



ENFORCEMENT OF HIV CRIMINALIZATION IN OHIO

ANALYSIS OF COURT CASES FROM 2014 TO 2020

**A COLLABORATION BETWEEN THE EQUALITY OHIO EDUCATION FUND AND
THE OHIO HEALTH MODERNIZATION MOVEMENT**

**AUTHORED BY:
KATE MOZYNSKI, ESQ
DELANEY BARR, ESQ.**

Table of Contents

| | | |
|------|---|-------|
| I. | Executive Summary | 3-4 |
| II. | Thanks and Acknowledgements..... | 5-7 |
| III. | In Depth: What Are These Laws and Why Do They Matter? | 8-14 |
| IV. | Our Methodology and Research Process..... | 14-16 |
| V. | By the Numbers: Our Findings and Analysis | 16-25 |
| VI. | Conclusion: Where Do We Go from Here? | 25-26 |
| VII. | Appendices | 27-29 |

Executive Summary

Like many states, Ohio currently has several criminal laws that specifically criminalize individuals living with HIV due to their HIV status.¹ Over the past several years, there has been a growing movement in the United States to modernize these laws so that they reflect current medical science on how HIV is and is not acquired and transmitted. However, in order to better understand why change is necessary, it is key to understand how these laws are being used and who is being most affected.

To that end, the Equality Ohio Education Fund (EOEF) and the Ohio Health Modernization Movement (OHMM) collaborated for over three years to for the first time gather data across all 88 counties in Ohio about the use of these laws and the consequences of HIV criminalization across Ohio. This effort, which is the first of its kind in Ohio, catalogs the criminal cases charged in Ohio from 2014-2020 under any of Ohio's six statutes that criminalize or create penalty enhancements for people living with HIV. This publication is the culmination of that data collection effort, and the following is a brief summary of the key data presented in full in this report.

- 1) There were at least 214 confirmed HIV-related prosecutions in Ohio from 2014-2020, of which over half (56%, 120 cases) came from the state's "harassment with a bodily substance" law and about a third (36%, 77 cases) came under the Ohio's felonious assault law. The remainder (8%, 17 cases) were related to sex work. There were no prosecutions under Ohio's blood donation law.
- 2) The enforcement of these statutes is geographically concentrated, with at least 56 cases (or just over 26% of identified cases) occurring in Cuyahoga County (Cleveland). The other most-represented counties include Hamilton County (Cincinnati), with at least 26 cases, Lucas County (Toledo) with at least 16 cases, Franklin County (Columbus) with at least 15 cases, and Montgomery (Dayton) and Warren Counties, each with at least 10 cases. A full accounting of all 88 counties in Ohio can be found in the appendix of this report.
- 3) There is a significant racial disparity between individuals charged under HIV criminalization statutes when compared to the general populace. Per the 2020 census, 77% of Ohioans identify as "White alone" and 12.5% identify as "Black alone." However, when examining the data set collected in Ohio's HIV cases, 35.9% of defendants were identified as Black and 51.8% of defendants were identified as White.

¹ See <https://www.cdc.gov/hiv/policies/law/states/exposure.html>

- 4) Statewide, 28.9% of all defendants (62 people) were identified as Black men.
- 5) When isolated to Cuyahoga County, the County with the most HIV-related charges, there is an even larger racial disparity. Per census data, 60.8% of Cuyahoga County residents identify as White alone and 30.9% of residents identify as Black alone (not Hispanic or Latino). However, when looking at HIV charges, only 7 defendants (30.3%) in Cuyahoga County were identified as White, 38 defendants (67.8%) were identified as Black, and 1 (17%) defendant was identified as Hispanic.
- 6) Behind each of these cases, there is a real Ohioan who has been affected. The disparate enforcement and impact of charges under these laws evidence a compelling need to modernize these laws so that they reflect accurate science regarding the routes and risks of transmission of HIV. Legislative review is a key next step in ensuring that Ohio laws related to HIV are fair and in the interest of justice.

Thanks and Acknowledgments

This project was a huge effort and required the work of many staff members and volunteers. It would not have been possible without the continued efforts of the project leads, staff, interns, and volunteers who labored tirelessly to put this information together. The analysis of the data that was collected would not have been possible without the partnership of the Williams Institute at UCLA's School of Law.

We are eternally grateful for the time, dedication, effort, and continued support from everyone who has assisted us. We have attempted to list everyone who has been involved and apologize if we miss anyone who helped in this endeavor.

Case Western Reserve School of Law

- Sarah Polly, Esq. (Managing Attorney, Milton A. Kramer Law Clinic Center)
- Adam Stuller (former clinic student)
- Alexandra Wright (former clinic student)
- Caroline Kish (former clinic student)
- Casey Lindstrom (former clinic student)
- Dustin Read (former clinic student)
- Eliza Roberts (former clinic student)
- Isaac Verhelst (former clinic student)
- Katie Taylor (former clinic student)
- Kayla DePalma (former clinic student)
- Kelsey Moore (former clinic student)
- Lucas Katz (former clinic student)
- Madeline McDaniel (former clinic student)
- Martin Shin (former clinic student)
- Meng Li (former clinic student)
- Michaella Guyot-Polverini (former clinic student)
- Olivia Kuenzi (former clinic student)
- Ryn Wayman (former clinic student)
- Sarah Scott (former clinic student)
- Thomas McIntyre (former clinic student)

Equality Ohio

- Kim Welter (Finance Director)
- Maya Simek, Esq. (Legal Director)
- Kate Mozyński, Esq. (Senior Staff Attorney)
- Delaney Barr, Esq. (former Staff Attorney)

- Alexa (Lexi) Stovski (former intern)
- Andy Dugan, Esq. (former Staff Attorney)
- Ben Stucke (former intern)
- Em Pate, Esq. (Staff Attorney)
- JM Triplett (former staff member)
- Kim Akins, Esq. (former Staff Attorney)
- Kimberly Burroughs, Esq. (former Staff Attorney)
- Lila Kopplin (former intern)
- Renier Halter- Rainey (former intern)
- Tiraj Lucas (former intern)
- Vy Allen (former intern)

Ohio Health Modernization Movement

- Kim Welter (Facilitator)
- Bryan Jones
- Naimah O’Neal
- Francesca Schumann
- Olga Irwin
- Shelley Harrison-Turner

Williams Institute of UCLA

- Brad Sears
- Nathan Cisneros
- Miguel Fuentes Carreno
- Moriah Macklin

Volunteers

- Amina Mohamed
- Amy Mildebrath
- Chance Zurub
- Chase Knodle
- Cody Vandergrift
- DVaughn House
- Emily Easton
- Erin Ahern
- J Thompson
- John Robertson
- Katelyn George
- Krista Eckersall
- MaKenna Daus

- Margaret Wu
- Megan Mattimoe, Esq
- Merissa Cooper
- Nicholas Gulish
- Olivia Steenberg
- Rasheeda Khan, Esq.
- Rob Salem, Esq
- Ryan McMullen

In Depth: What Are These Laws, and Why Do They Matter?

