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Enforcement of HIV Criminalization in Ohio

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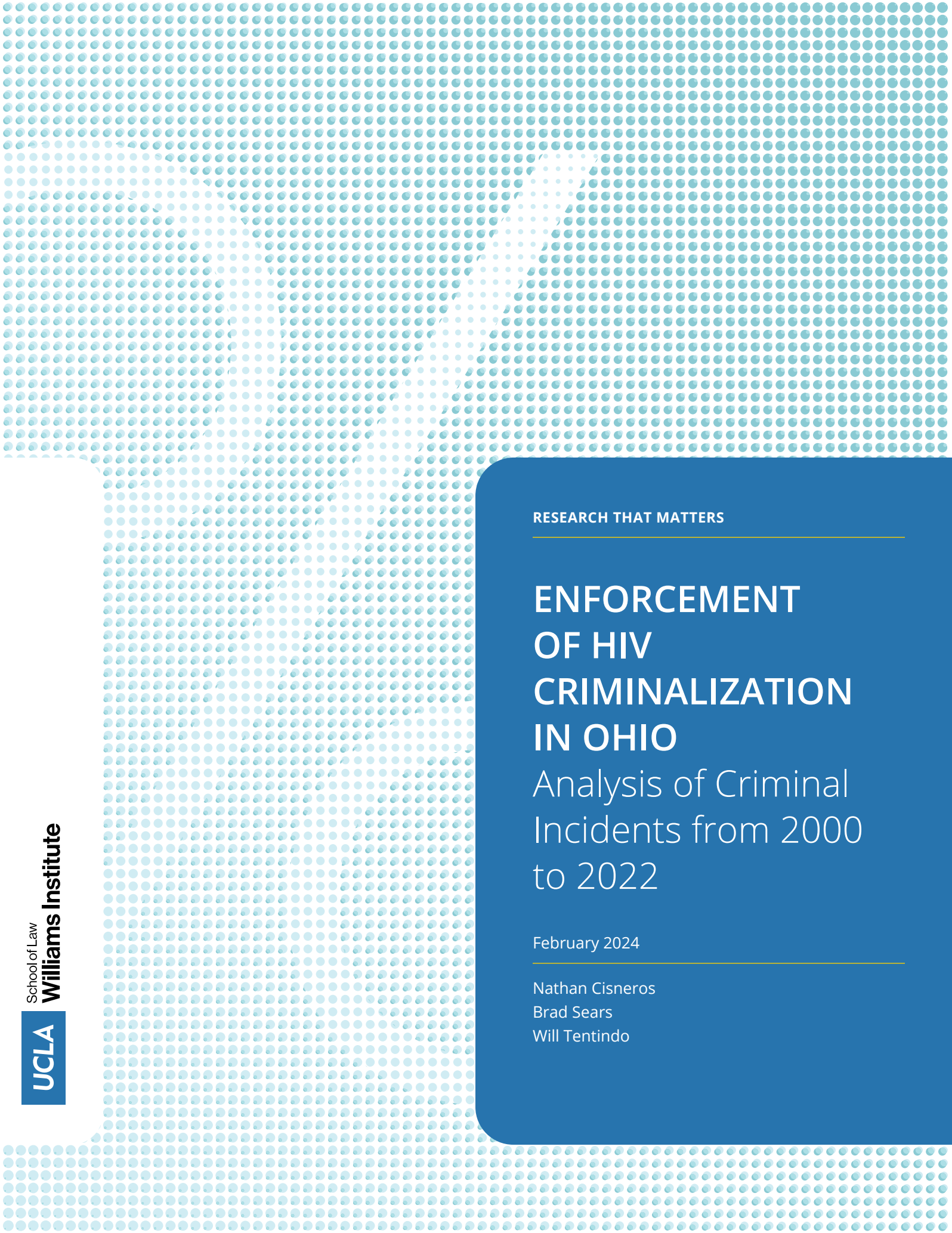

RESEARCH THAT MATTERS

ENFORCEMENT OF HIV CRIMINALIZATION IN OHIO

Analysis of Criminal Incidents from 2000 to 2022

February 2024

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OVERVIEW

This report provides an up-to-date look at the enforcement of HIV criminal laws in Ohio. The Williams Institute analyzed data from Ohio's Incident-Based Reporting System (OIBRS) about HIV-related criminal incidents between 2000 and 2022. We also analyzed data on HIV-related criminal court cases between 2009 and 2022 from the Cuyahoga County courts system collected by that county's Board of Public Health.

Ohio has six laws that criminalize the conduct of people living with HIV (PLWH), including having sex without disclosing one's HIV status, exposing others to bodily fluids more generally, engaging in sex work, and donating blood. Our analysis revealed that there have been at least 530 allegations of HIV-related criminal offenses across 447 separate incidents between 2000 and 2022 in Ohio. None of these incidents required actual transmission, the intent to transmit, or even conduct likely to transmit HIV in order to sustain a conviction.

The findings presented in this report corroborate those from a recent study by staff at the Equality Ohio Education Fund and the Ohio Health Modernization Movement.[1] Taken as a whole, the two reports find that from 2000 to the present, there have been hundreds of arrests and prosecutions for HIV-related crimes in Ohio. Together, they show a pattern of widespread and continued enforcement of HIV crimes. Enforcement is primarily concentrated in just a handful of counties across the state and disproportionately affects Black people and women in Ohio.

FINDINGS

- There have been at least 530 separate allegations of an HIV-related criminal offense across 447 criminal incidents in Ohio since the year 2000.[2]
    - Of these allegations, the crime of having consensual sex without disclosing one's HIV status accounted for nearly half (48%) of the total.
    - HIV-related criminal allegations related to sex work (19%) and bodily fluid exposure (21%) each accounted for nearly one-fifth of the total.
    - There were fewer allegations related to non-consensual sex (11%) or blood donation (1%).
- Despite significant advances in HIV treatment and prevention, people continue to be arrested and prosecuted for HIV-related offenses in Ohio to the present.
    - In fact, there has been an upward trend since 2000 in allegations of the crimes of nondisclosure before consensual sex and bodily fluid exposure.
    - Despite the U.S. blood supply being safe for decades, people in Ohio continue to be arrested for alleged blood donation crimes.

[1] Mozynski, K. & Delaney, B. (2024). The Enforcement of HIV Criminalization in Ohio: Analysis of Court Cases from 2014 to 2020. https://ohmodernizenow.org/wp-content/uploads/2024/02/OHMM-Research-Report-01.pdf. Their report is the first comprehensive look at HIV-related criminal cases across all 88 counties in Ohio.

[2] We are unable to say how many unique individuals have been arrested because the data have been de-identified.

- HIV criminal enforcement was highly geographically concentrated. Four counties—Cuyahoga, Franklin, Montgomery, and Summit—accounted for two-thirds (68%) of all HIV-related incidents.
    - Those four counties were home to just over half (53%) of all PLWH in the state and a little less than a third (32%) of all Ohioans.
- Excluding the Cuyahoga County cases, where this information is unavailable, 50% of all HIV-related incidents originated with three law enforcement agencies: Columbus Police Department (25%), Montgomery County Sheriff's Office (13%), and Akron Police Department (12%).
    - Ninety-four percent of loitering and solicitation-related incidents originated from the same three law enforcement agencies: Montgomery County Sheriff's Office (45%), Akron Police Department (27%), and Columbus Police Department (22%).
- Of the 333 unique HIV-related criminal incidents in the OIBRS data, 141 included data indicating that an arrest for an HIV-related offense had occurred. In total, there were 144 individuals arrested across these incidents.
    - Women were over-represented in HIV-related arrests: 48% of people arrested, but only 21% of PLWH in Ohio.
        - Further, women were 84% of all sex work-related arrests, and sex work-related arrests were nearly half (47%) of all incidents with an associated HIV-related arrest.
    - Black people were 44% of people arrested for allegations of an HIV-related offense, although they were only 13% of the state population and 44% of PLWH in Ohio. In contrast, white Ohioans were 56% of those arrested, 42% of PLWH, and 78% of the state's population. OIBRS does not include race or ethnicity data for other groups.
        - About two-thirds (67%) of sex work-related arrests were among white individuals.
        - White individuals were also about two-thirds (67%) of bodily fluid exposure arrests.
        - In contrast, Black people were about two-thirds (65%) of felonious assault arrests.
    - Breaking out the demographic data by race and sex reveals that women, especially white women, were over-represented among HIV-related arrests when compared to their share of PLWH in the state. White women were 34% of HIV-related arrests but only 7% of PLWH. More specifically, patterns of enforcement for different HIV crimes in Ohio impact groups by race and sex differently:
        - 61% of sex work-related arrests were of white women,
        - 58% of felonious assault arrests were of Black men, and
        - 67% of harassment by bodily fluid arrests were of white men.
- We have details for 274 individual victims across 253 unique HIV-related incidents. An additional 49 incidents listed "Society/Public" as the "Victim" in "crimes against society."
    - 21 individual victims were identified as police officers (of which 20 were bodily fluid exposure incidents and one was a felonious assault incident).
    - The remaining 253 individual victims were private individuals.

    - All of the loitering and solicitation incidents were reported as crimes against society, as were all but one of the prostitution incidents. This means there was no actual person identified as a victim in all but one of the sex work-related incidents.
    - Likewise, all six blood donation incidents were also classified as crimes against society.
- Neither data source for this report includes data about the sexual orientation or gender identity of arrestees or victims. However, for the felonious assault incidents, which involve sexual conduct, only 16% clearly indicate that the alleged sexual behavior occurred between people of the same sex.
- For OIBRS incidents with a reported outcome (and were no longer pending investigation), two-thirds (66%) resulted in formal charges.

None of Ohio's HIV-related criminal statutes require actual transmission, the intent to transmit, or even the possibility of HIV transmission to sustain a conviction. The enforcement data confirms that many of Ohio's HIV-related criminal allegations are based on conduct that could never transmit HIV, such as spitting, loitering, and types of touching or sexual conduct that cannot transmit HIV.

BACKGROUND

HIV criminalization is a term used to describe laws that criminalize otherwise legal conduct or that increase the penalties for already illegal conduct based on a person's HIV-positive status.[3] While there is only one federal HIV criminalization law,[4] more than half of states and territories across the United States have HIV criminal laws.[5] Most HIV criminal laws, including those in Ohio, do not require actual transmission of HIV or an intent to transmit HIV. Often, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or biting.[6] Most laws criminalizing people living with HIV (PLWH) were enacted in the early years of the HIV/AIDS epidemic,[7] long before there were effective tests for HIV,[8] before treatments became available that allow PLWH to live normal lifespans in good health,[9] and before highly effective methods for preventing transmission of HIV became widely available.

OHIO'S HIV CRIMINALIZATION LAWS

Ohio has six laws that criminalize the conduct of people living with HIV (PLWH), including having sex without disclosing one's HIV status, exposing others to bodily fluids more generally, engaging in sex work, and donating blood.

Table 1. Ohio's HIV criminal laws

OHIO REVISED CODE	SECTION TITLE	CONDUCT CRIMINALIZED
2903.11(B)	**Felonious assault**	Nondisclosure before sex with an adult; sex with a minor; sex with someone with diminished mental capacity
2907.25(B)	**Prostitution:** after positive HIV test	Prostitution
2907.24(B)	**Soliciting:** after a positive HIV test	Solicitation

[3] Harsono, D., Galletly, C., O'Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the United States. *AIDS and Behavior, 21*(1), 27-50. https://doi.org/10.1007/s10461-016-1540-5 .

[4] *See* 18 U.S.C. § 1122 (2015) (pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

[5] Centers for Disease Control and Prevention. (2023, December 19). "HIV and STD Criminalization Laws" https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html .

[6] *See* Barré-Sinoussi, F., et al. (2018). "Expert consensus statement on the science of HIV in the context of criminal law." *Journal of the International AIDS Society*, 21(7), 251-261. https://doi.org/10.1002/jia2.25161; and Lehman, J.S., et al. (2014). "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States." *AIDS and Behavior*, 18, 997-1006. https://doi.org/10.1007/s10461-014-0724-0.

[7] Harsono, D., Galletly, C., O'Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the United States. *AIDS and Behavior*, 21(1), 27–50. https://doi.org/10.1007/s10461-016-1540-5; Lehman, J.S., et al. (2014). Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States. *AIDS and Behavior*, 18, 997–1006. https://doi.org/10.1007/s10461-014-0724-0.

[8] HIV.gov. (n.d.). A timeline of HIV/AIDS. https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf .

[9] Trickey, A., et al. (2017). Survival of HIV-Positive Patients Starting Antiretroviral Therapy Between 1996 and 2013: A Collaborative Analysis of Cohort Studies. *The Lancet HIV*, 4(8), P. 349-356. DOI: 10.1016/S2352-3018(17)30066-8; "Barré-Sinoussi, F., et al. (2018). Expert consensus statement on the science of HIV in the context of criminal law. *Journal of the International AIDS Society*, 21(7), 251-61. DOI: 10.1002/jia2.25161; Lehman, J.S., et al. (2014). Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States. *AIDS and Behavior*, 18, 997-1006. DOI: 10.1007/s10461-014-0724-0.

OHIO REVISED CODE	SECTION TITLE	CONDUCT CRIMINALIZED
2907.241(B)	**Loitering to engage in solicitation:** after positive HIV test	Loitering to engage in solicitation
2921.38(C)	**Harassment with a bodily substance:** when a person knows they have HIV, hepatitis, or tuberculosis	Exposure of others to bodily fluids
2927.13(A)	**Selling or donating contaminated blood:** when a person knows they have HIV	Selling or donating blood or blood products

None of Ohio's HIV-related crimes require actual HIV transmission or the intent to transmit HIV to sustain a conviction. Each of these laws also criminalizes conduct that cannot transmit HIV, such as spitting, oral sex, loitering, and solicitation (proposing sexual activity in exchange for something of value). Ohio law also ignores whether the person living with HIV cannot transmit HIV through sexual contact because the person is in effective medication treatment and virally suppressed (HIV is non-detectable in their blood), nor does it consider other mitigation strategies such as condom use in determining guilt.

Below, we provide a legal and legislative analysis of Ohio's HIV criminal laws.

Felonious Assault

PLWH in Ohio who know they are HIV-positive can be prosecuted for felonious assault if they

1. knowingly engage "in sexual conduct with another person without disclosing" their HIV-positive status[10] or
2. engage in sexual conduct with a person they have reason to believe "lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive"[11] or
3. engage in sexual conduct with a person under 18 years of age who is not their spouse.[12]

"Sexual conduct" includes vaginal and anal intercourse, as well as oral sex.[13] "Sexual conduct" also includes penetration with any body part, such as fingers, and with objects, such as sex toys, if the person "knew at the time of the insertion that [the object inserted] carried the offender's bodily fluid."[14] Penetration, "however slight, is sufficient to complete vaginal or anal intercourse."[15]

[10] Ohio Rev. Code § 2903.11(B)(1) (2019).
[11] Ohio Rev. Code § 2903.11(B)(2) (2019).
[12] Ohio Rev. Code § 2903.11(B)(3) (2019).
[13] Ohio Rev. Code §2907.01(A) (2023).
[14] Ohio Rev. Code § 2903.11(E)(4) (2019).
[15] Ohio Rev. Code §2907.01(A) (2023).

Notably, Ohio's HIV felonious assault statute does not require transmission of HIV.[16] It does not even require HIV exposure. For example, oral sex and exposure to bodily fluids that do not carry HIV are enough to sustain a conviction. Rather, it is nondisclosure or nonconsent that is criminalized. The felonious assault law also does not take into account whether the person accused used a condom or otherwise employed safer sex practices.[17] Such actions cannot be used as a defense against prosecution.

