Truth or Consequences

December 16, 2007 By David Weiss

Sean Sykes and Charles Mahan knew they were HIV-positive. They each attended counseling sessions in which they acknowledged their HIV status, demonstrated their understanding that HIV may be transmitted through unprotected sex, and even affirmed their awareness of the Missouri criminal disclosure law. Despite this, Sykes repeatedly had sex with a sixteen-year-old girl and a nineteen-year-old girl without wearing a condom or informing them of his HIV status. Mahan repeatedly had anal sex with another man whom he told that he was not HIV-positive. Sykes was charged with two counts and Mahan was charged with one count under the statute. Juries in separate trials convicted both men and sentenced them to five years on each conviction.*

Since I began reading the posts in the forums here, I've become increasingly disquieted and saddened by the stories I've read about men and women who were infected with HIV by partners who knew they were positive but failed or refused to disclose. The last 20 years have seen the development of ever more effective treatments that have made HIV a so-called "manageable" chronic health problem for many of us, but many others are still dying every day. In my view, negligently or intentionally infecting another person is akin to driving while intoxicated or pulling the trigger of a lethal weapon. Accordingly, it is no surprise that in many states, the laws that have been passed are extremely punitive and impose an irrational and coercive approach to AIDS and people living with HIV.

Such a coercive approach is wrong, yet there are certainly some circumstances for which failure to disclose is justly punished. The answer to balancing the rights of HIV + individuals with protecting the health and safety of our uninfected partners is reasonableness. A "model" penal law might read as follows:

1. It shall be unlawful for anyone with a sexually transmitted disease or condition to knowingly and intentionally fail to disclose 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 disease knowingly and intentionally fails to disclose that disease or 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 venue where sexual activity between consenting adults occurs.

The above language would protect uninfected individuals without imposing an unfair burden. 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. Business is business and when we do business, its caveat emptor, babe. The same holds true for the buyer as well as the seller. Neither has ever had the right to expect the truth. If you frequent an establishment where sexual activity is part of the entertainment - paid or not, you are on your own.

A lot of folks have argued that anyone who participates in unsafe sex has assumed the risk of being infected and that therefore the individual who infected them should not be held responsible. I don't buy it. Unless you are in an "anything goes" kind of environment where it is implied that you are at risk if you leave the latex at home, you should let your partner know beforehand. Period.

If you do have safe sex without disclosing, it shouldn't be criminal, but in my view it is still unfair to your partner to do the dirty deed without their knowledge. I know that some of you may disagree with my views about disclosure and the laws, but if our community hopes to be treated with dignity and without prejudice, we owe it to ourselves and others to do the right thing.

The question of when to disclose your HIV status to someone with whom you hope to become intimate with is a complicated and vexing issue for anyone with HIV. No one wants to be rejected simply because they are HIV positive, but it is our moral obligation to behave responsibly - not only for our prospective partners, but for our HIV + community, even if you are a minister, a congressman or an immortal being, speaking of which, I have to go now - Cupcake is calling me. The Giants game starts in about an hour, and she and Ginger and I are going to watch them beat the Redskins and clinch a playoff spot.

*www.courts.mo.gov/Courts/PubOpinions.nsf/ccd96539c3fb13ce8625661f004bc7da/f003cb774bfa55ea8625662400534e26?OpenDocument

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