In Ohio, there are six criminal laws that specifically target people who are living with HIV/AIDS (referred to in this report as “PLWHA”). Some of these laws create harsher penalties for a crime if a person is living with HIV. Others make behaviors that would be perfectly legal a crime because of a person’s HIV status. Some of these laws also make behaviors that would be legal for people who are not living with HIV into a criminal offense for people who are living with HIV. For example, spitting on someone would be punishable by a fine of \$2500 or 6-12 months in prison. However, if a person living with HIV engages in the exact same behavior, they are liable for a fine of up to \$10,000 and 1-3 years in prison. Spitting is not an HIV transmission risk. Likewise, not disclosing your HIV status to an intimate partner is legal if your status is negative, but is a felony in Ohio—with sex offender registration—if you are positive, even if there is never a transmission risk.

Ohio’s six laws that criminalize people living with HIV have not been updated since the 1990s. These laws are outdated and do not reflect current scientific understanding of HIV, how it is treated, and how it is spread to other people. In most situations that these laws target, there is little to no risk of transmitting HIV to another person. In fact, none of these laws require actual transmission, the intent to transmit, or even the possibility of transmission. They also do not take into consideration mitigation strategies that can completely eliminate the risk of transmission through sex. For example, a person living with HIV who is in medication treatment and virally suppressed cannot pass on HIV through sex.

The original justification for passing these laws was to reduce the transmission of HIV/AIDS and to end the HIV/AIDS epidemic. However, we have since learned that these laws do not actually reduce transmission and instead act to *discourage* PLWHA from seeking lifesaving care. Additionally, the penalties associated with breaking these laws are severe and illustrate selective enforcement. Our data collection reflects significant racial disparities in charged cases versus the composition of Ohio’s population and County demographics. The data also suggests that these statutes are being unevenly enforced across Ohio, resulting in significant disparities based on an individual’s location in Ohio.

Our data collection efforts have been done with one goal in mind: to understand how Ohioans are being criminalized because of their HIV status. Specifically, we wanted to know how many criminal cases were filed under Ohio’s six HIV statutes from 2014-2020, where cases were being filed, and which communities were being most affected. We specifically looked at which cases were charged in court, which may vary from records of arrests. This information demonstrates a crucial need to honestly assess and discuss the consequences of these laws, including the necessity of ongoing conversations with judges, prosecutors, law enforcement, and legislators.

The Science²

➤ 9 Basic Terms to Know:

- “HIV” means human immunodeficiency virus. This virus can progress in stages, with the end stage being AIDS.
- “AIDS” means the illness designated as acquired immunodeficiency syndrome; this is a medical diagnosis, and is different from “HIV.”
 - AIDS is not a virus, and you cannot transmit AIDS to another person.
- “PLWHA” means a person living with HIV/AIDS.
- “Pre-exposure Prophylaxis (PrEP)” is a course of antiretroviral drugs that can prevent HIV infection. It’s for people who are HIV-negative but who may be at higher risk of HIV infection.
- “Antiretroviral drugs (ARVs)” are drugs used to treat HIV and stop it from replicating in the body. ARVs keep the virus at a low level in the body, strengthen the immune system, and reduce the likelihood of transmission.
- “Viral load” is the amount of HIV virus in the blood. It is measured by a simple blood test. It can tell you how well a person’s antiretroviral treatment is working.
- “Virally suppressed” means the person living with HIV has reduced the amount of virus in their body to such low levels that blood tests indicate that the virus is suppressed and controlled.
 - Having a virally suppressed or “undetectable” viral load means you can’t pass HIV onto others sexually.
- “Undetectable = Un-transmissible” or “U=U”
 - This phrase represents current science, and is often used when discussing transmission of HIV.
 - If a person living with HIV has a viral load that is 200 or below, you are considered “undetectable.” If you are undetectable, you cannot transmit HIV to someone else sexually. Please see below for more information on “undetectable.”
 - “The body of evidence to date has established that there is effectively no risk of sexual transmission of HIV when the partner living with HIV has a durable undetectable viral load, validating the U=U message of HIV treatment as prevention.” Dr. Fauci (CDC 2018).³
- “Undetectable” is a phrase used in several contexts.
 - Medically, tests are getting better all the time and can detect lower levels of virus in the body. A test may say that you have a viral load and are considered “detectable”, but that does not mean you can pass HIV to another person sexually.
 - **When we talk about viral transmission and having an “undetectable viral load” in the context of U=U, we are speaking about a viral load**

² Avert HIV & AIDS Glossary: <https://www.avert.org/about-hiv-aids/glossary>.

³ Statement by Dr. Anthony Fauci, July 2018; Director, National Institute of Allergy & Infectious Diseases, available at <https://www.hiv.gov/authors/afauci/>

of 200 or below. This is the level at which science has proven someone cannot transmit HIV to others sexually.

- **Transmission of HIV can only occur in 3 ways:**
 - through blood and blood products;
 - intimate sexual contact; and
 - vertical transmission (This includes transmission from parent to child during pregnancy, childbirth, and breastfeeding. Note that treatment with medication can prevent transmission from parent to child).⁴

- **Dispelling old information or beliefs—HIV cannot be transmitted:**
 - By mosquitoes, ticks, or other insects.
 - Through saliva, tears, sweat, urine, or feces.
 - By hugging, shaking hands, sharing toilets, sharing dishes, or closed-mouth “social” kissing with someone who is living with HIV.
 - Through the air.⁵

Ohio’s HIV Criminalization Laws

The six Ohio laws directly criminalizing PLWHA are listed below with a brief explanation of what each law means. The following chart compares penalties for people living with HIV/AIDS to the general population.