For example, in a legal decision involving an allegation of felonious assault in 2003, just two years after the law went into effect, an Ohio judge wrote that a jury only needed to decide whether a person living with HIV "engaged in sexual conduct with another person without disclosing to the other person that he was HIV-positive."[18] The opinion continued:

> *It was not necessary [for the jury] to decide whether the victim developed HIV, experienced emotional distress, or suffered any consequences from the sexual encounter. The jury had no need to know whether the victim in this case later developed HIV. As soon as the sexual conduct occurred without disclosure, the crime was committed.*[19]

One court held that the statute did not require actual transmission and that evidence the victim became HIV-positive after the prohibited conduct "is irrelevant and inflammatory."[20]

Felonious assault is a second-degree felony with a sentencing range of three to 12 years for the first conviction if the alleged incident occurred on or after March 22, 2019.[21] If the alleged incident occurred prior to March 22, 2019, the associated sentence for the first conviction is between two and eight years.[22] Felonies committed prior to March 22, 2019, result in a definite sentence, while felonies occurring on or after March 22, 2019, result in an indefinite sentence in which the person convicted could be released from prison at a time between the minimum and maximum term set at conviction.[23] There are penalty enhancements if the person convicted knew the other person was

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[16] *See*, *e.g.*, State v. Morris, 2022 Ohio 1318, 2022 Ohio App. LEXIS 1217 (Ohio Ct. App., Cuyahoga Cnty. 2022) ("In short, Morris's argument that none of the victims became infected with HIV and, therefore, the consecutive-sentencing findings are not clearly and convincingly supported by the record, misses the point — his criminal conduct was not dependent on that fact."). Zonou v. Warden, Chillicothe Corr. Inst., No. 1:120-cv-69, 2013 U.S. Dist. LEXIS 32236 (S.D. Ohio 2013) ("The felonious assault offense, as defined in Ohio Rev. Code § 2903.11(B)(1), does not include any element requiring proof that the defendant was the initial carrier of the HIV virus or, indeed, that the victim was even infected with the virus. *See* [State v.] Gonzalez, 796 N.E.2d [12, 32 (Ohio Ct. App., Hamilton Cnty. 2003)]. Therefore, the issue as to whether petitioner or the victim was the party who first contracted and transmitted the HIV virus is irrelevant to the determination of petitioner's guilt or innocence in this case.").

[17] State v. Ward, 2021-Ohio-1930, 2021 Ohio App. LEXIS 1885 (Ohio Ct. App., Allen Cnty. 2021) at fn. 1 ("The statute does not differentiate between 'protected' sexual conduct and 'unprotected' sexual conduct…").

[18] State v. Gonzalez, 796 N.E.2d 12 (Ohio Ct. App., Hamilton Cnty. 2003).

[19] State v. Gonzalez, 796 N.E.2d 12, 35, paragraph 97 (Ohio Ct. App., Hamilton Cnty. 2003).

[20] State v. Gonzalez, 796 N.E.2d 12, 18 paragraph 10, 36 paragraph 101 (Ohio Ct. App., Hamilton Cnty. 2003).

[21] The statutory minimum sentence for post-March 22, 2019 felonious assault convictions is three years. Ohio Rev. Code § 2929.14(A)(2)(a) (2023). The maximum sentence allowed under statute is calculated by taking the highest minimum sentence, which is eight years (Ohio Rev. Code § 2929.14(A)(2)(a) (2023)) and adding "50% of that term" (Ohio Rev. Code § 2929.144(B)(1) (2019)), which is 12 years.

[22] Ohio Rev. Code § 2929.14(A)(2) (2023).

[23] *See* Ohio Rev. Code § 2929.14(A) (2023).

pregnant at the time of the offense,[24] if the victim was a law enforcement officer,[25] or if the person convicted was convicted of multiple felonies.[26]

PLWH convicted of felonious assault may also be classified as a sex offender and be required to register on the state's sex offender registry.[27] When a person is found guilty of committing felonious assault with a "sexual motivation," i.e., "to gratify...sexual needs or desires," including through consensual sex, they are classified as a Tier III sex offender in Ohio.[28] Requirements under Ohio's sex offender registry include registration, notice of intent to reside, change of address notification, or address verification—and violations come with significant penalties.[29] Tier III registrants must report to the county sheriff every 90 days and provide home, work, and school addresses, all of which become publicly available. They also may not live near a school or daycare center. Tier III registration in Ohio is for life.

Legislative History

Prior to 2000, "felonious assault" only applied to a person who "knowingly causes serious physical harm to another or to another's unborn, or causes or attempts to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance."[30] In other words, felonious assault was a crime of (1) serious physical harm or (2) physical harm caused by a dangerous/deadly weapon. Ohio House Bill 100, which created the additional HIV-related felonious assault offense, was introduced in January 1999, signed by the governor in December of that year, and went into effect in March 2000.[31]

In an examination of the legislative record surrounding Ohio's HIV criminal laws, one commentator summarized that the Ohio General Assembly had two purposes in expanding the felonious assault

[24] Ohio Rev. Code § 2903.11(D)(1)(b) (2019).

[25] Ohio Rev. Code § 2903.11(D)(1)(b) (2019).

[26] Ohio Rev. Code § 2929.144 (2019).

[27] Center for HIV Law & Policy. (2024, January). "*HIV Criminalization in the United States, A Sourcebook on State and Federal HIV Criminal Law and Practice*" at page 5. https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf

[28] Center for HIV Law & Policy. (2024, January). "*HIV Criminalization in the United States, A Sourcebook on State and Federal HIV Criminal Law and Practice*" at page 5. https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf

[29] Center for HIV Law & Policy. (2024, January). "*HIV Criminalization in the United States, A Sourcebook on State and Federal HIV Criminal Law and Practice*" at page 5. https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf

[30] Ohio Legislative Services Commission. (1999). 123rd House Bill Analysis, H.B. 100, 123rd General Assembly (As Introduced). http://archives.legislature.state.oh.us/lsc/analyses123/h0100-i-123.pdf

[31] 123rd General Assembly of Ohio. (2001, March 1). "*Final Status Report of Legislation, 123rd GA.*" https://www.legislature.ohio.gov/files/legislation/status-reports/final123srl.pdf; Ohio Legislative Services Commission. (2000, March). "*Digest of Enactments 1999, 123rd General Assembly (1999-2000).*" https://www.lsc.ohio.gov/assets/organizations/legislative-service-commission/files/digest-of-1999-enactments.pdf.

statute: "(1) to control the spread of disease and (2) to punish those individuals who expose others to the virus."[32] In the bill's Fiscal Note and Local Impact Statement, as introduced, the legislature noted that Illinois had a similar statute.[33] Illinois has since completely repealed its HIV-related criminal law.[34]

Prior to House Bill 100, several PLWH had been charged with the earlier version of "felonious assault" under the legal argument that HIV was a deadly weapon in cases that involved biting,[35] spitting,[36] and sex.[37] These cases met with mixed results, with some courts holding that HIV could be a "deadly weapon" and some resulting in convictions. However, in one case, the court indicated that the passage of House Bill 100 was "virtually express acknowledgment by the Ohio Legislature that the" exposure to HIV was "not adequately address[ed]" as a deadly weapon under "the preexisting criminal law."[38] Notably, since the passage of House Bill 100, at least two courts have found that HIV is a deadly weapon in cases alleging that persons living with HIV had spit at police officers when their saliva also contained blood.[39]

Ohio's felonious assault statute has been amended numerous times since the addition of the HIV criminalization sections. Still, barring a single word change,[40] the language of the sections pertaining to HIV has not changed since they were added in 2000.[41]

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[32] Minahan, W.T. (2009). Disclosure Before Exposure: A Review of Ohio's HIV Criminalization Statutes. Ohio Northern University Law Review *35*, 99. https://www.hivlawandpolicy.org/sites/default/files/Disclosure%20Before%20Exposure%20-%20A%20Review%20of%20Ohio%E2%80%99s%20HIV%20Criminalization%20Statutes%20(Minahan).pdf.

[33] 123rd General Assembly of Ohio. (1999, March 9). "*Fiscal Note & Local Impact Statement, H.B. 100 (As Introduced).*" https://www.lsc.ohio.gov/documents/gaDocuments/123ga/hb0100in.pdf.

[34] Illinois General Assembly. (2021, February 24). "*Full Text of SB0655.*" https://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=SB&DocNum=655&GAID=16&LegID=133255&SpecSess=&Session

[35] State v. Reif-Hill, No. 72864, 1998 Ohio App. LEXIS 5404 (Ohio Ct. App., Cuyahoga Cnty. 1998 (conviction vacated because defendant did not in fact have HIV).

[36] State v. Bird, 692 N.E.2d 1013 (Ohio 1998) (conviction upheld on appeal even though route of transmission was salvia because the defendant plead no contest).

[37] State v. Couturier, No. 99AP-950, 2000 Ohio App. LEXIS 2677 (Ohio Ct. App., Franklin Cnty. 2000) (conviction overturned on appeal because HIV is not a deadly weapon).

[38] State v. Couturier, No. 99AP-950, 2000 Ohio App. LEXIS 2677 (Ohio Ct. App., Franklin Cnty. 2000).

[39] State v. Price, 834 N.E.2d 847 (Ohio Ct. App., Fairfield Cnty. 2005) (The court pointed to testimony offered by the defendant's treating physician, who stated that because the defendant was HIV positive and had hemophilia, there would be a risk for transmission of HIV if he "spit into the mouth of another individual" though the risk would be "low or remote." The court also quoted testimony provided by another physician who occasionally treated the defendant, who suggested that the risk of transmission associated with spitting was higher because the defendant was a hemophiliac.); State v. Branch, 2006 Ohio 3793, 2006 Ohio App. LEXIS 3750 (Ohio Ct. App., Lucas Cnty. 2006) (relying on *Price*, the court finds that the defendant "intended to cause serious physical harm by spitting as a means of transmitting HIV to the" officer. The officer provided testimony that he believed there "to be blood in the saliva that he cleaned out of his eye;" and a doctor testified "there is a small risk of getting HIV from such a transmission" when the saliva contains blood.).

[40] 2005-06 Ohio Laws 7059 (2006) (Changing "cavity" to "opening" in the statutory definition of "sexual conduct").

[41] 2007-08 Ohio Laws 7059 (2009). The majority of these amendments have added or changed penalties associated with felonious assault, including additional sentencing requirements if the victim is pregnant or if the action cause harm to a fetus.

Constitutional Challenges

There have been a number of constitutional challenges to Ohio's felonious assault statute, including for

- requiring forced speech (disclosure of HIV status) in violation of the First Amendment;
- discriminating against PLWH in violation of the Equal Protection Clause—or as applied to people accused who were on HIV medication at the time of the alleged offense;
- being unconstitutionally vague;
- violating the fundamental right to procreate;
- violating the Eighth Amendment's prohibition on cruel and unusual punishment; and
- double jeopardy when the prosecution involves another crime with similar elements.

As of early 2024, none of these challenges have been successful.[42]

For example, in a recent case[43] bringing a constitutional challenge to the felonious assault statute, the state of Ohio argued a governmental interest in singling out HIV for criminalization. The state asserted an interest in "ensuring informed consent and…limiting the spread of HIV by means of sexual conduct."[44] In 2017, the Ohio Supreme Court agreed with the state, despite recent advances in the treatment of HIV, writing:

> *We recognize that there have been advancements in the treatment of individuals with HIV that may have reduced the transmission and mortality rates associated with the disease. However, we cannot say that there is no plausible policy reason for the classification or that the relationship between the classification and the policy goal renders it arbitrary or irrational.*[45]

An appellate court in the same case noted, "The state aptly points out that, despite the medical advances in treatment, HIV remains incurable." The appellate court's opinion continued:

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[42] Center for HIV Law & Policy. (2024, January). "*HIV Criminalization in the United States, A Sourcebook on State and Federal HIV Criminal Law and Practice*" at pages 1-3. https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf; *See also* State v. Kindle, 2022 Ohio 2991, 2022 Ohio App. LEXIS 2844 (Ohio Ct. App., Allen Cty. 2022) (rejecting double jeopardy challenge); State v. Ward, 2021-Ohio-1930, 2021 Ohio App. LEXIS 1885 (Ohio Ct. App., Allen County 2021) (rejecting double jeopardy challenge); State v. Wilson, No. C-170050, 2018 Ohio App. LEXIS 590 (Ohio Ct. App., Hamilton Cty. 2018); (rejecting free speech and equal protection challenges); and State v. Batista, 2017-Ohio-8304, 151 Ohio St. 3d 584, 91 N.E.3d 724, 2017 Ohio LEXIS 2172 (Ohio 2017), cert. denied, 138 S. Ct. 1607, 200 L. Ed. 2d 788, 2018 U.S. LEXIS 2601 (U.S. 2018) (rejecting free speech and equal protection challenges); State v. Christian, 2017 Ohio 9420, 2017 Ohio App. LEXIS 5854 (Ohio Ct. App., Jefferson County 2017)(rejecting equal protection challenge, and argument based on the fundamental right to procreate when the offense involved minors, and an as applied challenge when the defendant was on medication at the time of the alleged offense: "regardless, while his medication may lower the transmission risk, it does not eliminate the possibility of transmission, altogether"); State v. Gonzalez, 2003-Ohio-4421, 154 Ohio App. 3d 9, 796 N.E.2d 12, 2003 Ohio App. LEXIS 3930 (Ohio Ct. App., Hamilton County 2003)(rejecting arguments that the statute is unconstitutionally vague for failing to define "disclosing," violates prohibitions against cruel and unusual punishment, and denies due process because it does not provide an affirmative defense).

[43] State v. Bautista, 2016 Ohio 2848 (Ohio Ct. App. 2016) aff'd in 2017 Ohio 8304 (Ohio 2017).

[44] State v. Bautista, 2017 Ohio 8304 (Ohio 2017), 91 N.E.3d 724 (Ohio Sup. Ct. 2017)

[45] State v. Bautista, 2017 Ohio 8304 at paragraph 26 (Ohio 2017), 91 N.E.3d 724 (Ohio Sup. Ct. 2017).

> *[HIV] shortens the life span of anyone infected. And while many HIV-infected people are able to lead productive lives, this is only possible through daily treatment at the cost of approximately $1,000 a month. People who are not properly treated can and do develop serious health problems. Without relying on any one particular aspect of HIV or its treatment, given the overall grave nature of this disease, we find that the state has a compelling interest in stopping its transmission.*[46]

The court also found that "the existence of other sexually transmitted diseases that may have serious public health and safety consequences does not eliminate the rational relationship between the classification here—individuals with knowledge of their HIV-positive status who fail to disclose that status to sexual partners—and the goal of curbing HIV transmission."[47]

Judicial Opinions as Evidence of Enforcement

Judicial opinions shed some light on the enforcement of Ohio's HIV-related felonious assault law.[48] While an analysis of these cases helps us understand the alleged fact patterns in some prosecutions, since most criminal cases do not result in published court opinions, they represent an incomplete picture of enforcement. In particular, they do not shed light on cases that do not result in convictions since those cases are unlikely to result in appeal.

The opinions we identified were published between 2003 and 2022 and involved allegations of felonious assault against 26 different people, with some cases resulting in more than one reported opinion.[49] Men were identified as the person accused of felonious assault in 24 of the 26 cases. The

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[46] State v. Batista, 64 N.E. 498 (Ohio Ct. App., Hamilton Cnty. 2016).

[47] State v. Batista, 64 N.E. 498 at paragraph 29 (Ohio Ct. App., Hamilton Cnty. 2016).

