The HIV Criminalization Debate

October 24, 2008 By Oriol R. Gutierrez Jr.

In many jurisdictions in the United States and worldwide, I could be fined or even incarcerated if I don't disclose my HIV status in those jurisdictions to a sexual partner prior to sexual activity.

I understand that HIV criminalization is intended to protect potential victims. HIV criminalization reinforces stigma, however, which discourages disclosure. HIV education is the best method to achieve the goal of protecting potential victims.

All that said, I admit to being angry after reading a recent article on Q-Notes Online ("Carolinas' multimedia LGBT news source"). They report that a 23-year-old gay disc jockey from Raleigh, North Carolina, broke his probation orders from a previous HIV violation.

He pleaded guilty in August to charges that he didn't disclose his HIV-positive status to three people before having unprotected sex with them. Earlier this month, health officials informed his probation officer that he had contracted a sexually transmitted infection that could have been avoided by using a condom (the article doesn't reveal the infection or how health officials knew it could have been avoided by using a condom).

That was enough evidence to charge him with breaking his probation. If he breaks his probation again, he will face weeks of jail time and possible quarantine in a state prison hospital. For now, he's under house arrest for six months.

The article makes a point of saying that the North Carolina law that he violated applies to many communicable diseases, including hepatitis and tuberculosis. This point is not lost on me?at least the law is inclusive, not singling out HIV as in many other laws.

I believe that cases like this are rare, but this is exactly why HIV criminalization laws exist. I understand that cases like this scare people. I agree that it's beyond belief that this guy after pleading guilty would do it again. His behavior angers me, but I'm not convinced that treating him like a criminal serves a greater good.

I became HIV positive as a result of being lied to by someone I loved. Michael died in 1994 from AIDS-related complications. I've since forgiven him, but it has taken me many years. Was Michael a criminal and was I a victim? Or were we both equal participants in a personal tragedy that no law could ever have protected us from?

I believe that my seroconversion was as much my doing as it was his. Perhaps that makes me a criminal.

Click here to read “Prison Break” by James Wortman in the November 2008 issue of POZ magazine. The article addresses whether HIV criminalization fuels stigma.

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