FIGURE 1.1 Summary Ohio HIV Criminalization Penalties

| Law | <u>Solicitation</u> O.R.C. 2907.24(B) | <u>Loitering</u> O.R.C. 2907.241 (B) | <u>Prostitution</u> O.R.C. 2907.25(B) | <u>Harassment with a Bodily Substance</u> O.R.C. 2921.38(C) | <u>Selling/ Donating Blood</u> O.R.C. 2927.13 | <u>Felonious Assault</u> O.R.C. 2903.11 (B) |
|-------------------|--|--|---|---|--|---|
| What is criminal? | <i>the attempt to trade sex for something of value</i> | <i>being in a public place and intending to trade sex for something of value</i> | the act of trading sexual acts for something of value | annoying someone with your bodily fluids (including spit) | donating or selling blood/ plasma/ blood products if | engaging in sexual conduct without adequate disclosure, engaging in |

⁴ Routes, Risks, and Realities of HIV Transmission and Care (2017). <https://www.hivlawandpolicy.org/resources/routes-risks-and-realities-hiv-transmission-and-care-current-scientific-knowledge-and>

⁵ Center for Disease Control HIV Basics, “Ways HIV is Not Transmitted” webpage, as of August 2021. <https://www.cdc.gov/hiv/basics/hiv-transmission/not-transmitted.html>

| | | | | | | |
|--------------------------------|--|---|--|--|---|---|
| | | | | | you are a PLWHA | sexual contact with someone who is unable to understand the disclosure, or with someone under 18 who is not the PLWHA's spouse, regardless of disclosure. |
| Penalties (PLWHA) | 1-3 years \$10,000, 3rd degree felony | 6-12 mo. \$2,500, 5th degree felony | 1-3 years \$10,000, 3rd degree felony | 1-3 years \$10,000, 3rd degree felony | 6-18 mo. \$5,000, 4th degree felony | 2-8 yrs per charge * ** \$15,000, 2nd degree felony |
| Penalties (general population) | 60 days \$500, 3rd degree misdemeanor | 60 days \$500, 3rd degree misdemeanor | 60 days \$500, 3rd degree misdemeanor | 6-12 mo. \$2,500, 5th degree felony | No Criminal Penalty | No criminal penalty |
| Enhancement for PLWHA | 6 to 18 times greater length sentence 19 times greater fine | 2 to 5 times greater length sentence Four times greater fine | 6 to 18 times greater length sentence 19 times greater fine | 1 to 6 times greater length sentence Three times greater fine | 100% greater length sentence 100% greater fine | 100% greater length sentence 100% greater fine |

***Felonious assault cases have an additional penalty: if a person is convicted of a felonious assault for failing to disclose their HIV status, they may be required to register as a sex offender.⁶**

**** The law states that for a second degree felony committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years⁷ and a maximum term that is**

⁶ The mandate to register as a sex offender for felonious assault comes from O.R.C. § 2950.0.

⁷ ORC §2929.14 (2)(a)

determined by the minimum term imposed plus an additional 50% of that stated term.⁸ This means that a PLWHA could face 12 years of prison time per felonious assault charge. If the conduct occurred before March 22, 2019, each count would carry a maximum sentence of 8 years in prison.⁹

Note as well that the criminal charge arising from failure to disclose and the selling or donating contaminated blood charge do not have analogous criminal charges for individuals who are not PLWHA, meaning that a person who is not living with HIV engaging in the same behavior would not be subject to criminal charges.

In-Depth: Ohio's HIV Criminalization Laws

R.C. § 2903.11(B): Felonious Assault (Including Non-Disclosure of HIV Status)

A person living with HIV/AIDS can be charged with a felony for doing any of the following three things:

1. Engaging in sexual conduct with someone without first disclosing their HIV status;
2. Engaging in sexual conduct with someone when the person living with HIV knows or has reason to know that the other person can't comprehend the significance of their HIV status; or
3. Engaging in sexual conduct with someone who is younger than 18 years old and isn't the PLWHA's spouse.

Note: this law does not take into account the prevention methods the PLWHA uses. If the PLWHA has an undetectable viral load, there could be no risk of transmission at all. The law also doesn't take into account if there was any intent to transmit HIV or if any transmission actually occurred.

Additionally, the definition of "sexual conduct" in Ohio law includes many behaviors that pose little to no risk of transmitting HIV, including engaging in oral sex, or engaging in penetration with an object other than a person's genitals.¹⁰

Importantly, this law considers each sex act its own felonious assault charge, so there may be multiple charges in a single criminal case.

For example: If a PLWHA spends an intimate weekend with someone and engages in sexual activity 8 times over the course of the weekend without being able to prove that they

⁸ ORC §2929.144 (A)(1)

⁹ ORC §2929.144 (A)(1)(b)

¹⁰ These definitions come from ORC §2907.01, which defines sex offenses.

disclosed their HIV status, the PLWHA could be charged with 8 felonious assault charges. This would be the case even if the PLWHA was undetectable and incapable of transmitting the virus. Each of these 8 charges has a potential penalty of 12 years in prison (assuming the conduct occurred on or after March 22, 2019), and each charge stacks on top of another. Therefore, the sentence could be up to 96 years in prison and a very heavy fine.

R.C. § 2907.24(B): Solicitation (Including Sex Work)

“Solicitation” is trying to exchange sex for something valuable. It does not require the person to actually engage in any sexual activity, but instead criminalizes trying to do so. That means that solicitation can be as simple as having a conversation or negotiation with someone about trading sex in exchange for something valuable in return. Whoever is attempting to trade sex for something valuable can be charged with solicitation. The law does not distinguish between the person offering to have sex or the person offering the item of value for sex. Notably, this offense could result in a misdemeanor conviction for the general public, but could result in a F3 felony conviction for PLWHA.

Note: Solicitation specifically penalizes PLWHA for activities that cannot lead to the transmission of HIV, yet people living with HIV are given higher penalties. The HIV virus cannot be transmitted by having a conversation with someone else.

R.C. § 2907.241(B): Loitering to Engage in Solicitation

Loitering is when a person is in a public space and doing any of the following: 1) having a conversation with someone, 2) attempting to stop a car and talk to someone in it, 3) stopping someone on the street to chat, or 4) sitting in a car and having a conversation with someone outside the car. If you are doing any of these activities and you also plan to trade sex for something of value, this is loitering to engage in solicitation. Loitering does not involve any physical contact. This offense could result in a misdemeanor conviction for a member of the general population, but could result in a F5 felony conviction for PLWHA.

Note: there is no risk of transmission of HIV through the above activities. An individual cannot transmit the HIV virus by having a conversation with someone else.

R.C. § 2907.25(B): Prostitution

Prostitution is when someone is engaging in “sexual activities” for hire. “Sexual activity” means sexual conduct, sexual contact, or both. The definition is very broad, and a lot of activities could fall under this definition, including activities with little to no risk of transmission, such as non-penetrative sex. For members of the general population, this crime could result in a 3rd

degree misdemeanor conviction, but this conduct is elevated to a potential 3rd degree felony conviction for PLWHA.

Note: this law does not take into account the prevention methods the person living with HIV uses to prevent transmission. There could be a reduced risk if a condom was used or if the sexual contact could not result in transmission, or even no risk of transmission of HIV at all if the PLWHA has an undetectable viral load. The law also doesn't take into account if there was any intent to transmit HIV or if any transmission actually occurred.

R.C. § 2921.38(C): Harassment with a Bodily Substance

This law has been known as both “harassment by an inmate” and “harassment with a bodily substance.” However, a person does not need to be in jail or prison or commit the offense against a police officer for this to apply.