[48] We use the term "reported court cases" or "reported cases" throughout to mean judicial opinions from court cases that have been published or reported in an official collection (called "reporters") of case law.

[49] State v. Gonzalez, 796 N.E.2d 12 (Ohio Ct. App., Hamilton Cnty. 2003); State v. Geiger, 2004 Ohio 7189, 2004 Ohio App. LEXIS 6653 (Ohio Ct. App, Summit Cnty. 2004); State v. Roberts, 805 N.E.2d 594 (Ohio Ct. App., Summit Cnty. 2004); State v. Gonzalez, 2006 Ohio 6458, 2006 Ohio App. LEXIS 6402 (Ohio Ct. App., Lucas Cnty. 2006); State v. Christian, 2007 Ohio 7205, 2007 Ohio App. LEXIS 6309 (Ohio Ct. App., Jefferson Cnty. 2007); State v. Green, 2008 Ohio 4452, 2008 Ohio App. LEXIS 3754 (Ohio Ct. App., Cuyahoga Cnty. 2008); State v. Ayala, 2010 Ohio 889, 2010 Ohio App. LEXIS 756 (Ohio Ct. App., Delaware Cnty. 2010); State v. Jones, 2009 Ohio 6585, 2009 Ohio App. LEXIS 5500 (Ohio Ct. App., Montgomery Cnty. 2009); State v. Russell, 2009 Ohio 5130, 2009 Ohio App. LEXIS 4351 (Ohio Ct. App., Franklin Cnty. 2009; State v. Eversole, 912 N.E.2d 643 (Ohio Ct. App., Montgomery Cnty. 2009); State v. Gamble, 945 N.E.2d 1135 (Ohio Ct. App., Hamilton Cnty. 2010); State v. Kinder, 2011 Ohio 1061, 2011 Ohio App. LEXIS 971 (Ohio Ct. App., Cuyahoga Cnty. 2011); State v. Gatlin, 2012 Ohio 3226, 2012 Ohio App. LEXIS 2840 (Ohio Ct. App., Stark Cnty. 2012); State v. Davis, 2012 Ohio 5756, 2012 Ohio App. LEXIS 4994 (Ohio Ct. App., Hamilton Cnty. 2012); State v. McKenzie, 2013 Ohio 2104, 2013 Ohio App. LEXIS 1999 (Ohio Ct. App., Columbiana Cnty. 2013); Zonou v. Warden, Chillicothe Corr. Inst., No. 1:120-cv-69, 2013 U.S. Dist. LEXIS 32236 (S.D. Ohio 2013); State v. Reeves, 2014 Ohio 3497, 2014 Ohio App. LEXIS 3427 (Ohio Ct. App., Cuyahoga Cnty. 2014); State v. Bean, 2014 Ohio 908, 2014 Ohio App. LEXIS 877 (Ohio Ct. App., Summit Cnty. 2014); State v. Batista, 91 N.E.3d 724 (Ohio 2017), *cert. denied*, 138 S. Ct. 1607, (2018); State v. Davis, 2017 Ohio 733, 2017 Ohio App. LEXIS 726 (Ohio Ct. App., Mahoning Cnty. 2017); State v. Boatright, 2017 Ohio 5794, 2017 Ohio App. LEXIS 2954 (Ohio Ct. App., Summit Cnty. 2017); State v. Wilson, No. C-170050, 2018 Ohio App. LEXIS 590 (Ohio Ct. App., Hamilton Cnty. 2018); State v. Ward, 2021 Ohio 1930, 2021 Ohio App. LEXIS 1885 (Ohio Ct. App., Allen Cnty. 2021); State v. Worship, 2022 Ohio 52, 2022 Ohio App. LEXIS 30 (Ohio Ct. App., Warren Cnty. 2022); State v. Kindle, 2022 Ohio 2991, 2022 Ohio App. LEXIS 2844 (Ohio Ct. App., Allen Cnty. 2022); and State v. Morris, 2022 Ohio 1318, 2022 Ohio App. LEXIS 1217 (Ohio Ct. App., Cuyahoga Cnty. 2022).

victims were identified as men in nine cases, women in 14 cases, and both men and women in one case.[50] One case had a victim of unknown sex. The alleged sexual conduct was different-sex sex in 17 cases, same-sex sex in seven cases, both opposite-sex and same-sex sex in one case, and unknown in one case. Only half (46%) of cases reported the type of sexual conduct that formed the basis of the criminal charge. Six cases specified vaginal sex, four specified anal sex, and one case specified both. One case clearly did not involve either vaginal or anal sex but rather oral sex and penetration with an object.[51]

All 26 cases resulted in a conviction on at least one HIV-related felonious assault charge. Nearly two-thirds (65%) involved convictions for consensual sex between adults, with no additional convictions for non-consensual sex crimes, so the only conviction was for nondisclosure of the person's HIV status.[52] About 27% of the cases resulted in convictions for sexual conduct with a minor. The remaining cases (two in total) resulted in convictions for nondisclosure felonious assault plus a nonconsensual sex crime, such as rape.

In those cases where the conviction was for nondisclosure of the person's HIV status within consensual sex between adults, the sentences for one count of felonious assault were fairly evenly distributed between two to eight years. In cases involving a minor, the sentences for one count of felonious assault were the pre-2019 maximum of eight years in all but one instance. The other sentence was for five years. In one case involving a conviction for felonious assault and a conviction of rape against an adult, the sentence for the felonious assault conviction was for eight years.

SEX WORK

Ohio has penalty enhancements for prostitution,[53] solicitation,[54] and loitering[55] if the person is living with HIV. None of Ohio's HIV-related offenses targeting sex work requires actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV to sustain a conviction. Nor do Ohio's laws take into account whether the person accused used mitigation strategies, such as a condom, or had an undetectable viral load that would make transmission of HIV through sex impossible.

Prostitution. Ohio criminalizes PLWH for prostitution, that is, "engaging in sexual activity for hire."[56] "Sexual activity" in Ohio includes vaginal, anal, and oral sex, and, in some circumstances, penetration, however slight, by fingers, other body parts, sex toys, and other objects.[57] More broadly, it also includes any touching of "the thigh, genitals, buttock, pubic region, or, if the person is a female, a

[50] In all, 19 cases involved only one alleged victim while seven involved more than one victim. The sex of the individuals accused and the victims were inferred by the accused's name and the pronouns that the court used. For many cases, those inferences were then checked against media stories about the cases. None of the court opinions or media reports indicated whether the individuals accused, or the victims, were cisgender or transgender.

[51] State v. Gonzalez, 2006 Ohio 6458, 2006 Ohio App. LEXIS 6402 (Ohio Ct. App., Lucas Cnty. 2006).

[52] In one of these 15 cases the defendant was also convicted of promoting prostitution. *See*, State v. Kinder, 2011 Ohio 1061, 2011 Ohio App. LEXIS 971 (Ohio Ct. App., Cuyahoga Cnty. 2011).

[53] Ohio Rev. Code § 2907.25(B) (1996).

[54] Ohio Rev. Code § 2907.24(B) (2021).

[55] Ohio Rev. Code § 2907.241(B) (1996).

[56] Ohio Rev. Code § 2907.25(B) (1996).

[57] Ohio Rev. Code §2907.1(A) (2023).

breast, for…sexually arousing or gratifying either person."[58] Notably, while the prostitution statute requires physical contact, it does not require contact that poses any HIV transmission risk.

For PLWH who know of their HIV-positive status, violation of the prostitution statute after 1996 is a third-degree felony, [59] punishable by a sentence of nine months to three years,[60] with enhanced penalties if the conduct occurs near a school.[61] For those who are not HIV-positive, prostitution is a third-degree misdemeanor,[62] with a maximum jail term of sixty days.[63]

Solicitation. Ohio also criminalizes PLWH for soliciting (asking or propositioning) another person to engage in sexual activity for hire in exchange for anything of value.[64] Again, Ohio does not require conduct that can transmit HIV to sustain a conviction. Indeed, solicitation does not require any actual sexual activity or even physical contact.

For PLWH who know of their HIV-positive status, violation of the solicitation statute after 1996 is a third-degree felony, [65] punishable by a sentence of nine months to three years,[66] with enhanced penalties if the conduct occurs near a school.[67] For those who are not HIV-positive, solicitation is a third-degree misdemeanor,[68] with a maximum jail term of sixty days.[69]

Loitering. Finally, Ohio criminalizes loitering—attempting to stop or talking to another person in a public place for the purpose of soliciting them to engage in sexual activity for hire.[70] As with the solicitation offense, loitering does not require physical contact to sustain a conviction.

For PLWH who know of their HIV-positive status, violation of the loitering statute after 1996 is a fifth-degree felony,[71] punishable by a sentence of six months to one year,[72] with enhanced penalties if the conduct occurs near a school.[73] For those who are not HIV-positive, loitering is a third-degree misdemeanor,[74] with a maximum jail term of sixty days.[75]

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[58] Ohio Rev. Code §2907.1(B) (2023).
[59] Ohio Rev. Code § 2907.25(C)(1) (2023).
[60] Ohio Rev. Code § 2929.14(A)(3)(b) (2023).
[61] Ohio Rev. Code § 2929.14(H)(2) (2023).
[62] Ohio Rev. Code § 2907.25(C)(2) (2023).
[63] Ohio Rev. Code § 2929.24(A)(3) (2023).
[64] Ohio Rev. Code § 2907.24(A) (2021).
[65] Ohio Rev. Code § 2907.24(C)(2) (2023).
[66] Ohio Rev. Code § 2929.14 (A)(3)(b) (2023).
[67] Ohio Rev. Code § 2929.14 (H)(2)(A) (2023).
[68] Ohio Rev. Code § 2907.24(C)(1) (2023).
[69] Ohio Rev. Code § 2929.24 (A)(3) (2023).
[70] Ohio Rev. Code § 2907.241(A) (1996).
[71] Ohio Rev. Code § 2907.241(D)(2) (1996).
[72] Ohio Rev. Code § 2929.14 (A)(5) (2023).
[73] Ohio Rev. Code § 2929.14 (H)(2)(A) (2023).
[74] Ohio Rev. Code § 2907.241(D)(1) (2023).
[75] Ohio Rev. Code § 2929.24 (A)(3) (2023).

Legislative History

Ohio's sex work crimes were amended in 1995 by House Bill 40 to create felony penalties for PLWH.[76] House Bill 40 was introduced in January 1995, signed by the governor the next month, and became effective on May 30, 1996.[77]

Several media accounts indicate that House Bill 40 came about after a series of articles published in 1993 by the Dayton Daily News about one sex worker with HIV who had been arrested multiple times. In fact, the law was "familiarly known" by the name of the sex worker.[78]

Ohio's prostitution and loitering statutes have not been amended since the 1996 enactment of the HIV-specific provisions. Ohio's solicitation statute has been amended occasionally, but many of these changes were undone by a 2020 law that reverted the statute nearly to its original form.[79] Despite these changes, the language of the HIV-related sections in the solicitation statute is identical to when those sections were initially enacted in 1996.

Constitutional Challenges

A 2005 court case considering the constitutionality of Ohio's solicitation statute found that the state had a rational interest in protecting the public "from the spread of HIV" after conceding that individual victims of the solicitation and loitering crimes are not actually exposed to HIV. In reaching this conclusion, the court found that it could not determine from the record in the case whether treatments for HIV were effective in reducing the transmission of HIV. It has since been confirmed that effective HIV treatments can eliminate the risk of transmitting HIV through sexual contact.[80] The court, in that case, also found that the legislature could feel a need to protect the public in general because "[s]olicitation involves a somewhat casual attitude towards sexual conduct that, when

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[76] Minahan, W.T. (2009). Disclosure Before Exposure: A Review of Ohio's HIV Criminalization Statutes, Ohio Northern University Law Review *35*, 99 at fn. 127. https://www.hivlawandpolicy.org/sites/default/files/Disclosure%20Before%20Exposure%20-%20A%20Review%20of%20Ohio%E2%80%99s%20HIV%20Criminalization%20Statutes%20(Minahan).pdf.

[77] 121st General Assembly of Ohio. (1996 December, 31). "Final Legislative Status Sheet – 121st GA." https://www.legislature.ohio.gov/files/legislation/status-reports/final121.pdf.

[78] *See, e.g.*, Breaking News Staff. (2014, May 27). Infamous Dayton HIV+ prostitute sentenced to 18 months. *Dayton Daily News*. https://www.daytondailynews.com/news/crime--law/infamous-dayton-hiv-prostitute-sentenced-months/yrHAuqa6qL87FwtTBf1flK/.

[79] In 2002, Ohio introduced additional penalties if the solicitation occurred in, or used, a vehicle. 2001-02 Ohio Laws 2467 (2003). A related 2012 amendment added an optional community service sentence in lieu of driver's license suspension. 2011-12 Ohio Laws pt. 5, Am. Sub. S.B. No. 337 (2012) (Hein Online). In 2014, additional sections were introduced that criminalized solicitation of another person to engage in sexual activity if that person is a minor or a "developmentally disabled person." 2013-14 Ohio Laws pt. 2, Am. Sub. H.B. No. 130 (2014) (Hein Online). The "for hire" element present in the solicitation criminal statute, which now only applied for solicitation of those over 18, was not present in these added sections. In 2016, the language was corrected to "person with a developmental disability." 2015-17 Ohio Laws pt. 2, Am. Sub. H.B. No. 158 (2016) (Hein Online). However, all the above amendments were effectively repealed in 2020. 2019-20 Ohio Laws Sub. H.B. 431 (2020), https://publicfiles.ohiosos.gov/free/publications/SessionLaws/133/133-HB-431.pdf. One substantive difference made by the 2020 amendments was the introduction of "knowingly" as a requirement for the general solicitation statute. Despite all of the above changes, the language of the HIV-related sections in the solicitation statute is identical to when those sections were originally enacted in 1996.

[80] State v. Wallace, 2005 WL 940029 (Ohio Ct. App., 2nd Dist., Montgomery Cnty. 2005).

combined with knowledge that one has had a positive HIV test, demonstrates at least some indifference to the health of the persons whom one is soliciting."[81]

Judicial Opinions as Evidence of Enforcement

We located seven judicial opinions involving six unique defendants charged with, or convicted of, violating Ohio's solicitation or loitering statutes after a positive HIV test. These cases were reported between 1998 and 2022.[82] Three of the six people accused in these cases were women, and three were men. Five of the six people accused were charged with both solicitation and loitering, while one was only charged with solicitation.

In total, the cases discussed nine charges of solicitation after a positive HIV test, with six convictions. There were also seven charges of loitering after a positive HIV test, with three convictions. Sentences in these cases ranged from no more than three years of community control (probation) to four years of imprisonment, with the longest sentence for a single solicitation charge of three years and the longest sentence for a single loitering charge of six months.

Analysis of these reported solicitation and loitering cases confirmed that no actual exposure to HIV was required. In one case involving both solicitation and loitering, the court found, "…there is no victim who was exposed to any possible STD transmission from [the defendant]. There is no evidence that any semen or bodily fluid has been passed to anyone. The charges against [the defendant] do not indicate a need to protect any victim by notifying her of the potential spread of an STD."[83]

Three of the seven cases specified the type of proposed physical contact that formed the basis for the solicitation or loitering charges. All three cases resulted in convictions for solicitation based on a conversation with an undercover police officer about having oral sex for amounts of money ranging from $10 to $25.[84] Oral sex, even if it had occurred, is not an HIV transmission route, nor is a conversation about oral sex an HIV transmission route. One case indicated that when the person accused was asked if she was HIV-positive and on a "cocktail" of medications, she indicated that she was. However, in court, the medication and whether or not the accused person could even transmit HIV because she had an undetectable viral load were not pursued.[85]

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[81] State v. Wallace, 2005 WL 940029 (Ohio Ct. App., 2nd Dist., Montgomery Cnty. 2005).

