

# Ohio

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## Analysis

### **People living with HIV (PLHIV) can be prosecuted for failing to disclose their HIV status to sexual partners.**

Ohio's felonious assault statute specifically criminalizes failure to disclose one's HIV status to another person prior to sexual conduct.<sup>1</sup> Under this statute, it is also a felony punishable by up to eight years' imprisonment to engage in sexual conduct with a person who "lacks the mental capacity" to appreciate the individual's HIV status, or to engage in sexual conduct with someone under the age of 18.<sup>2</sup>

"Sexual conduct" includes penile-vaginal sex, anal sex, oral sex, and, without consent, the insertion, however slight, of any part of the body or any instrument that carries the bodily fluids of a PLHIV into another person's vagina or anus.<sup>3</sup>

The only affirmative defense to prosecution is the disclosure of one's HIV status to sexual partners prior to engaging in any of these activities. The disclosure must be made prior to the first initial act of such conduct and using condoms or other forms of protection is not a defense.

Neither the intent to transmit HIV nor HIV transmission is required for prosecution.

Ohio's felonious assault statute has survived multiple constitutional challenges. Most recently, in *State v. Batista*, the Supreme Court of Ohio found the statute violates neither the right to free speech nor the Equal Protection Clauses of the U.S. and Ohio Constitutions.<sup>4</sup>

The free speech challenge had sought to frame the statute as requiring that PLHIV disclose their HIV status to sexual partners. However, the Court held that, since the statute prohibits people living with HIV from engaging in sexual conduct without first disclosing their HIV status, it regulates conduct (the sexual activity) instead of speech.<sup>5</sup> The regulation of speech was merely incidental to the regulation of conduct. With *Batista*, the Supreme Court of Ohio became the third state supreme court to hold its state's HIV criminal law does not unconstitutionally compel speech.<sup>6</sup>

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<sup>1</sup> OHIO REV. CODE ANN. § 2903.11(B)(1) (2016)

<sup>2</sup> OHIO REV. CODE ANN. §§ 2903.11(B)(2), 2903.11(B)(3), 2929.14(A)(2) (2016).

<sup>3</sup> OHIO REV. CODE ANN. § 2903.11(E)(4) (referring to § 2907.01).

<sup>4</sup> *State v. Batista*, Slip Opinion No. 2017-Ohio-8304 (Oct. 26, 2017).

<sup>5</sup> *Id.* at 6-7.

<sup>6</sup> *Id.* The Court followed the legal reasoning from similar previous decisions of the Missouri Supreme Court in *State v. S.F.*, 483 S.W.3d 385 (Mo. 2016), and the Illinois Supreme Court in *People v. Russell*, 158 Ill. 2d 794 (1994).

The Court in *Batista* also upheld the felonious assault statute against an Equal Protection challenge, which alleged the law unconstitutionally discriminates against PLHIV.<sup>7</sup> The Equal Protection clause requires that all people in similar situations be treated alike.<sup>8</sup> *Batista* claimed that he was being treated differently as a PLHIV, due to HIV-related stigma and prejudice against PLHIV, than people living with other sexually transmitted infections or contagious diseases. Since PLHIV are not considered a suspect classification,<sup>9</sup> the Court addressed the challenge under rational basis review, the lowest standard of review.<sup>10</sup> The Court held the felonious assault statute is rationally related to the legitimate government interest of, “curbing HIV transmission to sexual partners who may not be aware of the risk.” Moreover, the Court stated, “a legislative choice is not subject to courtroom fact-finding and *may be based on rational speculation unsupported by evidence or empirical data.*”<sup>11</sup> This deferral to the Ohio General Assembly’s policy considerations is within the scope of rational basis review.

The Court in *Batista* did not address the State’s argument that fully informed consent to sexual activity is not possible when a PLHIV who knows their HIV status does not disclose that status to a sexual partner prior to the sexual activity. However, Justice Dewine agreed with this argument in a concurring opinion.<sup>12</sup>

In *State v. Gonzalez*, the felonious assault statute also survived a challenge that it was unconstitutionally vague.<sup>13</sup> The defendant in *Gonzalez* was convicted of two counts of felonious assault for not disclosing his HIV status to his sexual partner.<sup>14</sup> He was sentenced to 16 years imprisonment and was required to register as a sex offender.<sup>15</sup> The complainant later tested positive for HIV.<sup>16</sup> At trial, there were numerous discrepancies in the parties’ testimony, including whether or not Gonzalez

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<sup>7</sup> *Batista* at 9.

