Just Us?

August 4, 2008 By David Weiss

The use of criminal law to address HIV is wrong, except in rare cases where a person acts with conscious intent to transmit HIV and does so.

If any government - anywhere in the world - is going to be involved at all, the laws must be CLEAR. They must not marginalize or stigmatize people, and they must be fair.

Simply having HIV can NEVER be a basis for discrimination or exclusion. If there is no reliable evidence that criminalization laws have actually prevented more infections than they may have caused, then the laws should not exist at all. Obviously, if I know that I have a disease that I can infect you with, and I spit in your eye in the hope that you?ll catch the disease, it should be illegal.

Human sexuality is complicated. If - and again, that?s a big IF - disclosure laws prevent more harm than they cause, it should only be unlawful for someone with HIV (or any dangerous sexually transmitted pathogen,) 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 that carries a reasonable risk of transmission that the partner may become infected. Likewise, if someone does cross the line of acceptable conduct, he or she shouldn?t be punished at all unless they?ve actually transmitted their pathogen.

Last January I posted a suggestion for a ?model? penal law:

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 that carries a reasonable risk of transmission that the partner may become infected.

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 disease, such conduct shall not 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.

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