[82] State v. West, 1998 WL 639290 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 1998); State v. McPherson, 143 Ohio App. 3d 741 (Ohio Ct. of App., 8th Dist., Cuyahoga Cnty. 2001); State v. Wallace, 2005 WL 940029 (Ohio Ct. App., 2nd Dist., Montgomery Cnty. 2005); State v. West, 2009 WL 4268554 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2009); State v. Givens, 2016 WL 3858728 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2016); State v. Jones, 2004 WL 690419 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2016); and State v. Clagg, 2022 WL 17258947 (Ohio Ct. App., 10th Dist., Franklin Cnty. 2022).

[83] State v. Wallace, 2005 WL 940029 (Ohio Ct. App., 2nd Dist., Montgomery Cnty. 2005).

[84] *See* State v. West, 2009 WL 4268554 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2009) (conversation involved $20 for oral sex with undercover detective); State v. Givens, 2016 WL 3858728 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2016) (conversation involved $25 for oral sex with undercover detective); State v. McPherson, 143 Ohio App. 3d 741 (Ohio Ct. of App., 8th Dist., Cuyahoga Cnty. 2001) (conversation involved $20 for oral sex with undercover detective).

[85] State v. Wallace, 2005 WL 940029 (Ohio Ct. App., 2nd Dist., Montgomery Cnty. 2005).

Notably, we found no published court opinions in Ohio for violation of the statute for prostitution after an HIV-positive test—the only sex work-related offense that requires any physical contact for a conviction.[86]

EXPOSURE TO BODILY FLUIDS

Since 1997 in Ohio,[87] PLWH who know of their HIV-positive status, as well as people living with viral hepatitis and tuberculosis who know of their positive status, can be prosecuted for exposing others to bodily fluids "in any manner" with the "intent to annoy, threaten, alarm, or harass."[88] At first, the statute applied only to incarcerated individuals,[89] but the language was expanded to apply to all PLWH in 2007.[90] Body fluids listed in the statute include "blood, semen, urine, feces, or another bodily substance."[91] Bodily fluids such as urine, feces, and saliva cannot transmit HIV.[92] Blood also cannot transmit HIV if it comes into contact with unbroken skin.[93] The law also includes "attempting to cause" another person to come into contact with the prohibited bodily fluids.[94] Violation of this statute is a third-degree felony,[95] punishable by a sentence of nine months to three years.[96]

The bodily fluid exposure law and its associated crime are titled "Harassment by inmate" in some official sources,[97] while others refer to the law as "Harassment with a bodily substance."[98] Despite official sources using the former statute name, a 2007 amendment to the law, which also expanded

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[86] A search for relevant case law published in 2009 indicates that there had been one such case. *See* Minahan, W.T. (2009). Disclosure Before Exposure: A Review of Ohio's HIV Criminalization Statutes, Ohio Northern University Law Review *35*, 99 at fn. 127. https://www.hivlawandpolicy.org/sites/default/files/Disclosure%20Before%20Exposure%20-%20A%20Review%20of%20Ohio%E2%80%99s%20HIV%20Criminalization%20Statutes%20(Minahan).pdf. ("Revised Code section 2907.25 Prostitution; after positive HIV test. The only case cited in the Ohio Official Reports under this statute is *State v. Wallace*."). However, the defendant in that case was indicted for one count of solicitation and one count of loitering after ah HIV positive test. *State v. Wallace*, 2005 Ohio 1913 at (Ohio Ct. App. 2005).

[87] *See* Ohio Rev. Code Ann. § 2921.38 (1997).

[88] Ohio Rev. Code § 2921.38 (C) (2013).

[89] 1997-98 Ohio Laws 285 (1997).

[90] 2005-06 Ohio Laws 9469 (2007). *See also*, legislative history for the law, above.

[91] Ohio Rev. Code § 2921.38 (C) (2013).

[92] Centers for Disease Control and Prevention. (2021, April 21). "*Bodily Fluids That Transmit HIV?*" https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html.

[93] Centers for Disease Control and Prevention. (2021, April 21). "*Bodily Fluids That Transmit HIV?*" https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html.

[94] Ohio Rev. Code § 2921.38 (C) (2013).

[95] Ohio Rev. Code § 2921.38 (D) (2013).

[96] Ohio Rev. Code § 2929.14 (A)(3)(b) (2023).

[97] Ohio Rev. Code § 2921.38 (2013) (West). *See also* Ohio Rev. Code § 2921.38 (2013), *https://codes.ohio.gov/ohio-revised-code/section-2921.38#:~:text=Section%202921.38%20%7C%20Harassment%20by%20inmate.&text=(D)%20Whoever%20violates%20this%20section,felony%20of%20the%20fifth%20degree.*

[98] *See, e.g.*, Katz, L.R., Martin, J., Mack, J. (2023, July). Baldwin's Ohio Practice Ohio Statutory Charges, Chapter 2921, "*§ 2921.38. Harassment with a bodily substance.*" *See also* Ohio Supreme Court, Criminal Sentencing Commission. (2022, Dec. 15). "*Draft Presented to Ohio Criminal Sentencing Commission:* Felony Sentencing in Ohio: Then, Now, and Now What?" at pages 27 & 39. https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/Materials/2022/December/SentencingRoundtableReport.pdf.

the elements of the crime, renamed the crime to "Harassment with a bodily substance."[99] Within the statute, the first two sections only apply to people confined in a detention facility[100] or if the victim is a law enforcement officer and do not require the person accused to have HIV, hepatitis, or tuberculosis.[101] Violations of those sections of the statute are fifth-degree felonies—a lesser penalty.[102] In contrast, the HIV/hepatitis/tuberculosis-related offense applies anywhere and to anyone.

Legislative History

Fiscal analysis prior to the 1997 enactment of the exposure to bodily fluids law recognized that the actions outlawed in the bill were already punishable as assault.[103] The original text of the statute limited enforcement to only individuals who were "confined in a detention facility."[104] In 2007, the law was expanded to apply to all persons "with knowledge that the person is a carrier of" HIV, hepatitis, or tuberculosis.[105] Fiscal analysis of the 2007 amendment recognized that "the bill's expanded prohibitions will primarily permit a prosecuting attorney to stack more charges against an individual and possibly secure a more serious punishment than might otherwise have occurred under current law."[106]

Judicial Opinions as Evidence of Enforcement

We identified four judicial opinions between 2002 and 2016 with individuals charged under the HIV-related provisions of Ohio's exposure to bodily fluids law.[107] All four people accused were men, and three were incarcerated at the time of the alleged incidents. The fourth case[108] involved allegations of exposing two people to spit (saliva): a shopper at a grocery store and a police officer who went to arrest the person accused at his home later the same day. This case is also the only one of the four cases that indicated what body fluid led to the charges.[109] Spitting at someone cannot transmit HIV.[110]

Only one of the four cases resulted in a conviction for an HIV-related crime. In that case, the person was convicted on nine of twelve bodily fluid exposure counts and was sentenced to a prison term of 20 years. However, the case was appealed and then sent back to the lower court for further

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[99] 126th General Assembly of Ohio Legislative Services Commission. (2006, December 19). "Fiscal Note & Local Impact Statement, Sub. H.B. 259." http://archives.legislature.state.oh.us/lsc/fiscal/fiscalnotes/126ga/hb0259en.htm.

[100] Ohio Rev. Code § 2921.38 (B) (2013).

[101] Ohio Rev. Code § 2921.38 (C) (2013).

[102] Ohio Rev. Code § 2921.38 (D) (2013).

[103] 122nd Gen. Assemb. of Ohio. (1997, May 28). "Fiscal Note & Local Impact Statement for Am. Sub. H.B. 37." http://archives.legislature.state.oh.us/lsc/fiscal/fiscalnotes/122ga/hb0037sp.pdf.

[104] 1997-98 Ohio Laws 285 (1997).

[105] 2005-06 Ohio Laws 9469 (2007).

[106] 126th General Assembly of Ohio Legislative Services Commission. (2006, December 19). "Fiscal Note & Local Impact Statement, Sub. H.B. 259." http://archives.legislature.state.oh.us/lsc/fiscal/fiscalnotes/126ga/hb0259en.htm. The bill passed in December 2006, but was not effective until 2007. 2005-06 Ohio Laws 9469 (2007).

[107] State v. Harris, 2002 WL 31401664 (Ohio Ct. of App., 8th Dist., Cuyahoga Cnty. 2002); State v. Lewis, 2008 WL 787722 (Ohio Ct. of App., 4th Dist., Scioto Cnty. 2008); State v. Abdalla, 2009 WL 1114480 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2009); State v. Jevnikar, 2016 WL 7189479 (Ohio Ct. of App., 11th Dist., Lake Cnty. 2016).

[108] State v. Jevnikar, 2016 WL 7189479 (Ohio Ct. of App., 11th Dist., Lake Cnty. 2016).

[109] State v. Jevnikar, 2016 WL 7189479 (Ohio Ct. of App., 11th Dist., Lake Cnty. 2016).

[110] Centers for Disease Control and Prevention. (2021, April 21). "*Bodily Fluids That Transmit HIV?*" https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html.

consideration of whether the accused person was, in fact, HIV-positive and whether he knew he was HIV-positive at the time of the incident.[111]

In one case—the allegations of exposing a grocery store shopper and an arresting police officer to saliva—a jury did not find the defendant guilty of the HIV-specific crime against the shopper; the other charge was pleaded down to the lesser-included crime of attempted harassment with a bodily substance against the police officer under a non-HIV-specific section of the statute.[112]

In two other cases, the charges were amended to not include allegations that the person knew of their HIV-positive status.[113]

In sum, only one reported court case in Ohio indicated a conviction under the HIV-specific section of the exposure to bodily fluids crime, and that case was appealed and then sent back to a lower court for further exploration of whether the defendant was, in fact, HIV-positive at the time of the incident.

BLOOD AND ORGAN DONATION

Since 1989,[114] Ohio has criminalized blood and plasma donation from PLWH who know of their HIV-positive status.[115] Violation of this crime is a fourth-degree felony, [116] punishable by a sentence of six to 18 months.[117]

Every unit of blood donated in the United States is tested for HIV and other pathogens.[118] As a result, the domestic blood supply has been safe for decades—the last known case of HIV transmission from blood donation occurred in 2008, and before that, the last known case occurred in 2002.[119]

Legislative History

Ohio's criminalization of the "sale or donation of blood, plasma, or a blood product" by PLWH was signed into law in December 1988.[120] The statute became effective in March of the following year.[121] The original statute language began with the words "no person" but then proceeded to use exclusively male pronouns throughout. In 1995, the statute was revised to use gender-neutral language

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[111] State v. Lewis, 2008 WL 787722 (Ohio Ct. of App., 4th Dist., Scioto Cnty. 2008).

[112] State v. Jevnikar, 2016 WL 7189479 (Ohio Ct. of App., 11th Dist., Lake Cnty. 2016).

[113] State v. Harris, 2002 WL 31401664 (Ohio Ct. of App., 8th Dist., Cuyahoga Cnty. 2002); State v. Abdalla, 2009 WL 1114480 (Ohio Ct. of App., 2nd Dist., Montgomery Cnty. 2009).

[114] *See* Ohio Rev. Code Ann. § 2927.13 (1988) (donation of blood, tissues, and fluids).

[115] Ohio Rev. Code § 2927.13 (A) (2016).

[116] Ohio Rev. Code § 2927.13 (B) (2016).

[117] Ohio Rev. Code § 2929.14 (A)(3)(b) (2023).

[118] Center for Disease Control and Prevention. (2023, July 11). "Blood Safety Basics." https://www.cdc.gov/bloodsafety/basics.html.

[119] Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR). (2010, Oct. 22). "HIV Transmission Through Transfusion --- Missouri and Colorado, 2008." https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5941a3.htm.

[120] 117th General Assembly of Ohio. (1988) "Legislative Status Sheet" at page 6, HB 0571. https://www.legislature.ohio.gov/files/legislation/status-reports/117thgafinalstatussheet.pdf.

[121] 1987-88 Ohio Laws 4383 (1989).

throughout and to reduce the classification of the crime from a third to a fourth-degree felony.[122]

Judicial Opinions as Evidence of Enforcement

We found no court cases related to Ohio's blood donation law.[123] In fact, the only reported court case in Ohio relating to HIV transmission through blood transfusion occurred in 1984, two years before all blood donations across the United States were tested for HIV.[124]

PREVIOUS STUDIES OF HIV CRIMINAL ENFORCEMENT

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,[125] Georgia,[126] Florida,[127] Missouri,[128] Nevada,[129] Kentucky,[130] Virginia,[131] Tennessee,[132] Louisiana,[133] Arkansas,[134] Maryland,[135] and Mississippi.[136]

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[122] 121st General Assembly of Ohio. (1995). "Legislative Status Sheet" at page 25, SB 2. https://www.legislature.ohio.gov/files/legislation/status-reports/final121.pdf; 1995-96 Ohio Laws 7136 (1995).

[123] A search for cases enforcing this crime published in 2009 also found no cases enforcing this HIV crime. *See* Minahan, W.T. (2009). Disclosure Before Exposure: A Review of Ohio's HIV Criminalization Statutes, Ohio Northern University Law Review *35*, 95. https://www.hivlawandpolicy.org/sites/default/files/Disclosure%20Before%20Exposure%20-%20A%20Review%20of%20Ohio%E2%80%99s%20HIV%20Criminalization%20Statutes%20(Minahan).pdf ("Revised Code section 2927.13: Selling or donating contaminated blood.126 No state or appellate cases were found.").

[124] Doe v. University of Cincinnati, d.b.a. Hoxworth Blood Ctr., 42 Ohio App. 3d 227 (1988).

[125] Hasenbush, A., Miyashita, A., & Sears, B. (2015). HIV Criminalization in California: Penal implications for People Living with HIV/AIDS. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf.

[126] Hasenbush, A. (2018). HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf.

[127] Cisneros, N., & Sears, B. (2021). HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf.

[128] Sears, B., Goldberg, S., & Mallory, C. (2020). Criminalization of HIV and Hepatitis B and B in Missouri: An Analysis of Enforcement Data From 1990 to 2019. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf.

[129] Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Nevada," by N. Cisneros & B. Sears, The Williams Institute at UCLA School of Law 2021 https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf.

[130] Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Kentucky. https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ky/.

[131] Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Virginia. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf.

[132] Cisneros, N., & Sears, B. & Lennon-Dearing, R. (2022). Enforcement of HIV Criminalization in Tennessee. https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-tennessee/.

[133] Cisneros, N., & Sears, B. (2022). Enforcement of HIV Criminalization in Louisiana. https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-louisiana/.

[134] Cisneros, N., Macklin, M., Tentindo, W., Sears, B. (2023). Enforcement of HIV Criminalization in Arkansas. https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ar/.

[135] Cisneros, N., Tentindo, W., Macklin, M., Sears, B., (2023). Enforcement of HIV Criminalization in Maryland. https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/.

[136] Cisneros, N., Macklin, M., Sears, B., (2024). Enforcement of HIV Criminalization in Mississippi. https://williamsinstitute.

These studies show that

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.
- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practices.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's sex offender registry.
- These enforcement trends described above occur across regions of the United States—from Georgia to California.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's sex offender registry.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

The Williams Institute reports follow several earlier studies analyzing the enforcement of HIV criminal laws in other states.[137] For example, Trevor Hoppe, analyzing 431 HIV-related criminal convictions in six states (Arkansas, Florida, Louisiana, Michigan, Missouri, and Tennessee), concluded that victim characteristics drive uneven patterns of enforcement and sentencing.[138] Hoppe found that there are disproportionately high rates of convictions among heterosexual white male defendants, yet at sentencing, Black defendants were punished more severely, and women were treated more leniently. Men accused of not disclosing their HIV status to women were punished more harshly than those accused by men.

law.ucla.edu/publications/hiv-crim-ms/.