<sup>8</sup> *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439-440 (1985)(citation omitted).

<sup>9</sup> *Batista* at 7. Depending on the group of people or “classification” of the people affected by the law, the court uses a different test in examining the law. Generally, if a law discriminates on the basis of race, national origin or religion, courts are required to use the most demanding test – “strict scrutiny.” Strict scrutiny requires the government prove that it had a very important reason for creating the law, and the law is drafted in the most specific way possible to achieve that goal. If a law discriminates on the basis of sex, gender, or in some instances, sexual orientation, the government must pass “intermediate scrutiny” by showing that it had an important reason for creating the law, and the law is substantially related to that reason. Finally, the easiest test, “rational basis,” is applied when the law applies to people based on age, disability, wealth or if a person was convicted of a serious crime. Under rational basis test, the person challenging the law must show that the government has no reasonable purpose for the law, or that there is no link between that alleged interest and how the law tries to make it happen. Rational basis review gives the government the most deference, or “respect.” Since the court presumably considered HIV as a type of disability, and it did not consider that the law affected “fundamental rights,” those rights that are protected by the constitution, it used rational basis for its analysis of the constitutionality of the law.

<sup>10</sup> *Batista* at 7.

<sup>11</sup> *Id.* at 8 (emphasis added).

<sup>12</sup> *Id.* at 12. This argument was also used to narrow a decision by the United States Court of Appeals for the Armed Forces, which would have otherwise invalidated prosecution of PLHIV for nondisclosure. See *United States v. Gutierrez*, 74 M.J. 61, 68 (C.A.A.F. 2015). In that case, the Court accepted the argument that consent is absent without disclosure of HIV status and found the violation sufficient to convict the defendant of a lesser included offense, assault consummated by battery. *Id.* For more on this argument and its origins in a case from the Supreme Court of Canada, see the section on “Federal Law Including U.S. Military” in [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy \(2017\)](#).

<sup>13</sup> *State v. Gonzalez*, 796 N.E.2d. 12, 21 (Ohio Ct. App. 2003).

<sup>14</sup> 796 N.E.2d 12, 17 (Ohio Ct. App. 2003).

<sup>15</sup> *Id.* at 17, 18.

<sup>16</sup> *Id.* at 19.

disclosed his HIV status prior to their having sex.<sup>17</sup> Gonzalez testified that the complainant asked him before they began their sexual relationship whether the rumors about his HIV status were true and he confirmed that he had tested positive for HIV and insisted that they use condoms every time they had sex.<sup>18</sup> The complainant, however, testified that when she confronted Gonzalez he denied his HIV status and that they had only used a condom once.<sup>19</sup> In addition to the testimony of the defendant and complainant, the defendant had an ex-girlfriend testify that he had disclosed his HIV status to her prior to their initiating a sexual relationship and always insisted on using condoms.<sup>20</sup>

On appeal, Gonzalez argued the statute was unconstitutionally vague.<sup>21</sup> He asserted that the statute did not provide enough information on what constitutes “disclosure,” whether such disclosure had to be made prior to each sexual contact with the same person, or whether the disclosure needed to be in writing.<sup>22</sup> For a law “[t]o survive a void-for-vagueness challenge, the statute must be written so that a person of common intelligence can determine what conduct is prohibited, and the statute must provide sufficient standards to prevent arbitrary and discriminatory enforcement.”<sup>23</sup> The court rejected the defendant’s void-for-vagueness challenge because it found that the word “disclose” did not have an unfamiliar meaning outside the courtroom, and that a person of common intelligence would understand its meaning to be “reveal or make known” through verbal disclosure.<sup>24</sup> The court also clarified that although failure to disclose is an essential element of each individual count of felonious assault pursued by the prosecution, once a PLHIV disclosed his or her status to a sexual partner, this would negate that element for any subsequent contact the person had with that partner.<sup>25</sup>

