

Over the last two columns, I've discussed the topic of HIV/AIDS. I chose this subject as a result of actor Charley Sheen's public disclosure that he has HIV. As a result of his admission and his HIV status, he may face criminal charges. He certainly does not stand alone in this predicament. As I stated last week, 35 states and territories, including Guam, have laws that criminalize certain sexual acts committed by persons with HIV/AIDS.

There are a growing number of public entities and institutions, such as the Centers for Disease Control and Prevention, the Positive Justice Project, and the U.S. Department of Justice, that have been encouraging Congress and state and territorial legislatures to revise their criminal laws that specifically target HIV/AIDS infected persons. The goal is to have these laws completely eliminated, or at least revised to reflect the medical realities of HIV/AIDS infections today. I fully support this goal.

The organizations proposing these changes argue that current laws act to discourage people from getting tested for sexually transmitted diseases, don't recognize the great medical strides that have been made in treating HIV/AIDS, and wrongfully discriminate against a very select group of people.

These concerns can best be highlighted on Guam by taking a close look at our criminal statute that specifically targets HIV/AIDS infected persons, 9GCA section 28.10. This law was passed in 1994, at time when the hysteria surrounding the AIDS epidemic remained high. This was understandable considering that at time most people with AIDS died. It wasn't until 1996 that an effective treatment for HIV was developed.

This law concerns the act of prostitution. In part, the law reads:

"A person who engages in, or agrees to engage in, or offers to engage in sexual penetration or sexual contact *or in any sexual conduct or act* with another person in return for a fee or in consideration of a pecuniary benefit commits the crime of prostitution. It is the intent of this section that guilt attach to both the payor and the recipient of the fee or pecuniary benefit....

"A person convicted of prostitution shall be guilty of a misdemeanor.

"A person convicted of prostitution who is determined to have known that he or she was infected with either HIV or AIDS at the time of the commission of the act shall be guilty of a felony of the first degree.

"In the case of a felony of the first degree, the court shall impose a sentence of not less than 5 years and not more than 20 years."

Consequently, if a prostitute, or a person who hires a prostitute (termed the "payor" in the law), knows he or she has HIV or AIDS and engages in sexual

conduct, then that person is guilty of a felony and faces 5 to 20 years in prison. The factor that possibly elevates the jail time from a 1-year sentence for a misdemeanor to a 20-year jail sentence for a felony is the fact that the person knew he or she has HIV/AIDS.

So, if a sex worker on Guam, or a person who uses their services, wishes to avoid the possibility of a felony charge, the easy solution is to never get tested for HIV/AIDS. Both would be able to plead ignorance of their condition and, with no medical proof, successfully avoid a felony charge. This result undermines the dual goals of treating HIV/AIDS and preventing further infections. What a disaster!

Incredibly, our law doesn't allow the defendant to offer any defenses, such as the fact that the customer knew the prostitute had HIV/AIDS and consented to the sexual act anyway; that he used a condom; or that the infected person was receiving medical treatment that dramatically decreased the odds of infecting another person.

Also, our law is not based on current medical realities. For example, certain acts that pose absolutely no risk of spreading HIV/AIDS are also punishable as a felony. Our law defines "sexual conduct" as "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts" if the purpose of the act is for "sexual arousal or gratification."

This means that either a prostitute, known to have HIV/AIDS, who simply touches the groin area of a fully clothed customer or, a fully clothed customer with HIV/AIDS who allows a prostitute to touch his groin, is guilty of a felony and faces 20 years in jail. On Guam, groping someone who wants to be groped can get you as much prison time as killing the person!

Our law wrongfully discriminates against persons with HIV/AIDS, discourages testing, and does not reflect sound medical reasoning. I call upon the Legislature to immediately repeal the law.