

## Case 1 ♦ HIV Criminalization

In January of 2013, Representative Lela Alston of Phoenix, Arizona, introduced a bill in the Arizona House of Representatives that would make it a felony (Class 6, punishable by up to a year in prison) to knowingly expose someone to HIV or other sexually transmitted diseases without their consent. Alston introduced the bill after hearing the story of one of her constituents, who had a partner that did not disclose a sexually transmitted infection. Her constituent thus didn't know that she had to protect herself from the infection.<sup>1</sup>

A diagnosis of HIV/AIDS is no longer a death sentence in many parts of the Western world, but it is a serious condition that 1.2 million US citizens struggle with on a day-to-day basis.<sup>2</sup> Because of the condition's severity and the cost associated with antiretroviral drugs, many countries and states make reckless or knowing transmission of HIV to someone else a crime. In addition to the harms that can come to someone who is unknowingly exposed to HIV, there are issues of consent. Some courts have held that sex cannot be fully consensual if a known sexually transmitted disease is not disclosed, and have awarded damages in such cases.<sup>2</sup>

But, lately, HIV criminalization has come under attack by public health advocates who say that these laws are counterproductive in the fight against HIV/AIDS. Major organizations such as the World Health Organization and the Presidential Advisory Council on AIDS have come out against such laws, saying that they reinforce negative stereotypes of HIV/AIDS and "fuel the epidemic rather than fighting it". Among the reasons the Presidential Advisory Council offers for its claims are that the laws discourage people from being tested — since in many states testing positive for HIV/AIDS makes one subject to the criminal statutes for exposing others. Another reason is that many criminalization statutes were developed at a time when fear of AIDS was running high and the disease was relatively misunderstood. Public health needs would be best served by revisiting and perhaps striking these statutes, which, according to the Council, cast people's bodily fluids as "deadly weapons" and have been used to imprison people for spitting or biting (both of which have a negligible chance of passing on the disease).<sup>3</sup>

Case from the 2013 Regional Ethics Bowl. Copyright, Association for Practical and Professional Ethics.

<http://appeonline.com/ethics-bowl/regional-ethics-bowl/>

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<sup>1</sup> Sean Peick, "Arizona Bill Seeks Felony Charge for Intentionally Exposing Others to HIV, STDs," Cronkite News. July 22, 2013, <http://cronkitenewsonline.com/2013/01/bill-seeks-felony-charge-for-exposing-others-to-hiv-stds/>

<sup>2</sup> "HIV Surveillance—United States, 1981–2008," Centers for Disease Control and Prevention, July 25, 2013, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6021a2.htm>

<sup>3</sup> "Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments," Presidential Advisory Council on HIV/AIDS, February 20, 2013, <http://aids.gov/federal-resources/pacha/meetings/2013/feb-2013-criminalization-resolution.pdf>