The court also held that though there was a violation of the state’s HIV disclosure statute when the prosecution failed to obtain court authorization for admission of Gonzalez’s HIV status, this was deemed “harmless error” because of the other evidence of the defendant’s HIV status, including the testimony of his sister and ex-girlfriend, as well as the complainant.<sup>26</sup>

As *State v. Gonzalez* demonstrates, it is very difficult to prove that disclosure of HIV status occurred prior to a particular instance of sexual conduct. In many of these cases, there is no proof that a PLHIV disclosed their status and the only evidence available is the testimony of the defendant, complainant, or other witnesses.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 19-20.

<sup>21</sup> *Id.* at 21.

<sup>22</sup> *Id.* at 21-22.

<sup>23</sup> *Id.* at 21 (citing *State v. Williams*, 88 Ohio St. 3d 513 (Ohio 2000)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 22.

<sup>26</sup> *Id.* at 18.

Below are other examples of prosecutions of PLHIV under Ohio's felonious assault statute:

- In January 2016, a 27-year old man was convicted of one count of felonious assault for having sex without disclosing his HIV status to a sexual partner and was sentenced to five years' imprisonment.<sup>27</sup>
- In November 2015, an 18-year-old woman was charged with felonious assault after having sex without disclosing her HIV status to her sexual partner.<sup>28</sup>
- In August 2015, a 24-year-old was sentenced to seven years' imprisonment after she pled guilty to two counts of felonious assault for having sex with two men without disclosing her HIV status to them.<sup>29</sup> The prosecutor in the case had recommended a sentence of four to six years.
- In June 2015, a 39-year old man was convicted of one count of felonious assault for not disclosing his HIV status to his girlfriend and sentenced to the maximum 8 years' imprisonment.<sup>30</sup>
- In March 2013, a 48-year-old woman was convicted of two counts of felonious assault and sentenced to eight years in prison for not disclosing her HIV status to two sexual partners.<sup>31</sup>
- In September 2013, a 21-year-old man was charged with felonious assault after not disclosing his HIV status to a sexual partner.<sup>32</sup>
- In May 2012, a 23-year old PLHIV was sentenced to three years in prison for having sex without disclosing his HIV status to his sexual partner.<sup>33</sup>
- In January 2012, a 29-year-old former professional wrestler was sentenced to 32 years in prison for having sex with multiple women without disclosing his HIV status.<sup>34</sup>
- In January 2012, a PLHIV pled guilty to three charges of felonious assault and was sentenced to five years in prison for allegedly infecting three women with HIV.<sup>35</sup>
- In March 2010, a 51-year-old PLHIV pled guilty to felonious assault and was sentenced to five years' imprisonment for not disclosing his HIV status to his wife.<sup>36</sup> The man was originally charged with attempted murder in addition to felonious assault.<sup>37</sup>

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<sup>27</sup> Adam Ferrise, *Akron man gets prison for failing to disclose HIV to partner*, CLEVELAND.COM, January 20, 2016, available at [http://www.cleveland.com/akron/index.ssf/2016/01/akron\\_man\\_gets\\_prison\\_for\\_fail.html](http://www.cleveland.com/akron/index.ssf/2016/01/akron_man_gets_prison_for_fail.html); *State v. Boatright*, CR2015-03-0731 (Oh.C.P. Summit 2016).

<sup>28</sup> Rose-Ann Aragon, *Woman accused of not telling sexual partner of HIV status*, WCPO, Nov. 12, 2015, available at <http://www.wcpo.com/news/crime/woman-accused-of-not-telling-sexual-partner-of-hiv-status>.

<sup>29</sup> Joe Gorman, *Sweeney gives Youngstown woman 7 years in HIV sex case*, VINDY.COM, Aug. 21, 2015, available at <http://www.vindy.com/news/2015/aug/21/woman-receives--years-in-hivsex-case/?print%20http://www.vindy.com/news/2015/jul/16/woman-pleads-guilty-to-assault-in-hiv-ca/?print>.