[137] *See* Harsono, D., Gallety, C., O'Keffe, E., & Lazzarini, Z. (2017). Criminalization of HIV Exposure: A Review of Empirical Studies in the United States. *AIDS and Behavior*, 21(1), 27-50. doi: 10.1007/s10461-016-1540-5; Galletly, C., and Lazzarini, Z. (2013). Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010. *AIDS and Behavior*, 17, 26-24. DOI: 10.1007/s10461-0130408-1; Cann, D., Harrison, S.E., Qiao, S. (2019). Historical and Current Trends in HIV Criminalization in South Carolina: Implications for Southern HIV Epidemic. by D. Cann, S.E. Harrison, & S. Qiao 2019, *AIDS and Behavior*, 23, 233. doi: 10.1007/s10461-01902599-1; Hoppe, T. (2014). From Sickness to Badness: The Criminalization of HIV in Michigan. *Social Science and Medicine*, 101, 139-47. DOI: 10.1016/j.socscimed.2013.11.007; Hoppe, T. (2015). "Disparate Risks of Conviction under Michigan's Felony HIV Disclosure Law: An Observational Analysis of Convictions and HIV Diagnoses 1992-2010. *Punishment & Society*, 17(1), 73-93. https://doi.org/10.1177/1462474514561711; Hoppe, T. (2018). Punishing Disease: HIV and the Criminalization of Sickness. *University of California Press*; Hoppe, T., McClelland, A., & Pass, K. (2022). Beyond Criminalization: Reconsidering HIV Criminalization in an Era of Reform. *Current Opinion in HIV & AIDS*, 17(2), 100-105. DOI: 10.1097/COH.0000000000000715.

[138] Hoppe, T. (2018). Punishing Disease: HIV and the Criminalization of Sickness. *University of California Press.*

Prior attempts to analyze the enforcement of Ohio's HIV criminal law indicate that it has one of the highest levels of enforcement in the United States:

- Comprehensive attempts by the HIV Justice Network to identify prosecutions of HIV crimes indicate at least 195 HIV-specific criminal law cases in Ohio.[139] More recently, the HIV Justice Network found over ten cases from Ohio from 2013 to 2015,[140] 1 in 1000 to 1 in 10,000 HIV cases per capita of PLWH from 2015 to 2018,[141] and four to nine cases from 2019 to 2021.[142]
- In 2023, the Ohio Health Modernization Movement reported that they had identified 192 HIV-related cases across 65 Ohio counties from 2014 to 2020.[143]
- A compilation of HIV criminal cases by the Center for HIV Law and Policy identified 34 HIV criminal cases in Ohio between 2008 and 2019.[144]
- In 2013, Pro Publica relied on earlier case tracking by the Sero Project and others, as well as original research, to identify 356 charges (one case can have multiple charges) under Ohio's HIV crimes between 2003 and 2013.[145] Most of the charges were from Cuyahoga, Franklin, Hamilton, and Montgomery counties and involved solicitation, loitering, and felonious assault offenses.[146]

As the findings in this report show, all of the previous attempts to measure the extent of HIV-related criminal enforcement in Ohio have understated the frequency with which HIV-related criminal allegations occur in the state.

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[139] HIV Justice Network. (n.d.). Global HIV Criminalization Database. https://www.hivjustice.net/global-hiv-criminalisation-database/.

[140] Edwin J. Bernard and Sally Cameron. (2016). Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalization. *HIV Justice Network and GNP+. Brighton/Amsterdam*. http://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2_.10May2016.pdf.

[141] Sally Cameron and Edwin J Bernard. (2019). Advancing HIV Justice 3: Growing the global movement against HIV criminalization. HIV Justice Network, Amsterdam. https://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf.

[142] Alison Symington, Edwin J Bernard, et al. (2022). Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities. HIV Justice Network, Amsterdam. https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf.

[143] David Rees (2023). Ohio's 'unjust' HIV-criminalization laws still in effect, state's revised code shows. NBC 4. https://www.hivjustice.net/news-from-other-sources/us-nearly-200-people-have-charged-under-ohios-antiquated-hiv-criminalization-laws/.

[144] The Center for HIV Law & Policy & Positive Justice Project. (June 2019). Chart of U.S. Arrests and Prosecutions for HIV Exposure in the United States, 2008-2019. https://www.hivlawandpolicy.org/sites/default/files/Chart%20of%20U.S.%20Arrests%20and%20Prosecutions%20for%20HIV%20Exposure%20in%20the%20United%20States%20%28June%202019%29_0.pdf.

[145] Hernandez, Sergio. (2013, Dec. 1). About the HIV Criminalization Data. *ProPublica*. https://www.propublica.org/article/about-the-hiv-criminalization-data.

[146] Hernandez, Sergio. (2013, Dec. 1). About the HIV Criminalization Data. *ProPublica*. https://www.propublica.org/article/about-the-hiv-criminalization-data.

ANALYSIS OF HIV CRIMINAL ENFORCEMENT IN OHIO

Below, we present an analysis of HIV criminal enforcement in Ohio. The results here should be interpreted as the minimum number of allegations of an HIV-related criminal offense in Ohio, minimum number of alleged HIV-related criminal incidents, and minimum number of people who have come into contact with the criminal legal system because of such allegations.

DATA SOURCES

Ohio Incident-Based Reporting System

In March 2021 and again in December 2022, the Williams Institute obtained de-identified incident-based crime data regarding allegations of an HIV-related criminal offense in Ohio. Each incident represents an allegation of an HIV-related offense or offenses that occurred at the same time and in the same location.

The data were supplied by the Ohio Department of Public Safety's Office of Criminal Justice Services and came from the Ohio Incident-Based Reporting System (OIBRS). Ohio's law enforcement agencies voluntarily report to OIBRS. A total of 837 law enforcement agencies reported data for at least one year between 2000 and 2022, with a median of 15 years reported per agency. However, the share of the population covered by law enforcement agencies reporting full-year data to OIBRS hovered between 50% and 75% between 2006 and 2020.[147] In 2022, 80% of the state's population was covered by law enforcement agencies reporting full-year data to OIBRS (about 612 law enforcement agencies that year).[148] The OIBRS data, therefore, provide increasing coverage in more recent years, but substantial gaps exist, and those gaps increase further back in time.

Of those 837 law enforcement agencies that reported data into OIBRS, the Office of Criminal Justice Services identified 88 with HIV-related arrests. However, within these data, only two HIV-related criminal incidents originated in Ohio's second most populous county, Cuyahoga County—one in Euclid (police department) and one in North Olmsted (police department).

The lack of HIV-related incidents originating in Cuyahoga County within the OIBRS data contrasts with news accounts and other administrative data showing heavy enforcement actions in the county.[149] Not only is Cuyahoga the state's second most populous county, but it is also home to one in five people living with HIV (PLWH) in the state.[150]

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[147] Ohio Department of Public Safety. (n.d.). Crime in Ohio 2022. https://ocjs.ohio.gov/static/links/crime-in-ohio-2016-2022.pdf.

[148] Ohio Department of Public Safety. (n.d.). Crime in Ohio. Retrieved February 22, 2024. https://ocjs.ohio.gov/research-and-data/data-reports-and-dashboards/crime-data.

[149] For example, the Center for HIV Law and policy identified at least five court cases in Cleveland that received press attention. *See* Center for HIV Law and Policy. (2022). *HIV Criminalization in the United States: Ohio*. Retrieved from https://www.hivlawandpolicy.org/sites/default/files/Ohio%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S..pdf. Equality Ohio Education Fund and the Ohio Health Modernization Movement identified at least 56 HIV-related prosecutions in Cuyahoga County. See Mozynski, K. & Delaney, B. (2024). The Enforcement of HIV Criminalization in Ohio: Analysis of Court Cases from 2014 to 2020. https://ohmodernizenow.org/wp-content/uploads/2024/02/OHMM-Research-Report-01.pdf.

[150] AIDSVu. (n.d.). *2021 County Prevalence*. Retrieved February 22, 2024. https://aidsvu.org/wp-content/

The police department in Cuyahoga's largest city, Cleveland, appears to have reported data into OIBRS but reported no HIV-related criminal incidents. In contrast, Columbus, Ohio's most populous city, reported data for every year from 2001 through 2022, including 83 HIV-related incidents.

Cuyahoga County Criminal Court Cases

We separately received data from the Cuyahoga County Board of Health on HIV-related criminal court cases in the county that paint a very different picture. These court cases, 114 in all, required an HIV-related criminal allegation, arrest, and charging decision and, therefore, should have been included in the OIBRS data. In addition, the Cuyahoga court cases extend back only to 2009—an entire decade less than the earliest OIBRS data. Presumably, there were also other court cases before 2009 that we were not able to observe in the data from the Cuyahoga County courts about HIV-related criminal cases.

We include the Cuyahoga County criminal cases data in the analysis of overall counts of HIV-related offenses in Ohio to depict the extent and geographic range of HIV criminal enforcement in the state more accurately than can be obtained with just the OIBRS data.[151] However, it is important to note that the Cuyahoga County courts data and OIBRS data are not perfect substitutes. While OIBRS data includes criminal allegations and arrests even if no charges were brought for an HIV crime, the courts data only consists of those cases where HIV-related crimes were charged. This means that there are likely more HIV-related arrests in Cuyahoga County than there are court cases presented here. Moreover, while OIBRS data provides detailed demographic data on the people accused of an HIV-related offense, information on victims, and further details about the circumstances of arrests, the Cuyahoga court cases do not provide this detailed information. Accordingly, below, we first present a combined analysis of the OIBRS and Cuyahoga County courts data to the extent possible, then focus the remainder of our analysis on the OIBRS data.

Number and Frequency of HIV-Related Criminal Incidents

There have been at least 530 separate allegations of an HIV-related criminal offense across 447 criminal incidents (criminal reports or criminal court cases) since the year 2000.[152] Of those 530 HIV-related criminal allegations, the alleged crime of having consensual sex without disclosing one's HIV status accounted for nearly half (48%) of the total, and alleged crimes related to sex work (19%) and bodily fluid exposure (21%) each accounted for nearly one-fifth of the total. There were many fewer offenses related to non-consensual sex (11%) or donating blood (1%).

uploads/2022/11/AIDSVu_County_Prev_2021-20230725.xlsx.

[151] The two Cuyahoga County incidents in the OIBRS data—from North Olmsted PD and from Euclid PD (both involving blood donation) do not appear in the Cuyahoga courts data. In total there were 114 unique Cuyahoga County criminal court cases involving an HIV-related offense, none of which appear in the OIBRS data. Combined, we have evidence for 116 unique HIV-related criminal incidents in Cuyahoga County.

[152] We are unable to say how many unique individuals have been arrested because the data have been de-identified.

Table 2. Number of HIV-related offenses by type and Ohio Revised Code description

OFFENSE TYPE	HIV-RELATED OFFENSE	NUMBER OF HIV-RELATED COUNTS IN OIBRS	NUMBER OF HIV-RELATED COUNTS FROM CUYAHOGA COUNTY CRIMINAL CASES	TOTAL NUMBER OF HIV-RELATED COUNTS
Nondisclosure	**Felonious Assault:** sexual conduct without disclosing HIV-positive status[153]	178	75	253
Sex work	**Loitering to Engage in Solicitation:** when person knows they are HIV-positive[154]	55	0	55
	Solicitation: when person knows they are HIV-positive[155]	10	27	37
	Prostitution: when person knows they are HIV-positive[156]	11	0	11
Bodily fluid exposure	**Harassment with a bodily substance:** when person knows they have HIV, hepatitis, or tuberculosis[157]	50	62	112
Non-consensual sex	**Felonious Assault:** sexual conduct without disclosing HIV-positive status and victim under 18 years of age[158]	17	22	39
	Felonious Assault: sexual conduct without disclosing HIV-positive status and victim lacks mental capacity of significance of HIV[159]	17	0	17
Donation	**Selling or donating contaminated blood:** when person knows they are HIV-positive[160]	6	0	6
TOTAL		**344**	**186**	**530**

[153] ORC description: "Felonious assault: sexual conduct without disclosing knowledge of HIV."

[154] ORC description: "Loitering to engage in solicitation: knowledge person tested positive for HIV."

[155] ORC description: "Soliciting: knowledge person tested positive for HIV."

[156] ORC description: "Prostitution after positive HIV test."

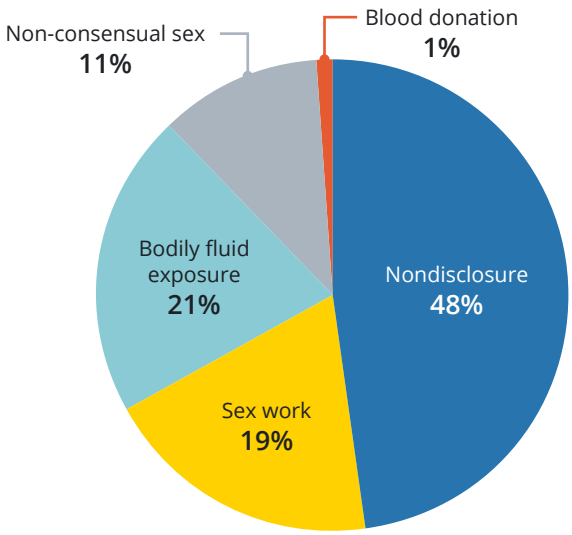
[157] ORC description: "Harassment by inmate: knowingly carries virus that causes AIDS, hepatitis virus, or infected with tuberculosis." Certain sources call this offense "harassment by inmate," while others use "harassment with a bodily substance." The HIV section of the statute applies to any person, and in any location. It is a bodily fluid exposure law, and a person found guilty is guilty of "harassment with a bodily substance."

[158] ORC description: "Felonious assault: not disclosing knowledge of HIV, victim under 18 years of age."

[159] ORC description: "Felonious assault: victim lacks mental capacity of significance of HIV."

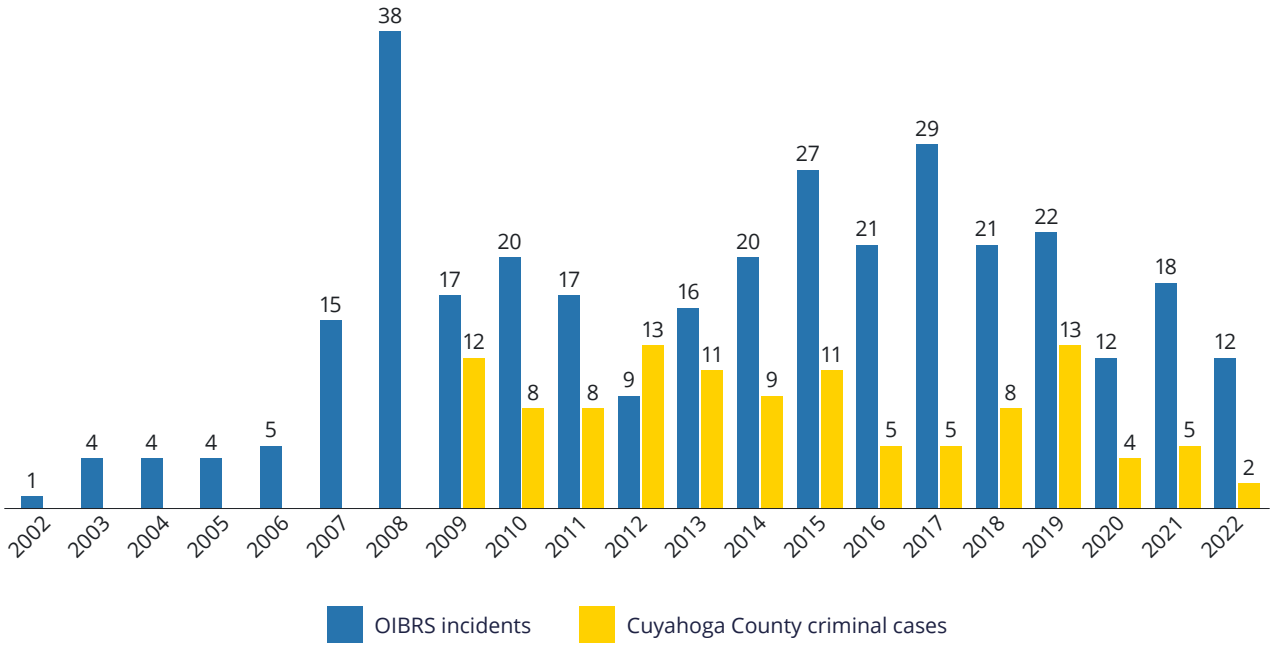
[160] ORC description: "Selling or donating contaminated blood (AIDS)."

