

Criminalization and Civil Liability for HIV and HSV-2 Transmission

Group Assignment, 15 Points
Due Friday, May 1, 2015 in Section
TRIAL DATE SET FOR MAY 1, 2015

Calling it a crime "akin to murder," Kalamazoo County Circuit Court Judge Philip D. Schaefer ordered a Kalamazoo man to spend nine months in jail for failing to tell his sexual partners he was HIV-positive. "Quite frankly there isn't a sentence long enough that I could give you that would be justice," Schaefer told [the defendant]. "You have signed a death warrant for another human being. God forbid that you ever do it again" -- Ricks 2004.

Hypothetical

Congratulations! Now that you've each become experts on HIV/AIDS, including its biological, historical, and social aspects, and have successfully prepared a grant proposal for the University of Arizona to prevent the transmission of STIs, you have been hired as an attorney in a very complex and interesting case involving the transmission of HIV and other STIs.

For the sake of this assignment, we are assuming that Arizona's HB 2218 that criminalizes HIV and STI transmission was signed into law even though it did not pass the legislature in 2013. We will also assume that the proposed amendments to HB 2218 were approved and are part of the law.

Groups from each section will create their own factual patterns for the case. It must involve the possible transmission of HIV and HSV-2. We will combine the criminal charges against the defendant and the civil case brought by the plaintiff against the defendant into one case. The jury will need to decide whether the defendant 1) is guilty or not, and 2) whether the defendant is liable for the possible transmission of HIV and HSV-2.

Sources to Consider

Everyone Must Watch

1. "HIV is Not a Crime" – to be shown in class
2. Videoconference with Robert Suttle (hopefully in class on Monday, April 20)
3. Parts of the Debaun oral arguments <http://wfsu.org/gavel2gavel/viewcase.php?eid=2217> (will show in class)

Everyone Must Read

1. Brydum, Sunnive. "When Sex Is a Crime" Feb. 17, 2015
2. SERO Project, *HIV Criminalization: What You Need to Know*
3. UNAIDS Policy Brief from 2008 - <http://www.aidslaw.ca/EN/lawyers-kit/documents/1.UNAIDSUNDPposition.pdf>
4. HB 2218 including the bill summary (http://www.azleg.gov/DocumentsForBill.asp?Session_ID=110&Bill_Number=HB2218) – **note the Proposed Amendment from the Judiciary Committee is especially important for this assignment, especially in relation to the two Florida cases below.**
5. *L.A.P. v. Florida*, June 10, 2011
6. *Florida v. Debaun*, October 30, 2013
7. *Lopez v. Clarke*, April 1, 2015

Each Group Should Read at least 1 of the Following (Found through Academic Search Complete or on the Internet)

1. Mykhalovskiy, Eric. "The problem of "significant risk": Exploring the public health impact of criminalizing HIV non-disclosure" *Social Science & Medicine*, 2011, 73(5): 668-675.
2. O'Byrne, Patrick. "Sexual practices and STI/HIV testing among gay, bisexual, and men who have sex with men in Ottawa, Canada: examining nondisclosure prosecutions and HIV prevention" *Critical Public Health* 2013, 23(2): 225-236.
3. HIV non-disclosure and the criminal law: A summary of two recent decisions of the Supreme Court of Canada (Internet)
4. Lazzarini, Zita. "Criminalization of HIV Transmission and Exposure: Research and Policy Agenda" *American Journal of Public Health* 2013, 103(8): 1350-1353.
5. Grant, Isabel. "The Over-Criminalization of Persons with HIV" *University of Toronto Law Journal*, 2013, 63(3): 475-84.
6. Hughes, David. "Condom Use, Viral Load and the Type of Sexual Activity as Defences to the Sexual Transmission of HIV" *Journal of Criminal Law* 2013, 77(2): 136-50.
7. Persson, Asha. "I don't blame that guy that gave it to me": Contested discourses of victimisation and culpability in the narratives of heterosexual women infected with HIV" *AIDS Care*, 2014, 26(2): 233-39.
8. Hoppe, Trevor. "From sickness to badness: The criminalization of HIV in Michigan" *Social Science & Medicine*, 2014, 101:139-47.

Groups

NOTE: at the end of the assignments students will fill out group project evaluation forms that evaluate the contributions of each member of the group. These will be taken into account in assigning the assignment grades.

Groups 1 and 2 (for each section): Plaintiff and Defendant. These two groups work together to establish the facts of the case and members serve as the defendant and the plaintiff. Remember the case for each section should include the possible transmission of both HIV and HSV-2. The facts should be presented in 2-3 paragraphs and should mention how they are similar or different than the L.A.P., Debaun, and Lopez cases. The plaintiff and defendant will need to testify during the trial.

Groups 3 and 4 = Expert consultants (one group for HIV, one for HSV). One group should prepare a brief on the important facts on the disease required for this case. Of particular interest will be stuff on the transmission and testing for the disease. They will also be asked to testify at trial and be cross-examined.

Groups 5-6 = Attorneys for either the plaintiff or defendant. Each group should prepare a 2-3 page legal brief. It should include

- 1) A short introduction stating your position on both the criminal charges and the civil claims.
- 2) a general background on the criminalization of transmission of HIV as well as civil liability claims of STI transmission.
- 3) summary of several cases as they relate to your section case. You might include such cases as Robert Suttle, L.A.P, Gary DeBaun, and *Lopez v. Clarke* (April 1, 2015).
- 4) discussion of the latest relevant research on HIV and STI transmission,
- 5) application of the facts of the cases to the legal standards and conclusion.