The law makes it a crime for someone (for clarity, “Person A”) to intend to harass, threaten, or annoy someone else (“Person B”) by causing Person B to come in contact with Person A’s bodily substances. This can include semen, urine, feces, or any other bodily fluid, including spit. This law includes HIV, tuberculosis, and hepatitis.

For PLWHA, this offense could result in a 3rd degree felony conviction. However, individuals who are members of the general population can be convicted of a less-severe 5th degree felony for the same conduct. Notably, the Ohio statute criminalizing this offense includes hepatitis, tuberculosis, and HIV.

Note: there is no risk of transmission of HIV by simply coming into physical contact with these substances. HIV cannot be transmitted by spitting on someone else or throwing urine or feces at someone, and this law criminalizes behaviors that could never be a transmission risk.

R.C. § 2927.13: Selling or Donating Contaminated Blood

This law prohibits a PLWHA from donating blood, plasma, or any “blood products.” A blood product is any therapeutic substance that is donated for the purpose of being given to someone else to put in their body.

Note: there have been no criminal cases filed under this law. Currently, federal law (the HOPE Act, or “H.R.2336”) allows for people living with HIV to donate their

organs to other people living with HIV, but blood donation remains a potential felony for PLWHA in Ohio, though blood transfusion is often crucial in treatment for people who are living with cancer, anemia, or other illnesses. Additionally, blood donations have been routinely and universally screened for HIV since June of 1992 per CDC guidance, making this law wholly unnecessary to prevent blood from PLWHA entering the blood pool for the general population.

Our Methodology and Research Process

How did researchers conduct this project?

Equality Ohio Education Fund (EOEF) and the Ohio Health Modernization Movement (OHMM) collaborated to gather all information on the criminal cases in Ohio charged under any of the six HIV-related statutes discussed in the previous section, including finding, verifying, and interpreting data from all 88 counties in Ohio. Specifically, the team included cases that utilized the HIV-related statutes at any point in the judicial process, including when individuals were charged, indicted, or convicted under any of the six HIV-related statutes in Ohio. Our team narrowed our search to encompass any relevant instances that occurred from the years 2014-2020. Because researchers focused only on charged criminal cases, the data collected does not include arrests or other police interactions that PWLHA may have experienced during this timeframe, which would likely greatly increase the number of identified cases that resulted in an arrest but were not prosecuted.

As researchers undertook this project, it became clear that a lack of uniformity across counties would present unique challenges in gathering relevant data. Pursuant to Home Rule authority, each Ohio court is permitted to create their own system or process to record their cases and internally handle case management. Thus, there is not one overarching court record-keeping system that has all of the same options to enter data. Depending on the clerk who is entering the data, a “felonious assault” criminal charge could be entered in more than 10 different ways into the system, for example, “fel. Assault” or “felony assault” or “f.a. 2” or “felonious assault with HIV.”

Second, because of Home Rule authority for localities, the Supreme Court of Ohio doesn’t have a database where it is able to access all of the information on these cases. The Supreme Court of Ohio only receives approximate case numbers from each individual court, and there is no way to aggregate the data into comprehensive results. The Supreme Court isn’t able to generate a report with the case numbers per county for this project because that information is not public record.

As a result, researchers and volunteers gathered data across all 88 counties in Ohio through the following steps:

- 1) Researchers surveyed each county's online public record search engines to determine whether they were able to pull records from the county based on statute violated, indictment, or conviction.
- 2) In counties in which pulling records by charges was not an available option, researchers sent official requests via mail to County Clerk offices asking for the information.
- 3) Each county was contacted periodically to determine the status of each request and the Clerk's response.
- 4) In counties that did not furnish this information, researchers issued Freedom of Information Act requests to obtain the information.
- 5) Researchers sent request letters to the Office of the Prosecutor in any county that was unresponsive, refused to comply due to the breadth of the request, or refused to comply because the Court's system was unable to fulfill the request. Researchers then periodically contacted prosecutors to follow up on the previously issued requests.
- 6) In counties in which researchers still did not receive a response to the request for records, they conducted a survey of the remaining counties' online court dockets and searched by description of the offense ("felonious assault") or by type of offense ("criminal") from 2014-2020. Researchers then manually audited the records to see if any cases fell within the relevant data set.
- 7) Researchers conducted an audit of the data sets discovered, including both those located by our internal research team and also for the results returned by county courts and/or county prosecutor's offices. Specifically, the team verified that each case fell within the six HIV-related statutes and fell within the appropriate date ranges. For cases involving Harassment with a Bodily Substance, researchers included all cases charged under R.C. § 2921.38(C), which includes HIV, hepatitis, and tuberculosis, unless a case could be specifically excluded from the data set due to court records confirming a diagnosis of tuberculosis or hepatitis. Researchers also reviewed dockets to gather relevant demographic information on both victims and defendants, including age, sex, and race.
- 8) For the counties that indicated there were no records to be found, researchers cross-referenced data with the Williams Institute at UCLA, who collected HIV-related arrest records in Ohio. By comparing how many arrests were made in the area to the total number of criminal cases that were filed, the team was able to identify areas of concern or potential cases that were missed in the data collection. The team then followed up with the clerks' office or via the online search portal to ensure accuracy. In total, this process took our team more than three years to complete.

What was excluded from the data collection process?

The data collection efforts leading to this report illuminated multiple issues in the difficulty of accessing relevant court records. In some cases, researchers were unable to determine which subsection of a given statute an individual was charged under, even in cases in

which the docket noted that HIV testing for the defendant was ordered by the Court. These cases were excluded from the data set, as it could not be confirmed that the cases involved HIV-related charges.

It is important to note that while research in this project was extensive, it is possible that additional cases may exist, as some cases were excluded from the final data set because they did not specify the subsection of the statute under which a case was charged and therefore could not be confirmed as HIV-related cases. Additionally, it is possible that additional cases may have been sealed or expunged following a post-conviction waiting period under Ohio law. As a result, the confirmed cases discussed in this report represent a *minimum* baseline of the use of these statutes, and it is possible that the actual use of these statutes in Ohio's criminal justice system is even more pervasive than the data discussed in this report reviews.

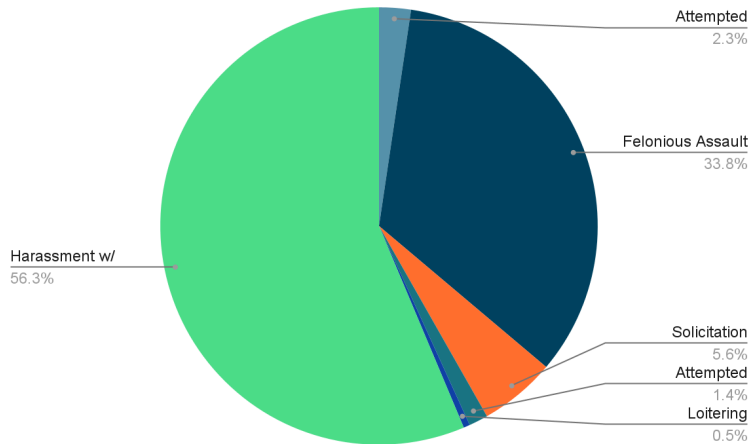
By the Numbers: Our Findings and Analysis

What is being charged?

