

Resumé; Afhandlingens genstand er straffelovens § 252 stk. 2. Formålet med afhandlingen er, at redegøre for bestemmelsens materielle funktionsområde samt for gældende ret. Bestemmelsen omfatter ifølge straffelovens § 252 stk. 3, HIV. Indledningsvis foretages en definition af sygdommen HIV, hvilke behandlingsmuligheder der findes, hvilke fremtidsudsigter sygdommen har og sidst, hvilke bivirkninger der følger af behandlingen og af sygdommen. Set i et sundhedspolitisk perspektiv, foretages en gennemgang af de retlige regler, der historisk har reguleret området for kønssygdomssmittedes seksuelle forhold. Der foretages en gennemgang af retspraksis, navnlig afgørelserne U1994.520 H. Samt U2001.1478 Ø. Det konkluderes, at førstnævnte afgørelse er juridisk korrekt men politisk problematisk. Sidstnævnte afgørelse anses som juridisk tvivlsom. Afgørelserne antages, at have motiveret Folketinget til lovændringerne i 1994 og 2001. Der foretages en tilbundsående prøvelse af bestemmelsen. Det konkluderes, at sygdommen næppe længere, kan antages at være livstruende. Det antages, at udelukke forsæt til at handle hensynsløst, såfremt den HIV smittede er velbehandlet. Det anses som tvivlsomt om faren for smitteoverførsel kan antages, at være påviselig og realistisk, såfremt den smittede er velbehandlet. Konklusionen er, at bestemmelsen næppe har virkning. Som følge heraf og idet bestemmelsen regulerer HIV smittedes kønslige forhold, udtrykkes bekymring for, at der foreligger et utilsigtet, ureguleret strafferetligt område. Der opfordres til en lovgivningsmæssig revision. Der foretages en sammenlignende gennemgang af den tyske samt de nordiske landes retlige regulering på området. Ud fra en samlet vurdering, herunder hensynstagen til de menneskelige, etiske og forebyggelsesmæssige aspekter, anføres tre alternative lovgivningsmæssige løsninger. Den foretrukne er, at ophæve straffelovens § 252 stk. 2 med klare bemærkninger i ophævelsesloven om, at straffelovens øvrige bestemmelser forudsættes anvendt i de groveste tilfælde.

Summary; The subject of this thesis is Penal Code section 252, subsection 2. The aim of the dissertation is, to explain the substantive area of functionality as well as applicable law. According to the Penal Code section 252 subsection 3 the regulation covers, HIV. First of all is carried out a definition of HIV disease, which treatment options are available, what are the prospects of the disease and finally, what side effects are resulting from the treatment and the disease. Seen in a health policy perspective, carried out a review of the legal rules that has historically regulated the area of sexually transmitted diseases and the infected individual's sexual relations. Carried out a review of the case-law, in particular decisions U1994.520 H and U2001.1478 Ø it is concluded that the first decision is legally correct but politically problematic. The last decision shall be considered as legally questionable. The decisions taken shall be presumed to have motivated the Folketing to changes in the law in 1994 and 2001. Carried out an in-depth review of the regulation. It is concluded that the disease hardly any longer, can be assumed to be life-threatening. It is assumed to exclude intentionally to act recklessly, where the HIV infected is medically well-treated. . It is regarded as doubtful if the danger of transmission can be assumed to be evident and realistic, where the infected is medically well-treated. The conclusion is that the provision is unlikely to have effect. As a result, and since the provision is regulating HIV infected individual's sexual relation, expressed concern that the existence of an accidental, unregulated legal area, calls for a legislative revision. Carried out a comparative examination of the German and the Scandinavian countries legislation in this area. As a consequence of this as well as considering the humane, ethically and preventive aspects, three alternative legislative solutions is presented. The favorite solution is a repeal of the Penal Code section 252 subsection 2 with clear comments in repeal Act on that other provisions of the Penal Code is assumed to be used in the most serious cases.