

Sex Offenders with AIDS: How Should They Be Punished

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The Note addresses the question of what is the most appropriate and equitable manner of punishing AIDS-infected rapists. It begins with a discussion on the medical background on AIDS and its current status in the Philippines and in the world. It then discusses the inadequacy of Section 111 of Republic Act No. 7659, which imposes the death penalty for an accused rapist by showing the application of traditional criminal law to AIDS transmission. The Note also examines the possibility of making an AIDS-infected rapist criminally liable under traditional penal statutes and the wisdom of bringing rape with AIDS under an AIDS-specific statute by analyzing the advantages and disadvantages of such statutes and discussing the two approaches to structuring an AIDS specific-statute.

The Note recommends that the Affirmative Duty Approach should be applied where if sexual intercourse is consensual and the AIDS infected partner did not inform the other partner of his or her infection, then he or she will be held liable under the AIDS statute. This also applies to rapists who have sexual intercourse done with force, violence, or intimidation. If, however, the rapist did not know that he was infected, then he can be held liable under the Revised Penal Code instead of under the AIDS statute. This solution is deemed by the Author to be the most appropriate and most equitable for both the offending and the offended party.