Through extensive research and document review, researchers have identified at least two hundred and fourteen (214) instances in which Ohio's HIV criminalization statutes were utilized in the criminal justice system from the years 2014-2020. The extensive use of Ohio's HIV criminalization statutes is readily apparent upon a brief review of the cases confirmed by our research team.

Of the 214 identified and confirmed cases, researchers identified 5 cases of attempted felonious assault, 72 cases of felonious assault, 1 case of attempted solicitation, 15 cases of solicitation, 1 case of loitering to engage in solicitation, 1 case of prostitution, and 120 cases of harassment with a bodily substance, and 0 cases of selling or donating contaminated blood. These statistics are represented in percentages in Figure 3.1 below.

Figure 3.1: Ohio HIV Case Types Charged, 2014-2020 (By Percentage of Total)



In Context: Harassment with a Bodily Substance

Of particular note is the pervasive use of the harassment with a bodily substance statute, as the penalty for violation of this statute allows for a sentence of up to three years in prison. This is especially concerning because the statute criminalizes behaviors that cannot transmit HIV, such as spitting.

For example, assume that Alex is an incarcerated person and is a PLWHA. Alex could face an additional three-year prison term for spitting in the direction of a correctional officer, even though the virus is not transmitted through saliva. This harsh criminal penalty could apply even in the case that it is physically impossible for Alex to transmit the virus to the correctional officer, if Alex’s viral load is undetectable, or even if Alex’s bodily substance does not make contact with the correctional officer at all. Additionally, there are other statutes Alex could be charged with to theoretically deter this behavior that do not criminalize Alex for HIV status. For example, Alex could still be charged under ORC §2921.38(a) or §2921.38(b), which still criminalize this activity as a felony, but would not criminalize Alex for their HIV status.

Notably, Ohio law does not require that a PLWHA is incarcerated or directs bodily substances toward a law enforcement officer in order to charge them with the offense of harassment with a bodily substance. Specifically, the law states that if a PLWHA is aware of their diagnosis and *intends* to harass, annoy, or threaten another person with a bodily substance, they may be charged under this statute. This means that if Alex was not an incarcerated person and was still a PLWHA, they may be charged under this statute if they spit at another person or attempt to do so, again, regardless of their ability to even transmit the virus. The penalty for this offense is still up to a 3 year term of incarceration and an F3 felony conviction on their record.

In Context: Felonious Assault

Under current Ohio law, the charge of felonious assault does not take into account if HIV is actually transmitted or if the PLWHA has an undetectable viral load and therefore cannot transmit the virus. The law does not require an intent to cause harm or an intent to transmit the virus. In fact, the felonious assault statute also does not take into account safer sex practices, such as condom use or the type of sexual contact, that reduce the chance of the transmission of HIV. This means that even behaviors that cannot transmit the virus can be charged criminally under this statute.

Consider the following scenario: Mindy and Michelle are partners and have been dating for about a month. Mindy is living with HIV and has an undetectable viral load, meaning that she cannot transmit the virus sexually. Mindy engages in consensual sex with Michelle twice and does not disclose her HIV status. Mindy may face a prison sentence of up to 24 years (up to 12 years per count), despite the fact that she cannot transmit the virus to Michelle. She may also have to register as a sex offender.

The statute also criminalizes engaging in sex acts with a person under 18 (assuming that the minor and the PLWHA are not married) even if the person living with HIV discloses their status to their partner.

For example, assume that Mark is 19 years old and is living with HIV. Mark engages in consensual sexual activity with his girlfriend Jennifer, who is 17 years old. Mark discloses his status to Jennifer, has an undetectable viral load, and utilizes safe sex practices. Assuming that Mark and Jennifer are not married, Mark may still be convicted of felonious assault, be made to register as a sex offender, and may face a prison sentence of up to twelve years per each sexual act he engaged in with Jennifer, assuming that his conduct occurred on or after March 22, 2019.

In Context: Solicitation

While solicitation and attempted solicitation carry penalties of up to 3 years of incarceration, it is impossible for the act of solicitation to result in the transmission of the HIV virus.

For example, if Devon is a PLWHA and they offer to exchange a sex act with an individual in exchange for money, they may face a prison sentence of up to three years, even if no sex act ever occurred at all. They could also have an F3 felony conviction on their record. If Devon was not a PLWHA, they would face a criminal sentence of up to 60 days in jail. They would also be subject to a 3rd degree misdemeanor conviction on their record, as opposed to a felony conviction.

Where are these cases happening?

Our research showed not only that these statutes are being enforced in Ohio, but also that this enforcement is largely uneven based on where an individual is located in the state. The collected data demonstrates that enforcement of these statutes is geographically concentrated, with at least 56 cases (or just over 26% of identified cases) occurring in Cuyahoga County (Cleveland).

The other most-represented counties include Hamilton County (Cincinnati), with at least 26 cases (12.1%), Lucas County (Toledo) with at least 16 cases (7.4%), Franklin County (Columbus) with at least 15 cases (7%) and Montgomery (Dayton) and Warren Counties, each with at least 10 cases (4.6% each). A full accounting of all 88 counties in Ohio can be found in the appendix of this report.

Notably, Cuyahoga County, which is the state's second most populous county, had four times the number of cases located in Franklin County, which is the state's most populous county. National data suggests that Franklin County has the greater number of PLWHA residing within the county.¹¹