Figure 1. Percent of HIV-related offenses by offense type in Ohio



In the OIBRS data, we have a date for when the alleged HIV-related criminal incident took place for about 90% of all incidents. For the remainder, we have a date when the alleged incident was reported to law enforcement.[161] In the Cuyahoga County data, we have the date a case was charged.

Figure 2. Number of HIV-related criminal incidents by year in Ohio



[161] One OIBRS incident had neither an incident date nor a report date. In total 332 OIBRS incidents had either an incident date or a report date. All of the bodily fluid exposure, donation, and sex work-related offenses were reported within eight days of the alleged incident occurring. For sex work, it was always on the same day, likely because the police directly observed the alleged crime. For nondisclosure cases that took greater than eight days to report (68 cases), the median lag time was nearly five months. In other words, police involvement often happened well after the alleged offense took place.

The peak year of enforcement in the OIBRS data was in 2008, driven by a huge spike in loitering arrests in Montgomery County. Disaggregating by offense reveals that, except for the 2008 spike, sex work-related incidents show no time trend. In contrast, there is a clear upward trend over time in allegations of nondisclosure before consensual sex, moderated in the COVID-19 pandemic years of 2020 and 2021. Exposure to bodily fluid incidents also shows an upward trend in the past ten years. Surprisingly, there has even been enforcement of the blood donation statute in the past 15 years. The U.S. blood supply has been safe since the mid-1980s.

Figure 3. OIBRS HIV-related incidents by year and offense in Ohio

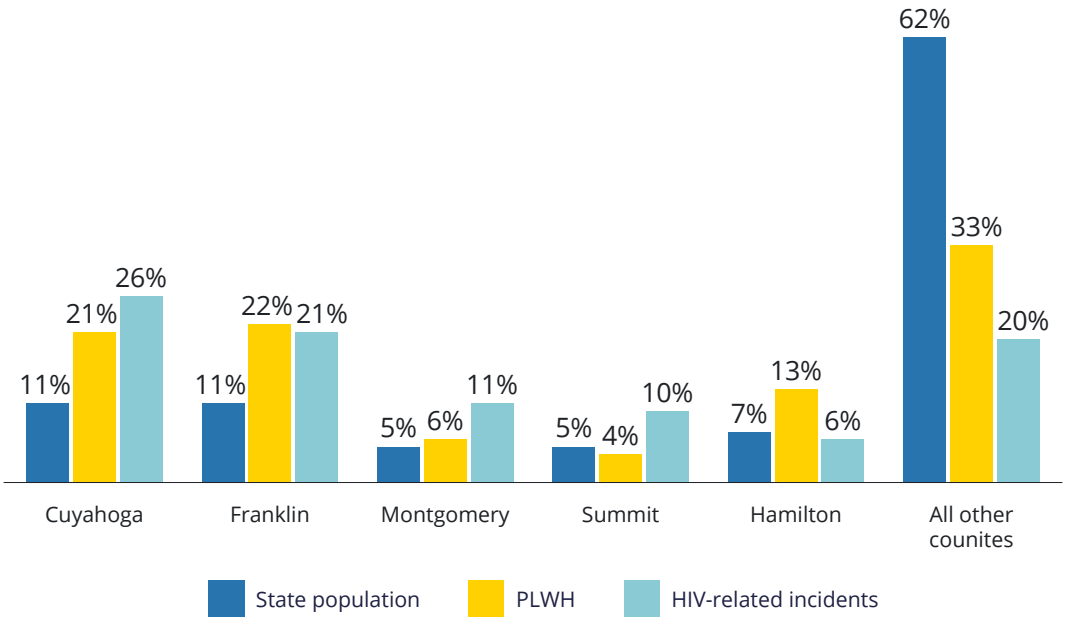
In the Cuyahoga data, there is no observable overall time trend or time trend by offense type.

Geography of HIV-Related Criminal Incidents in Ohio

Despite the lack of law enforcement agencies reporting HIV-related incidents to OIBRS, Cuyahoga County represented the largest share of HIV-related incidents in Ohio when Cuyahoga County's HIV-related criminal cases are also included in the counts. This is likely an undercount of HIV-related incidents in Cuyahoga County, as there may be many HIV-related incidents that do not result in a

formal charge for an HIV-related offense, and the Cuyahoga County data only go back to 2009 (as opposed to 2000 like the OIBRS data). Cuyahoga County accounted for about 11% of the state's population in 2021 and 21% of the state's population of people living with HIV.[162] However, Cuyahoga County accounted for 26% of all HIV-related incidents. In contrast, the state's most populous county, Franklin County, home to the state's most populated city, Columbus, accounted for 11% of the state's population, 21% of the population of PLWH, but only 21% of HIV-related incidents.

Figure 4. State population, population of PLWH, and HIV-related criminal incidents in Ohio by county

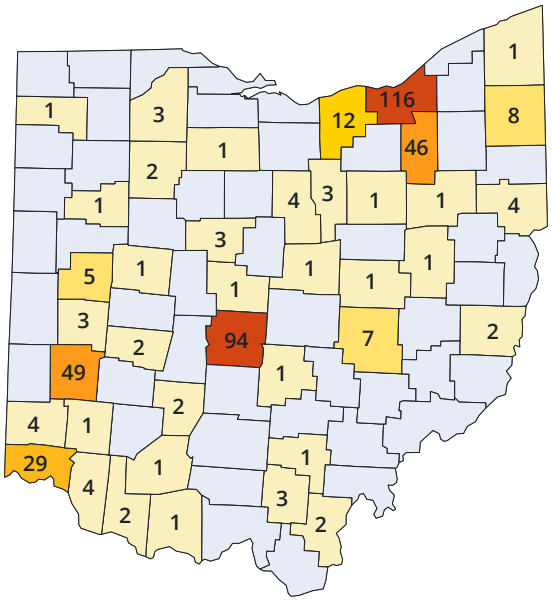


In general, HIV-related criminal enforcement was highly geographically concentrated, with four counties—Cuyahoga, Franklin, Montgomery, and Summit—accounting for over two-thirds (68%) of all HIV-related incidents. Those four counties were home to just over half (53%) of all PLWH in the state and a little less than a third (32%) of all Ohioans. Put differently, Cuyahoga and Franklin counties each had more HIV-related incidents than the bottom 83 counties by HIV-related incidents combined. Indeed, 48 of Ohio's 88 counties reported no HIV-related incidents to OIBRS. It is possible Cuyahoga County would have accounted for an even greater share of HIV-related criminal incidents if complete OIBRS data for the county were available. Indeed, restricting the analysis to just the period in which we have both OIBRS and Cuyahoga County data, the share of incidents from Cuyahoga County rises to 30%.[163]

[162] AIDSVu. (n.d.). 2021 County Prevalence. Retrieved February 22, 2024, from https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_County_Prev_2021-20230725.xlsx; U.S. Census Bureau. (n.d.). *Population Estimates for Counties, 2020-2022* [Ohio]. Retrieved from https://www2.census.gov/programs-surveys/popest/tables/2020-2022/counties/totals/co-est2022-pop-39.xlsx.

[163] This is not an exact comparison as the OIBRS dates are nearly all incident dates, while the Cuyahoga County court cases are charge dates.

Figure 5. Number of HIV-related criminal incidents in Ohio by county



We have ZIP code information for 311 of the OIBRS incidents. We do not have this information for Cuyahoga County court cases. In total, only 120 ZIP codes in Ohio reported an HIV-related incident.

As with the county counts, there were also enforcement hotspots by ZIP code. A Harrison Township ZIP code in Montgomery County just to the north of Dayton, 45414, had by far the most HIV-related incidents—18, about 6% of the total OIBRS incidents for the entire state that include a ZIP code. All but one incident in 45414 was for loitering to engage in solicitation; the other was for prostitution, and 10 of the incidents took place in the 12 months from August 2008 to August 2009. The Montgomery County Sheriff's Office was the arresting agency in these loitering incidents. Removing the 45414 ZIP code incidents eliminates the noticeable enforcement spike around that time noted above—that spike is entirely driven by the high number of arrests in a short time period in this one ZIP code.

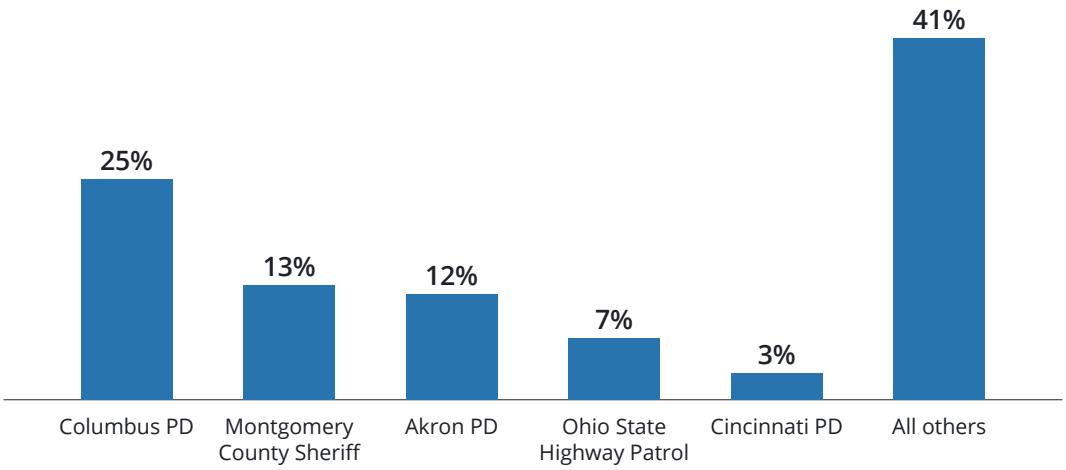
The following five ZIP codes with the highest number of HIV-related incidents had eight or nine such incidents: three were in Columbus (43204, 43205, and 43223), and two were in Akron (44306 and 44311). ZIP code 43205 showed a high concentration of felonious assault incidents, but the other ZIP codes contained a broader mix of felonious assault, sex work, and bodily fluid exposure incidents. All other ZIP codes had seven or fewer HIV-related incidents. (The median number of HIV-related incidents among the 120 ZIP codes was two).

Law Enforcement Agencies

We also have law enforcement agency information (originating agency) for all 333 OIBRS incidents. We do not have this information for Cuyahoga County court cases. Again, the data show high geographic concentration. Of the 88 law enforcement agencies that reported at least one HIV-related incident, a full quarter (25%) came from the Columbus Police Department. Montgomery County Sheriff's Office (surrounding Dayton) contributed another 13%, followed by the Akron Police Department. Together, these three law enforcement agencies accounted for 50% of all HIV-related incidents—the same share as all the other 85 law enforcement agencies combined. Again, these figures exclude Cuyahoga County.

Suburban law enforcement agencies near populous cities also appear among the law enforcement agencies with high numbers of incidents, including the Elyria Police Department to the west of Cleveland (seven incidents) and Mount Healthy Police Department to the north of Cincinnati (four incidents) as well as the Ohio State University—Columbus Police Department (4 incidents). Zanesville Police Department also had four incidents, but the town is not near a major city.

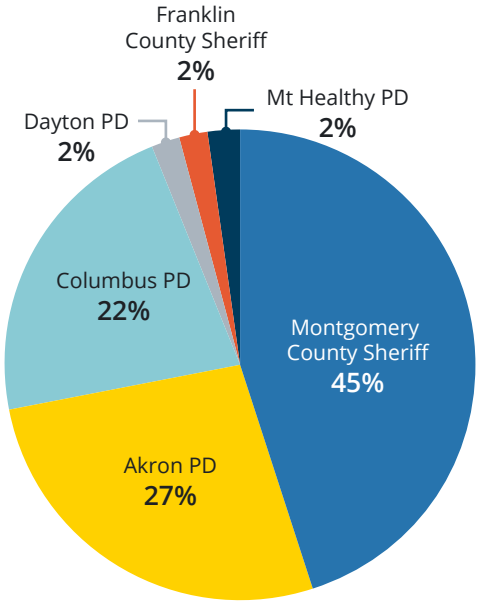
Figure 6. Share of HIV-related incidents in Ohio by law enforcement agency



Note: Excludes Cuyahoga County court cases data.

We also observed a high concentration by law enforcement agency among the loitering and solicitation-related incidents. All of these incidents originated with just six law enforcement agencies, with 94% originating from just three agencies. By far, the greatest share of these incidents (45%) originated with the Montgomery County Sheriff's Office (Harrison Township, just north of Dayton), followed by the Akron Police Department (27%) and Columbus Police Department (22%). Dayton Police Department, Franklin County Sheriff's Office (the arrest occurred within the city of Columbus), and Mount Healthy Police Department each had one incident. Presumably, solicitation and loitering incidents also originated with law enforcement agencies in Cuyahoga County, but those data are unavailable.

Figure 7. Share of loitering and solicitation-related HIV incidents in Ohio by law enforcement agency



Note: Excludes Cuyahoga County court cases data.

Location of Incident

We have location information for all 333 OIBRS incidents. We do not have this information for Cuyahoga County court cases. About half (51%) of all OIBRS incidents took place in a home, hotel/motel, or other residential building. However, among bodily fluid exposure incidents, nearly all took place in a public place or government facility. Just under half (47%) of exposure incidents occurred within a jail or prison, and another 19% occurred in a government office, hospital, or doctor's office. Similarly, among sex work incidents, 80% took place on the street or in a parking lot.

Arrests

Of the 333 unique HIV-related criminal incidents in the OIBRS data, 141 included data indicating that an arrest for an HIV-related offense had occurred.[164] In total, there were 144 individuals arrested across the 141 incidents. We do not have arrestee information for the Cuyahoga County court cases. Further, we cannot determine from the OIBRS data whether individuals were arrested more than once for an HIV-related incident over time.[165]

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[164] OIBRS includes sections for both "Suspect" and "Arrestee." We were provided arrestee data, indicating an arrest had been made associated with a specific HIV-related criminal incident. All 114 of the Cuyahoga County criminal court cases also involved at least one arrest for an HIV-related crime allegation.

