in the bedroom seems to ignite passionate debate whenever it is raised. It all too often draws out hysterical cries of protest and finger-pointing. We can all be sure of one thing: the question will

never go away.

If the government is going to be involved at all, the laws must be CLEAR. They must not marginalize or stigmatize people, and they must be fair. If there has to be a law, it should read as follows:

1. It shall be unlawful for anyone with a sexually transmitted condition, as defined herein, to knowingly and intentionally fail to disclose that he or she has that condition to a partner immediately prior to engaging in any sexual activity with that partner that carries an unreasonable and scientifically established risk of transmitting the condition.

2. Notwithstanding the above, if anyone with a sexually communicated condition knowingly and intentionally fails to disclose that he or she has that condition to a partner immediately prior to engaging in any sexual activity, without actually transmitting such condition, such conduct shall not be punishable by law.

3. Section 1 shall not apply to anyone engaging in sexual activity for payment or in any commercial establishment or other public venue where sexual activity between consenting adults occurs.

4. The following conditions are sexually communicated conditions:

* BV - Bacterial Vaginosis

* Chlamydia and LGV

* Gonorrhea

* Hepatitis (viral)

* Herpes, Genital

* HPV - Human Papillomavirus Infection

* PID - Pelvic Inflammatory Disease

* Syphilis

* Trichomoniasis

* Human Immunodeficiency Virus

All of these conditions are sexually communicated, and if you know that you have one, it?s unfair to subject someone else to it without telling them about it. Period.

This doesn?t relieve our partners from their responsibilities; when human beings engage in unsafe sex we are always taking some risks, but if we are going to criminalize human sexual behavior at all, the laws should be intelligently written and based on established scientific facts.

The above language would limit the stigma of having HIV or whatever, and protect uninfected individuals without imposing an unfair burden on others. What is a “reasonable risk” of transmission? Hey, if you have HIV, or chlamydia or whatever, it’s your obligation to find out how you might give it to someone else. If you screw up (yeah yeah, I know its a bad pun) but no one gets hurt, it shouldn’t be the government’s business and you shouldn’t be punished by any government agency or authority. If you have “safe sex” and don’t disclose, it should not be criminal because you are not engaging in conduct that is unreasonably dangerous. If you have sex for money, you assume the risk because the underlying assumption throughout human history has always been that people engaging in paid sex have no obligation to their partner other than a measure of respect. If you have unsafe sex in a sex bar its reasonable to expect that you may catch more than a cold.

If you have any constructive suggestions as to how the above model statute might be amended, tell me about them.

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