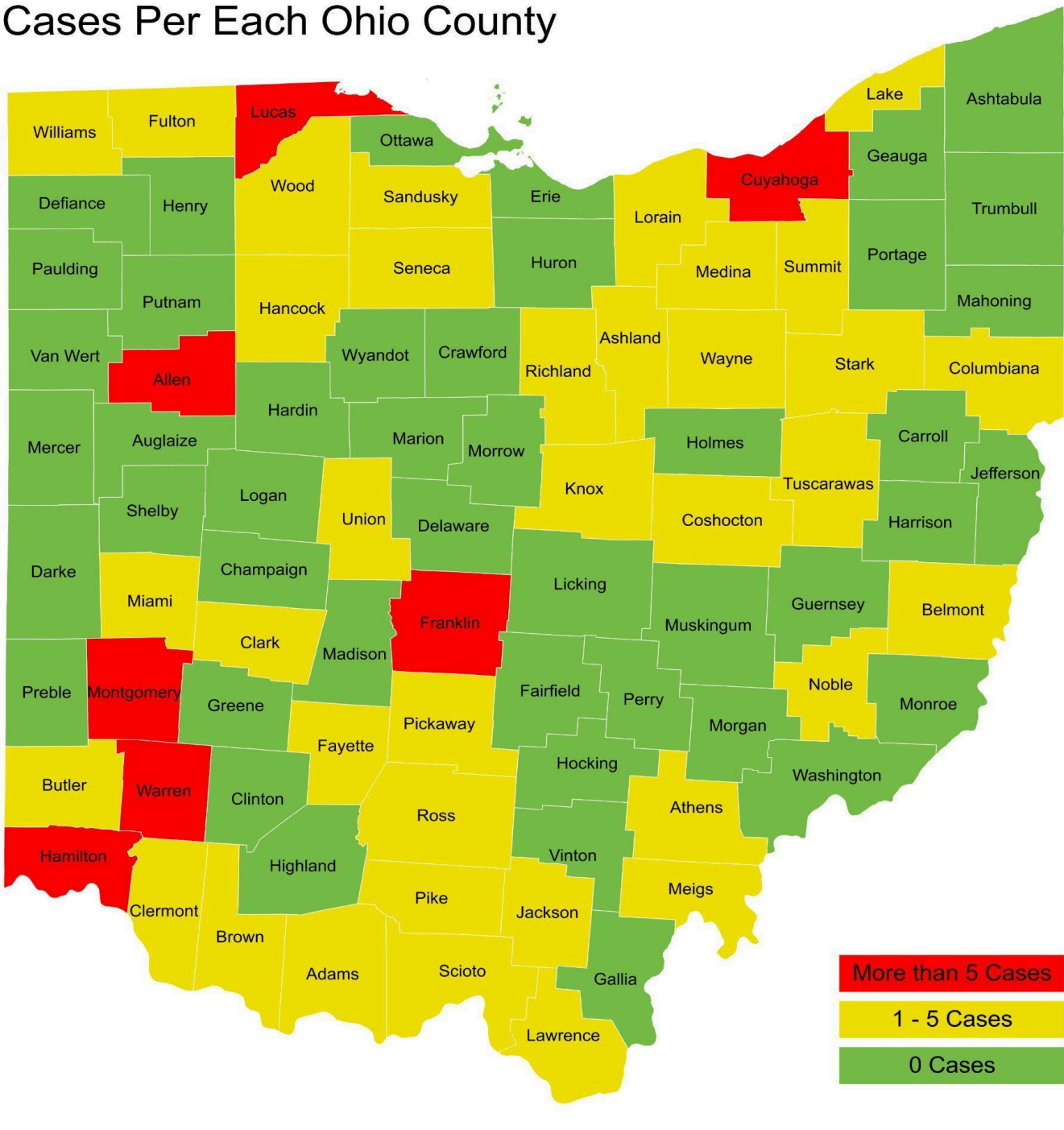
Within Cuyahoga County, 37 of the 56 identified cases resulted in a plea bargain to a lesser charge, 9 identified cases were dismissed, 5 were marked nolle prosequi (meaning that the prosecutor chose not to proceed with prosecution), 2 resulted in convictions, 1 resulted in a no bill (meaning that the grand jury found insufficient evidence to proceed), 1 resulted in a not guilty verdict, and 1 did not yet have a final outcome. By percentage, this means that nearly two-thirds (66.07%) of charged cases in Cuyahoga County resulted in guilty pleas to lesser offenses.

The following page demonstrates a statewide map of where charges are most frequently located.

¹¹ <https://aidsvu.org/data-methods/data-methods-statecounty/>

Figure 3.2: Geographic Distribution of HIV Criminalization in Ohio, 2014-2020

Cases Per Each Ohio County



Who is being charged?

A survey of the available demographic data on individuals who were charged with HIV-related offenses demonstrates concerning racial disparities in which individuals are most likely to be charged under one of Ohio's six HIV criminalization statutes.

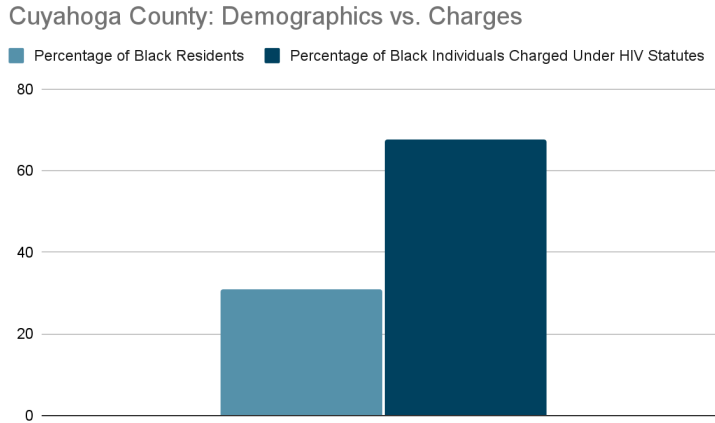
Racial demographic information was available for 189 of 214 identified cases. In those cases, 77 defendants were identified as Black, 111 defendants were identified as White, 1 defendant was identified as Hispanic, and 25 cases did not identify the Defendant's race after a manual review of the relevant court dockets. Notably, very few counties allow for race demographic information to be listed as any other designation outside of "Black" and "White," and the only instance of "Hispanic" being used as a race demographic category was in Cuyahoga County.

Data from the 2020 United States Census shows a stark contrast between the population at large and the individuals being most impacted by Ohio's HIV criminalization statutes. Per the 2020 census, 77% of Ohioans identify as "White alone" and 12.5% identify as "Black alone." However, when examining the data set collected in Ohio's HIV cases, 35.9% of defendants were identified as Black and 51.8% of defendants were identified as White.

When isolating analysis to Ohio's largest cities, the disparity between charged cases and the general racial makeup of the population is startling.

According to census data, 60.8% of Cuyahoga County residents identify as White alone and 30.9% of residents identify as Black alone (not Hispanic or Latino). Per the data set gathered by researchers, 17 defendants (30.3%) in Cuyahoga County were identified as White, 38 defendants (67.8%) were identified as Black, and 1 (17%) defendant was identified as Hispanic. This data means that while less than a third of the residents of Cuyahoga County identify as Black, two thirds of individuals charged under Ohio's HIV statutes are Black. This disparity is represented in the following figure.

