

Virtual Mentor

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CASE AND COMMENTARY

HIV Transmission, Is it a Crime?

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Case

Sarah Smith is a 19-year-old student at a state university in Illinois. As part of a blood drive at her school, she donated blood for the first time in February. In late March, Sarah learned from the Red Cross that her blood had tested positive for HIV. Shocked by the news, Sarah did not tell anyone she was HIV positive or visit her physician.

Since learning of her HIV-positive status, Sarah began several relationships, engaging in unprotected sex with male students at the university. At no time did Sarah inform any of her partners of her HIV status. One of Sarah's partners later tested positive for HIV at the university health clinic. The man then listed Sarah as one of his sexual partners to the Health Department counselors.

Following up on the case, the counselors interviewed Sarah who admitted to engaging in unprotected sex with several men without informing them of her HIV status. The Health Department then notified the police and Sarah was arrested.

Commentary

Under Illinois law, Sarah can be charged with a Class 2 felony: criminal transmission of HIV.¹ (A Class 2 felony carries a possible sentence of 3 to 7 years.) A person can be charged with criminal transmission of HIV when "he or she, knowing that he or she is infected with HIV: (1) engages in intimate contact with another; (2) transfers, donates, or provides his or her blood tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another." The statute defines "intimate contact with another" as "exposure of the body of one person to bodily fluid of another person in a manner that could result in the transmission of HIV."

The statute does not require that actual HIV infection take place in order for someone to have committed criminal transmission of HIV. In addition, under the law a person is not guilty of criminal transmission of HIV if the person exposed knew both that the infected person was HIV positive, and that he or she could be infected as a result, and consented to the action.

In this case, Sarah meets the criteria for the criminal transmission of HIV and can therefore be charged with commission of the crime. Aware of her HIV-positive

status, Sarah engaged in intimate contact with other persons without informing them of her HIV status. It cannot therefore be argued that they knowingly consented to the action.

While HIV transmission statutes are common in many states, the Illinois law has been the subject of a great deal of criticism and controversy. One major criticism is that the statute requires that the person know he or she is infected with HIV but does not define what constitutes such knowledge. It remains unclear if "knowledge" requires an actual positive test result or if symptoms of the disease would be sufficient.

The statute has also been criticized because of the unclear definition of the term "body fluid." Besides blood tissue, semen, or organs, what other, if any, body fluids qualify? Saliva, urine, tears? Does the body fluid have to have been proven to actually transmit the disease? This question is made even more ambiguous by the statute's use of the word "could" in its definition of "intimate contact"; intimate contact is "exposure of one body to the bodily fluid of another person in a manner that *could* result in the transmission of HIV." Again, it is not clear whether the bodily fluid must be a scientifically proven route of HIV transmission in order for the infected person to be guilty of criminal "intimate contact."

These criticisms have formed the basis for challenges of the statute on the grounds that it is unconstitutionally vague. However both the Appellate Court of Illinois and the Supreme Court of Illinois have concluded that the statute is not unconstitutionally vague and is therefore valid.²

Questions for Discussion

1. Should health officials have informed Sarah of her legal obligation to inform her partners of her HIV-positive status?
2. Does a law such as the one in Illinois discourage people from being tested or seeking treatment for HIV symptoms?

References

1. § 720 ILCS 5/12-16.2 (2001).
2. *People v Russell*, 630 N.E.2d 794 (Ill. 1994) and *People v Dempsey*, 610 N.E.2d 208 (Ill. App. Ct. 1993).

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