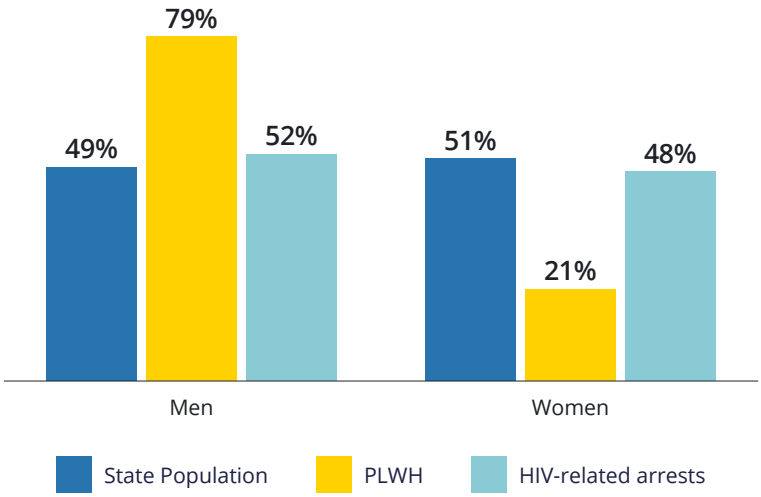
[165] The characteristics of arrestees should be understood to be those of people who law enforcement arrested, as opposed to those of the pool of unique individuals who have even been arrested for an HIV-related offense in Ohio. In other words, when making arrests for HIV-related offenses, 52% of the time law enforcement arrested men (and some men could have been arrested more than once). If men were more likely to be arrested for multiple HIV-related incidents than women, then less than 52% of those who have ever been arrested for an HIV-offense in Ohio were men. That said, our research from other states indicates that most people with an HIV-related incident have only one such incident. For example, *see* Sears, B., Goldberg, S. K., & Mallory, C. (2022). *The Criminalization of HIV and Hepatitis B and*

The median age at the time of arrest was 30 years old, and the mean age was 33. The youngest person arrested was 15 years old (for felonious assault), followed by a 17-year-old (for solicitation). The oldest person arrested was 63 (for bodily fluid exposure).

Included in the OIBRS data is information about where those arrested lived. A little over eight in ten (81%) people arrested were residents of the town or county where the arrest occurred. It appears, then, that most people arrested for an HIV-related criminal allegation were members of their local community.

Men made up a bare majority (52%) of all people arrested for an allegation of an HIV-related offense. However, men were 79% of PLWH in 2021.[166] In contrast, women were 48% of people arrested for an allegation of an HIV-related offense, but only 21% of PLWH. Put differently, women were disproportionately more likely to be arrested because of an alleged HI-related offense.[167] We do not have information on gender identity and do not know what share of people arrested might identify as cisgender, transgender, or another gender identity.

Figure 8. Sex distribution of state population, population of PLWH, and HIV-related arrests in Ohio



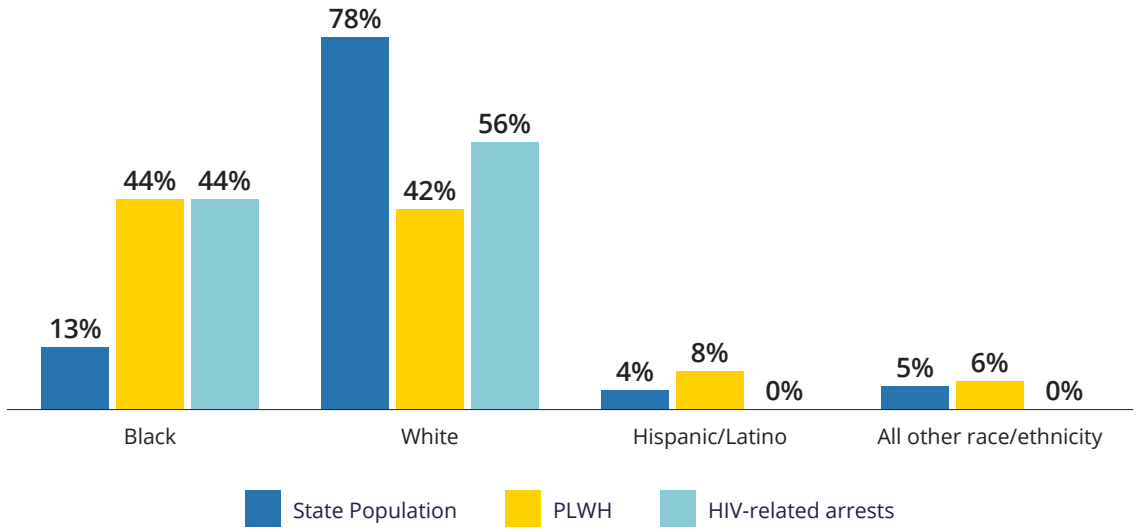
C in Missouri. The Williams Institute at UCLA School of Law. https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf ("Eighty-four percent of people impacted by Missouri's HIV/hepatitis crimes have been arrested for only one HIV/hepatitis incident.").

[166] AIDSVu. (n.d.). *State Prevalence Data 2021*. Retrieved February 22, 2024, from https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx.

[167] OIBRS only includes a field for "Arrestee Sex," and only provides two options: female and male. We do not know who makes the sex determination, and we do not have any information on gender identity. It is possible that self-reported gender identity would differ from the sex reported here.

Overall, Black people were 44% of people arrested for allegations of an HIV-related offense. White people made up the remainder of HIV-related arrests. No other race/ethnicity group was identified in the arrests data.[168] Black Ohioans also made up 44% of PLWH in 2021, although they were only 13% of the state population.[169] In contrast, white Ohioans were 42% of PLWH and 78% of the state's population.

Figure 9. Race/ethnicity distribution of state population, population of PLWH, and HIV-related arrests in Ohio

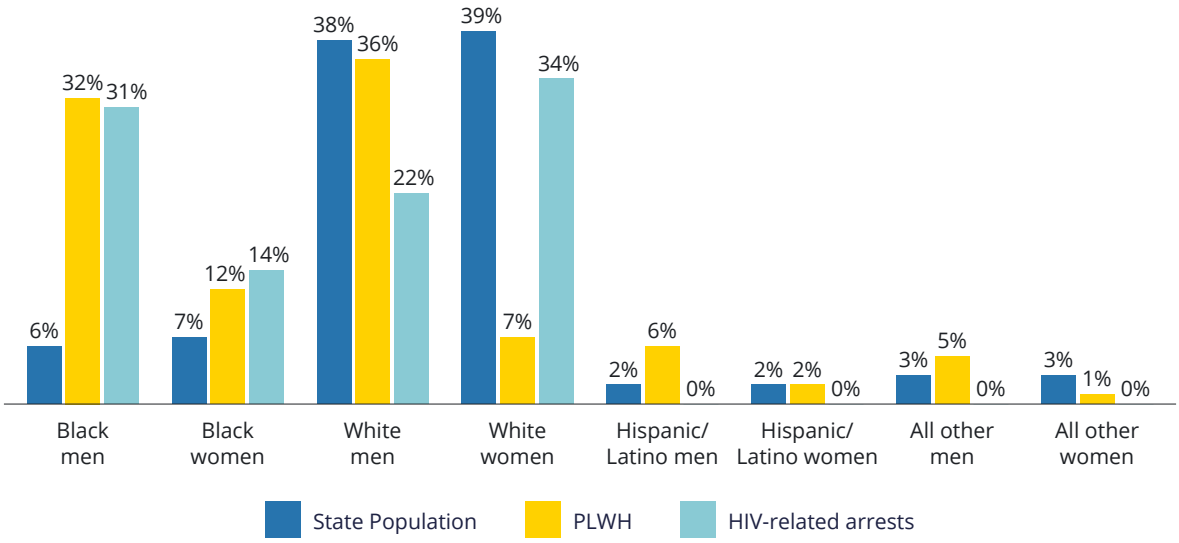


Breaking out the demographic data by race and sex reveals that women, especially white women, were over-represented among HIV-related arrests when compared to their share of PLWH. White women were 34% of HIV-related arrests but only 7% of PLWH. In contrast, white men were under-presented: 22% of HIV-related arrests, but 36% of PLWH.

[168] An earlier version of the OIBRS system separated out race and ethnicity; the 2023 version combines them. We are not able to determine whether people who identify as Hispanic/Latino are included in the race data provided by OIBRS. *See* Ohio Department of Public Safety. (2023, May). *Ohio Incident Based Reporting System: Data Collection and Submission Specifications*. Retrieved February 22, 2024, from https://ocjs.ohio.gov/static/oibrs/links/Data_Specs.pdf.

[169] AIDSVu. (n.d.). *State Prevalence Data 2021*. Retrieved February 22, 2024, from https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx; U.S. Census Bureau. (n.d.). *State Population Estimates by Age and Sex, 2020-2022* [Ohio]. Retrieved from https://www2.census.gov/programs-surveys/popest/tables/2020-2022/state/asrh/sc-est2022-syasex-39.xlsx.

Figure 10. Demographic distribution of state population, population of PLWH, and HIV-related arrests in Ohio

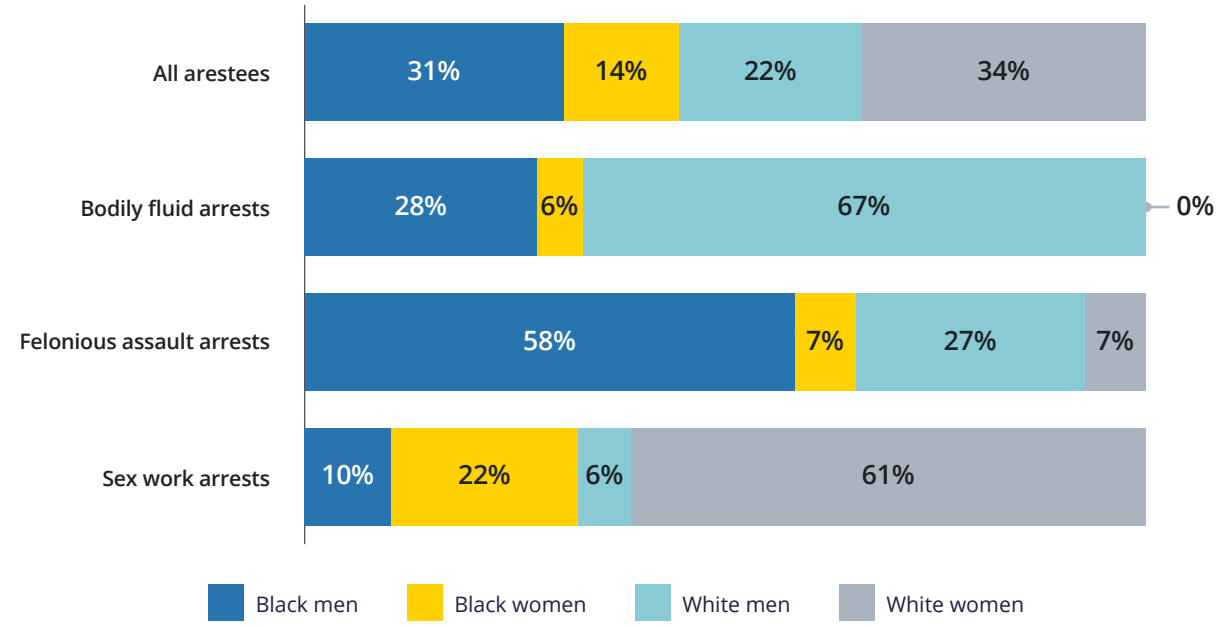


This overrepresentation of women in HIV-related arrests is the result of the enforcement of Ohio's HIV crimes related to sex work. Women were 84% of all sex work-related arrests, and sex work-related arrests were nearly half (47%) of all incidents with an associated HIV-related arrest. Indeed, nearly all sex work-related incidents led to an arrest, whereas about one in four of the nondisclosure cases had an associated arrest; for bodily fluid exposure incidents, about one in three led to an arrest.

We know from other research that sex work-related arrests usually take place in the context of interactions with police; an officer observes the alleged illegal activity and then makes an arrest.[170] In contrast, most allegations of felonious assault are reported to police after the fact rather than directly observed by law enforcement, making an arrest less likely than for sex work. The gender breakdown for the felonious assault (and bodily fluid exposure) arrests looks very different—just a handful of people arrested were identified as women.

[170] Nathan Cisneros, Brad Sears, & Robin Lennon-Dearing, "Enforcement of HIV Criminalization in Tennessee," The Williams Institute at UCLA School of Law, 2022, https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-tennessee/

Figure 11. Demographic distribution of people arrested for HIV-related offenses in Ohio by offense



The skew toward sex work arrests also affects the racial breakdown of arrestees. About two-thirds (61%) of sex work-related arrests were among white women. (White men made up about two-thirds (67%) of bodily fluid exposure arrests. In contrast, Black people were about two-thirds (65%) of felonious assault arrests.)

Victims

OIBRS provides information on victims of alleged HIV-related criminal incidents. We have details for 324 victims. These include 274 individual victims across 253 unique HIV-related incidents.[171] We do not have victim information for the Cuyahoga County court cases. Of these 274 victims, 21 individuals were identified as police officers in the line of duty (of which 20 were fluid exposure incidents and one was a felonious assault incident). The remaining 253 victims were private individuals.

The vast majority of private individuals who were identified as victims were associated with an alleged nondisclosure offense (72%), followed by alleged bodily fluid exposure offenses (15%) and non-consensual sex (12%). There was only one alleged prostitution offense with an associated private person as a victim. A victim was also identified for blood donation, but this may have been an input error.[172]

An additional 49 incidents listed "Society/Public" as the "Victim" as so-called "crimes against society."[173]

[171] The OIBRS data are de-identified, so we cannot link victims across incidents.

[172] That victim demographic information has nevertheless been included in the analysis here.

[173] The OIBRS manual defines crimes against society as "A crime that represents the community or public's prohibitions of engaging in certain types of activity." Center for HIV Law and Policy. (2022). *HIV Criminalization in the United States: Ohio*. Retrieved from https://www.hivlawandpolicy.org/sites/default/files/Ohio%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S..pdf.