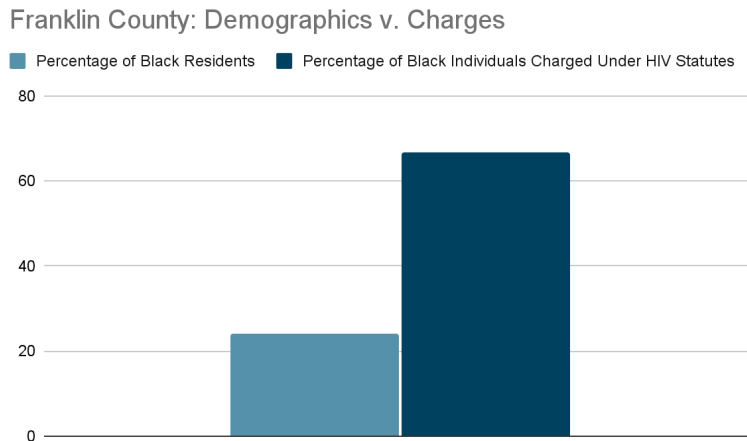
Figure 3.3: Demographics vs. Charges for Black Individuals in Cuyahoga County



In Franklin County, 63.9% of residents identify as White alone, and 24% identify as Black alone. In Franklin County HIV-related charges, 2 defendants (13%) were identified as White, 10 defendants (66.7%) were identified as Black, and 3 defendants (20%) did not have their race identified within court documents.

At a minimum, this shows that while less than a quarter of individuals in Franklin County identify as Black, over two thirds of individuals charged were identified as Black. This is demonstrated in the figure below.

Figure 3.4: Demographics vs. Charges for Black Individuals in Franklin County



In Hamilton County, 65.4% of residents identify as White alone and 26.3% identify as Black alone. In Hamilton County HIV-related charges, 12 defendants (46.2%) were identified as white, and 14 defendants (53.8%) were identified as Black. This means that while around a quarter of individuals in Hamilton County identify as Black, more than half of the people charged under Ohio’s HIV statutes were Black. The figure below shows this disparity.

Figure 3.5: Demographics vs. Charges for Black Individuals in Hamilton County

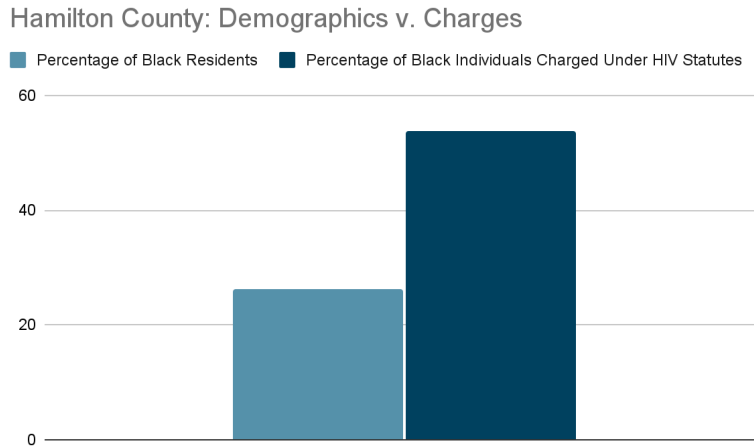
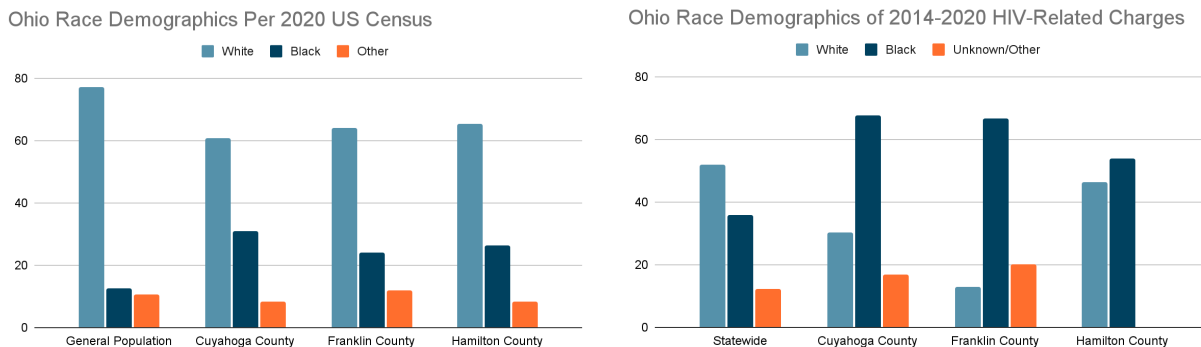


Figure 3.6 demonstrates a comparison between the general racial make-up of Ohio’s population and the racial make-up of HIV-related criminal charges in Ohio.

Figure 3.6: Racial Demographic Comparison By County



Of charged cases, 49 defendants (22.8%) were identified as “female,” whereas 165 (77.1%) defendants were identified as male. Importantly, court data did not capture the gender identity of charged defendants, meaning that it is impossible to determine the accuracy of the

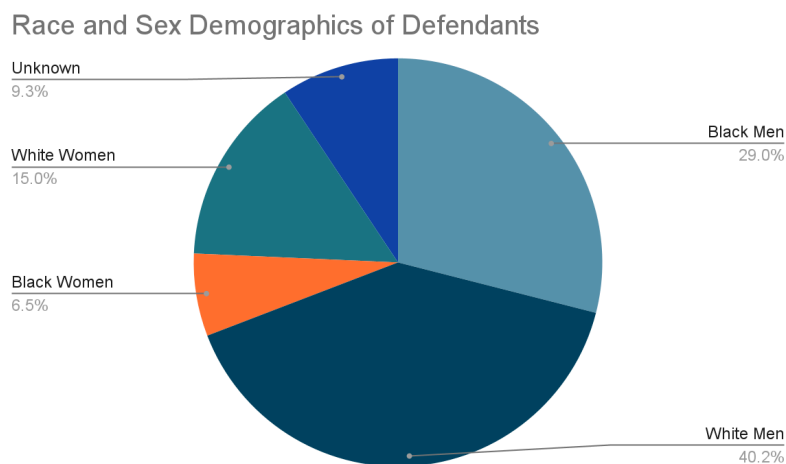
gender breakdown of charged cases when taking into account transgender and gender diverse individuals who may have been subject to prosecution under Ohio’s HIV criminalization statutes.

Additionally, Court records do not reveal demographic data on the LGBTQ+ status of individuals who were charged under these laws. Though some courts have realized the importance of collecting this data in an anonymized fashion for demographic purposes, Ohio courts have not done so, and therefore, it is impossible from the existing data to determine how the uneven enforcement of these statutes affects the LGBTQ+ community specifically.

However, despite those limitations, evidence does demonstrate that Black men are the most disparately impacted by Ohio’s HIV laws. When isolating cases to sex and racial demographics, 62 of the 214 identified cases, or 28.9%, of all defendants were identified as Black men.

A full breakdown of race and gender demographics of defendants is represented in Figure 3.4 below.

Figure 3.4: Race and Sex Demographics of Defendants Charged Under Ohio’s HIV Statutes



Thus, our research demonstrates that not only are these laws being unevenly enforced based on geographic location within Ohio, but that they are disproportionately impacting Black Ohioans, particularly Black men.

What’s Missing?

Though researchers were able to answer many questions about Ohio’s HIV statutes and how they are being used, there is key data that is not available and likely is not recorded by

Courts or in arrest records. Arresting agencies (police departments, sheriff offices, etc.) only record someone's "sex" based on their appearance, identifying documents, and what the officer *believes* the person's sex is. There is no record of someone's gender identity or sexual orientation on arrest records or in court documents, and the only reference to sexual orientation researchers located involved if arrest records mentioned that a PLWHA's "homosexual partner" was the one bringing the criminal complaint.

This same process of identification based on an officer or official's perception also applies to race demographics.

As a result, the demographic information that is listed in court documents is potentially inaccurate. One cannot tell someone's gender identity from their appearance or gender expression, and one cannot tell if someone identifies as LGBTQ+ based on their appearance. Further, the forms that arresting officers use frequently have only binary options for "male" or "female" sex marker designations. Therefore, existing records do not capture information about transgender, gender non-conforming, nonbinary, or other gender diverse individuals.

Additionally, many court systems only allow for race demographics to be recorded as "Black" or "White." Upon review of our data, one system, Cuyahoga County's, also allowed for a racial demographic listing of "Hispanic" in addition to "Black" and "White." As a result, the existing data essentializes defendants' racial identities, especially for individuals who may be of multiple races. In particular, many Latinx defendants may be incorrectly categorized as "White," and the racial disparities in reality may be even more significant than the disparities confirmed by this report.

Conclusion: Where Do We Go From Here?

While this research is an important first step in understanding how Ohio's HIV criminalization statutes are affecting Ohioans, future research is necessary to understand the broader ramifications of these laws.

First and foremost, it is necessary to complete additional research on how the frequency of HIV-related charges has changed over time, including in 2021 and beyond. Additionally, as mentioned previously in this report, the lack of demographic data available when it comes to people charged under these statutes limits researchers' ability to fully analyze the impact that these laws are having on some of the most vulnerable populations in Ohio, including LGBTQ+ people, people experiencing incarceration, and racial minorities. It is also important that further research is conducted in reviewing cases charged under O.R.C. § 2921.38(C), as court records did not always distinguish if these matters were charged as a result of HIV status, hepatitis, or tuberculosis.

It is important to understand that behind each of these cases, there is a real person living with HIV/AIDS who has been affected. Often, these people have been most impacted because Ohio law does not reflect current scientific consensus on HIV acquisition and transmission. The disparate enforcement and repercussions of PLWHA being charged and convicted under these laws evidence a compelling need to modernize these laws so that they reflect reasonable criminal penalties and accurate science. Legislative review is a key next step in ensuring that Ohio laws related to HIV are fair and in the interest of justice.

APPENDICES

Appendix A: Cases Per Each Ohio County (Including Attempt Charges)

| COUNTY | 2903.11(B): felonious assault | 2907.24(B): solicitation | 2907.241(B): loitering to engage in solicitation | 2907.25(B): prostitution | 2921.38(C): harassment with a bodily substance | 2927.13: selling or donating contaminated blood | Total # |
|------------|-------------------------------------|-----------------------------|---|-----------------------------|---|---|------------|
| Adams | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Allen | 4 | 1 | 0 | 0 | 4 | 0 | 9 |
| Ashland | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Ashtabula | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Athens | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Auglaize | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Belmont | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Brown | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Butler | 2 | 0 | 0 | 0 | 1 | 0 | 3 |
| Carroll | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Champaign | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Clark | 1 | 0 | 0 | 0 | 3 | 0 | 4 |
| Clermont | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Clinton | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Columbiana | 1 | 0 | 0 | 0 | 1 | 0 | 2 |
| Coshocton | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Crawford | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cuyahoga | 26 | 5 | 0 | 0 | 25 | 0 | 56 |
| Darke | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Defiance | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Delaware | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Erie | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Fairfield | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Fayette | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Franklin | 11 | 1 | 1 | 0 | 2 | 0 | 15 |
| Fulton | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Gallia | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Geauga | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Greene | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Guernsey | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hamilton | 10 | 2 | 0 | 0 | 14 | 0 | 26 |
| Hancock | 0 | 0 | 0 | 0 | 4 | 0 | 4 |
| Hardin | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Harrison | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Henry | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Highland | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hocking | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| COUNTY | 2903.11(B): felonious assault | 2907.24(B): solicitation | 2907.241(B): loitering to engage in solicitation | 2907.25(B): prostitution | 2921.38(C): harassment with a bodily substance | 2927.13: selling or donating contaminated blood | Total # |
|------------|-------------------------------------|-----------------------------|---|-----------------------------|---|---|------------|
| Holmes | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Huron | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Jackson | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Jefferson | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Knox | 1 | 0 | 0 | 0 | 2 | 0 | 3 |
| Lake | 0 | 0 | 0 | 0 | 3 | 0 | 3 |
| Lawrence | 0 | 0 | 0 | 0 | 4 | 0 | 4 |
| Licking | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Logan | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Lorain | 1 | 0 | 0 | 0 | 3 | 0 | 4 |
| Lucas | 6 | 4 | 0 | 0 | 6 | 0 | 16 |
| Madison | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mahoning | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Marion | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Medina | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Meigs | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Mercer | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Miami | 1 | 0 | 0 | 0 | 3 | 0 | 4 |
| Monroe | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Montgomery | 2 | 1 | 0 | 0 | 7 | 0 | 10 |
| Morgan | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Morrow | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Muskingum | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Noble | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Ottawa | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Paulding | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Perry | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pickaway | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Pike | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Portage | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Preble | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Putnam | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Richland | 0 | 0 | 0 | 0 | 3 | 0 | 3 |
| Ross | 1 | 0 | 0 | 0 | 2 | 0 | 3 |
| Sandusky | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Scioto | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Seneca | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Shelby | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Stark | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Summit | 1 | 1 | 0 | 0 | 2 | 0 | 4 |

| COUNTY | 2903.11(B): felonious assault | 2907.24(B): solicitation | 2907.241(B): loitering to engage in solicitation | 2907.25(B): prostitution | 2921.38(C): harassment with a bodily substance | 2927.13: selling or donating contaminated blood | Total # |
|---------------|--|-------------------------------------|---|-------------------------------------|---|--|--------------------|
| Trumbull | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tuscarawas | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Union | 1 | 0 | 0 | 0 | 1 | 0 | 2 |
| Van Wert | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vinton | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Warren | 6 | 0 | 0 | 0 | 4 | 0 | 10 |
| Washington | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wayne | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Williams | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Wood | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Wyandot | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 77 | 15 | 1 | 1 | 120 | 0 | 214 |