All of the loitering and solicitation incidents were reported as crimes against society, meaning there was no actual person identified as a victim. All of the prostitution incidents except one also listed "Society/Public" as the victim. In other words, with a single exception, it appears that none of the sex work-related incidents involved anyone other than the person arrested. Likewise, all six blood donation incidents were also classified as crimes against society.[174]

Figure 12. Victim type among HIV-related criminal incidents in Ohio

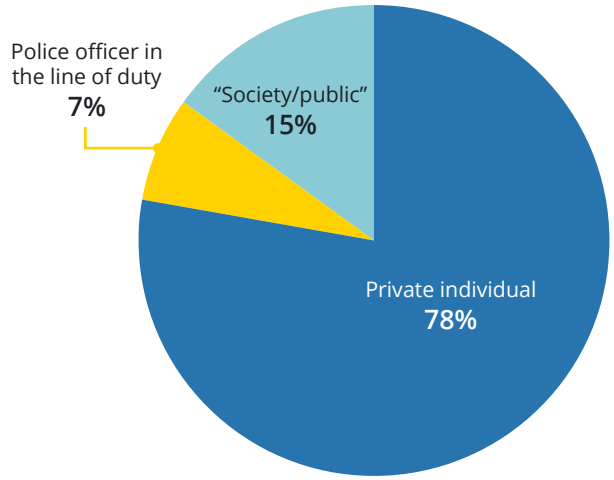
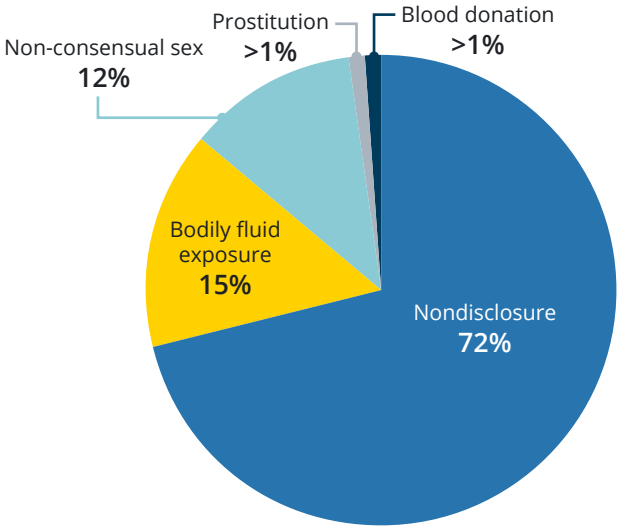


Figure 13. Distribution of private individual victims among HIV-related offenses in Ohio



Among private individuals who were victims, the median victim age was 30 years old. Seven victims were under the age of 18, and the oldest victim was 78 years old. More than three-fourths (77%)

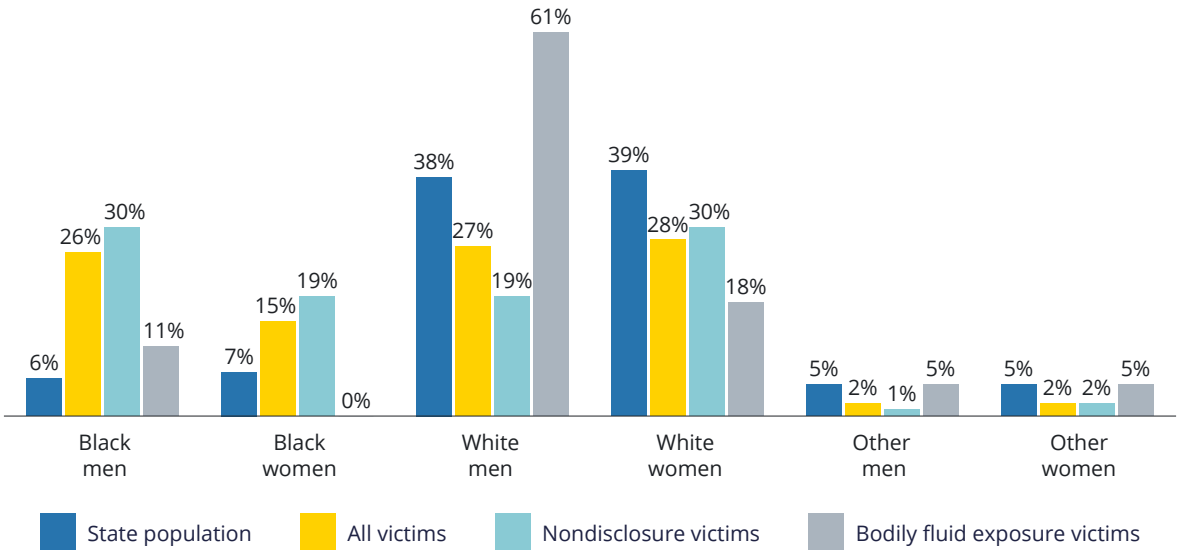
[174] One blood donation incident, from 2012, lists both "Society/Public" and a private individual as a victim, but this was likely a mistake; crimes against society should not have multiple victim fields. There has not been an HIV transmission case since 2008.

of victims lived in the community—were residents of the town or county—in which the HIV-related criminal incident was alleged to have happened.

Overall, victims were nearly as likely to be men (55%) as to be women (45%).[175] However, by race, Black people were disproportionately likely to be victims. Black people were 13% of the state's population in 2021 but 42% of victims in HIV-related incidents. In contrast, white people were 78% of the state's population but 56% of victims in HIV-related incidents.

By race and sex, both Black men and Black women were disproportionately likely to be the victim of an HIV-related incident. Black men were just 6% of the state's population but 26% of victims in HIV-related incidents. Likewise, Black women were 7% of the state's population but 15% of victims in HIV-related incidents.

Figure 14. Demographic distribution of state population, victims of all HIV-related incidents, victims of nondisclosure incidents, and victims of bodily fluid incidents in Ohio



The demographic distribution looks similar for nondisclosure victims. However, the picture changes with bodily fluid exposure incidents, where white men are over-represented. White men were 38% of the state population but 61% of all bodily fluid exposure victims. In contrast, there were no Black women identified as the victim of a bodily fluid exposure incident.

Victim-Suspect Relationship

The OIBRS data include a field for victim-suspect/arrestee relationship. We focus our analysis here on bodily fluid exposure incidents and felonious assault incidents.

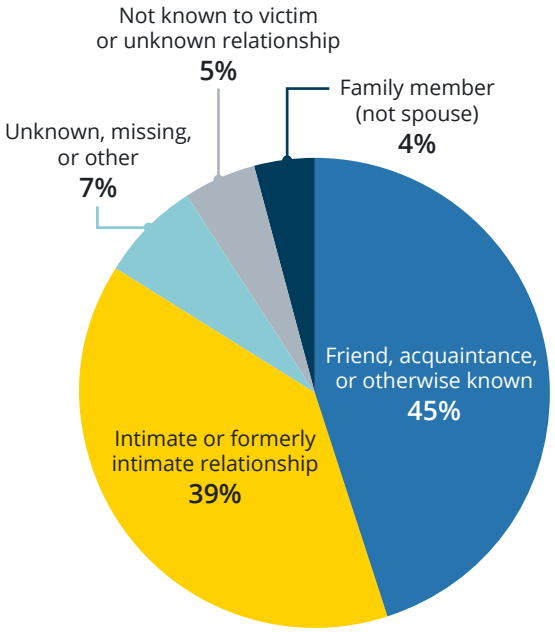
We have information on the relationship between the victim and the arrestee in 40 of the bodily fluid

[175] We do not know how victim sex was determined, for example whether the victim was allowed to self-report. We do not have information on gender identity.

exposure incidents in which the victim was not a law enforcement officer. In 75% of those cases, the victim was known to the person arrested (for example, acquaintance, neighbor, or "otherwise known").

For felonious assault, we have 219 unique victim-suspect relationships. Nearly half (45%) of all relationships indicated that the victim and person arrested knew each other (friend, acquaintance, or "otherwise known"). Another four in ten (39%) of all pairings indicated that the victim and the person arrested were intimate partners or formerly intimate partners.[176] These two categories together accounted for 84% of all victim-suspect relationships, indicating that the victim and person arrested were familiar with one another and perhaps intimately so.

Figure 15. Victim-suspect relationship among HIV-related felonious assault incidents in Ohio



We were also able to discern something about same-sex sexual contact between victims and the people arrested. Among the 219 felonious assault relationships, 25 (11%) were identified as "Homosexual Partner." (Every pairing was a man-man pairing.) However, in the most recent version of OIBRS, this option has been removed in the victim-suspect field. The most recent victim-suspect relationship that was classified as "Homosexual Partner" dates to October 2021. It is, therefore, possible that additional recent relationships would have been classified as "Homosexual Partner" if given the option. We also have information on the reported sex of both the victim and person

[176] This includes relationships labeled as "Boyfriend/Girlfriend," "Homosexual Partner," "Spouse," "Ex-Spouse," and "Common Law Spouse." "Homosexual Partner" was not an available victim-suspect relationship choice in 2023, but was previously an option based on the national incident-based reporting template. The latest incident date to use this field in the OIBRS data was in 2021. *See* Ohio Department of Public Safety. (2023, May). *Ohio Incident Based Reporting System: Data Collection and Submission Specifications*. Retrieved February 22, 2024, from https://ocjs.ohio.gov/static/oibrs/links/Data_Specs.pdf.

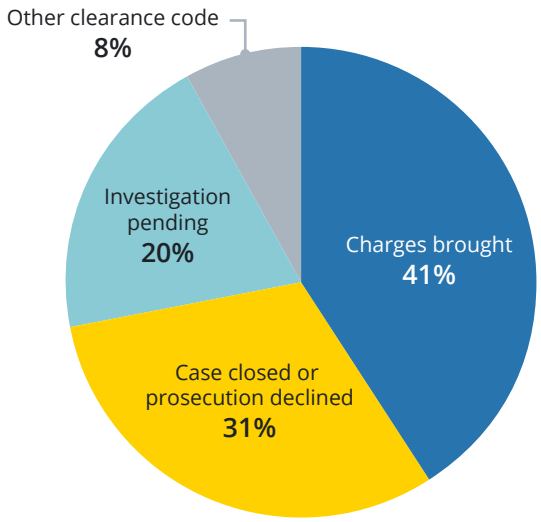
arrested. Using this method, we identified an additional 14 man-man pairings among the felonious assault incidents and an additional woman-woman pairing for a combined total of 35 victim-suspect relationships (16% of the total) for which we have evidence of same-sex sexual contact.

Arrest Outcomes

For OIBRS incidents, we have "clearance code" data on how investigators and prosecutors decided to proceed. For example, a criminal case may still be open, and in the process of investigation, it may have been closed for some reason; prosecutors may have declined to file charges, or they may have decided to proceed and file formal criminal charges for one or more person arrested for the HIV-related incident. (All of the Cuyahoga County court cases started as a report of an HIV-related incident that resulted in an arrest and formal charge for an HIV-related offense.)

We have clearance codes for 183 HIV-related incidents in the OIBRS data. Just about four in ten (41%) of incidents with a known clearance code resulted in a formal charge of one of the HIV-related offenses. In 31% of incidents, the case was closed without any further legal action, or prosecutors declined to bring charges, and another 20% still had investigations pending when we received the OIBRS data. In other words, among incidents that were not pending investigation and that indicated whether a formal charge for an HIV offense was brought or not, two-thirds (66%) resulted in formal charges.

Figure 16. Outcomes of HIV-related incidents in Ohio by clearance code



CONCLUSION

This report documents the legal and legislative history of HIV criminalization in Ohio and analyzes key trends in the enforcement of the state's HIV-related criminal laws. In contrast to previous studies and media reports, we uncovered 530 separate allegations of an HIV-related criminal offense across 447 criminal incidents (criminal reports or criminal court cases) since the year 2000.

Enforcement of Ohio's HIV-related crimes is not an issue of the past. It continues to the present day. The enforcement of HIV crimes is geographically concentrated, with four counties—Cuyahoga, Franklin, Montgomery, and Summit—accounting for over two-thirds of all HIV-related incidents.

Like the impact of the HIV epidemic in Ohio, enforcement of HIV crimes disproportionately impacts Black people in the state. Because of the focus on sex work-related crimes in the state, enforcement disproportionately impacts women living with HIV. More specifically, patterns of enforcement for different HIV crimes in Ohio impact groups by race and sex differently: 61% of sex work-related arrests were of white women, 58% of felonious assault arrests were of Black men, and 67% of bodily fluid exposure arrests were of white men. While the passage of HIV criminal laws may have been motivated by fears about the sexual behaviors of men who have sex with men, most HIV crimes involving sex in this analysis were related to heterosexual, not homosexual, conduct.

HIV criminalization is not only a criminal justice issue but a barrier to promoting public health and ending the HIV epidemic in Ohio. The state's three most populous counties—Franklin, Cuyahoga, and Hamilton—were all included in the U.S. Department of Health and Human Services (HHS) 2019 Ending the Epidemic initiative targeting 50 local areas where more than half of all new HIV diagnoses occur.[177] Each of these local areas prepared a "Plan to End the HIV Epidemic" that was released in December 2020, describing concrete steps to increase HIV testing and treatment and to decrease HIV transmissions.[178]

All three of Ohio's Ending the Epidemic plans single out HIV criminalization as an impediment to achieving their Plans' public health goals. For example, in Franklin County (Columbus), the Plan specifies the need to "Modernize archaic laws that significantly criminalize HIV,"[179] explaining that

> *Laws on the books in Ohio that criminalize HIV serve as a significant disincentive to testing. In other states that have modernized their laws, there is more awareness of HIV status, and thus fewer new infections…Activities under this strategy will include supporting work going on in Ohio to make these statute changes.*[180]

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[177] Ohio Department of Public Safety. (2023, May). *Ohio Incident Based Reporting System: Data Collection and Submission Specifications*. Retrieved February 22, 2024, from https://ocjs.ohio.gov/static/oibrs/links/Data_Specs.pdf

[178] Centers for Disease Control and Prevention. (n.d.). *About the Ending the HIV Epidemic in the U.S. Pillars*. Retrieved February 22, 2024, from https://www.cdc.gov/endhiv/about-ehe/pillars.html.

[179] Plan to END THE HIV EPIDEMIC: Central Ohio (Franklin County). (2020, December). Retrieved February 22, 2024, from https://www.communitysolutions.com/wp-content/uploads/2020/12/Central-Ohio-EHE-Plan.pdf.

[180] Plan to END THE HIV EPIDEMIC: Central Ohio (Franklin County). (2020, December). Retrieved February 22, 2024, from https://www.communitysolutions.com/wp-content/uploads/2020/12/Central-Ohio-EHE-Plan.pdf.

Their Plan also singles out the "unjust application of criminal law to people living with HIV based solely on their HIV status" as a specific hurdle to combatting the HIV epidemic.[181]

Cuyahoga County's Plan mentions HIV criminalization several times. Indeed, "Modernizing of HIV Laws" is identified as part of that county's "Overarching Strategy" to end the HIV epidemic.[182] Cuyahoga County's Plan states that "Outdated criminalization laws are not based in science, undermine public health, and perpetuate stigma against PLWH. These laws contribute directly to decreases in diagnoses and [create] issues surrounding partner identification." The plan continues that Ohio's HIV criminal laws further stigmatize and penalize "those who are practicing safe sex and obtaining undetectable viral loads."[183]

Similarly, Hamilton County's Plan also calls for agencies to "Work to reduce stigma about HIV/AIDS in the community" by "Advocat[ing] for change in HIV criminalization laws" and to "Oppose, through advocacy and lobbying, HIV criminalization laws and other discriminatory legislation that disproportionately affects communities of color."[184]

All three plans echo the Center for Disease Control and Prevention's (CDC) position on HIV-specific criminal laws, which calls for state legislatures to "[r]epeal outdated HIV criminalization laws, or [m]odernize HIV criminalization laws, or [d]eprioritize HIV criminalization through specific or general criminal statutes, or [i]f the former options are not feasible, use current scientific and medical evidence when applying existing HIV criminalization laws, or general criminal statutes used to criminalize the action taken by people with HIV."[185]

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[181] Plan to END THE HIV EPIDEMIC: Central Ohio (Franklin County). (2020, December). Retrieved February 22, 2024, from https://www.communitysolutions.com/wp-content/uploads/2020/12/Central-Ohio-EHE-Plan.pdf.

[182] Plan to END THE HIV EPIDEMIC: Cuyahoga County, Ohio. (2020, December). Retrieved February 22, 2024, from https://www.ccbh.net/wp-content/uploads/2020/12/Cuyahoga-EHE-Plan.pdf.

[183] Plan to END THE HIV EPIDEMIC: Cuyahoga County, Ohio. (2020, December). Retrieved February 22, 2024, from https://www.ccbh.net/wp-content/uploads/2020/12/Cuyahoga-EHE-Plan.pdf

[184] Plan to END THE HIV EPIDEMIC: Cuyahoga County, Ohio. (2020, December). Retrieved February 22, 2024, from https://www.ccbh.net/wp-content/uploads/2020/12/Cuyahoga-EHE-Plan.pdf.

[185] Centers for Disease Control and Prevention. (2023, January). *HIV Criminalization and Ending the HIV Epidemic in the U.S.* Retrieved February 22, 2024, from https://www.cdc.gov/hiv/pdf/policies/law/cdc-hiv-criminal-ehe-2023.pdf.

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