<sup>30</sup> *State v. Batista*, B-1402928 (Oh.C.P. Hamilton 2015)

<sup>31</sup> Kara Suyyak, *Woman Convicted of Lying about HIV*, FOX 8 CLEVELAND, March 11, 2013, <http://fox8.com/2013/03/11/woman-gets-eight-years-in-hiv-case/>.

<sup>32</sup> *Man with HIV Explains Why He Didn't Tell Ex-Girlfriend*, 10TV.COM, Sept. 17, 2013, available at <http://www.10tv.com/article/man-hiv-explains-why-he-didnt-tell-ex-girlfriend>.

<sup>33</sup> John W. Goodwin, Jr., *HIV-Positive Man Sentenced to Three Years for Assault*, VINDY.COM, May 18, 2012, available at <http://www.vindy.com/news/2012/may/18/hiv-positive-man-sentenced-to-three-year>.

<sup>34</sup> *Ohio Wrestler Gets 32 Years in HIV Assault Case*, FOX NEWS, Jan 23, 2012, available at <http://www.foxnews.com/us/2012/01/23/ohio-wrestler-gets-32-years-in-hiv-assault-case/>.

<sup>35</sup> Michael Sangiacomo, *HIV Positive Man Sentenced for Infecting 3 Women*, THE PLAIN DEALER, Jan. 10, 2012, available at [http://blog.cleveland.com/metro/2012/01/hiv\\_positive\\_man\\_sentenced\\_for.html](http://blog.cleveland.com/metro/2012/01/hiv_positive_man_sentenced_for.html).

<sup>36</sup> Gabriel Baird, *Man Who Gave Wife AIDS Gets Five Years in Prison*, THE PLAIN DEALER, Mar. 8 2010, available at [http://blog.cleveland.com/metro/2010/03/man\\_who\\_gave\\_wife\\_aids\\_gets\\_5.html](http://blog.cleveland.com/metro/2010/03/man_who_gave_wife_aids_gets_5.html).

- In September 2009, a PLHIV's sentence of seven years' imprisonment for not disclosing his HIV status to his alleged rape victim was affirmed.<sup>38</sup> The man had appealed his conviction, arguing there was insufficient evidence that he had knowledge of his HIV status.<sup>39</sup> The court reasoned that, because the defendant had discussed his HIV status with detectives, there was sufficient evidence to show he knew his HIV status, despite the fact that there was no medical record or testimony from a medical professional that the defendant had tested positive for HIV.<sup>40</sup>
- In September 2008, a PLHIV pled guilty to two counts of felonious assault and was sentenced to six years' imprisonment for not disclosing his HIV status to a sexual partner.<sup>41</sup>
- In June 2008, a PLHIV was charged with felonious assault for not disclosing his HIV status to his sexual partner.<sup>42</sup>
- In 2006, a PLHIV was convicted of nine counts of felonious assault for exposing his sexual partner, who was under the age of 18 and not his spouse, to HIV. He was sentenced to 40 years' imprisonment and required to register as a sex offender.<sup>43</sup>
- In 2004, a PLHIV was sentenced to four years' imprisonment for abduction and six years' imprisonment for felonious assault for not disclosing his HIV status to a sexual partner. The trial court ordered that the sentences be served consecutively.<sup>44</sup> The appellate court found the trial court's determination of consecutive sentencing proper because the defendant could have transmitted HIV to the complainant and because it was unclear how many other people the defendant may have exposed to HIV through unprotected sex.<sup>45</sup>
- In 2003, a PLHIV was sentenced to four years in jail for felonious assault after allegedly having sex without disclosing his HIV status to his sexual partner.<sup>46</sup>

After being released from prison for felonious assault charges, PLHIV may be subject to invasive parole and community control standards. In 2006, a PLHIV was sentenced to two years' imprisonment for having sex without disclosing his HIV status to his sexual partner.<sup>47</sup> A year later he was released and placed on community control for five years.<sup>48</sup> As a condition of his community control, the defendant was required to "[h]ave no sexual contact with any individual without prior approval of the court as to

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<sup>37</sup> Gabriel Baird, *Woman Hopes Tale Can Warn Others After Her Husband Conceals Illness, Gives Her AIDS*, THE PLAIN DEALER, Feb. 28, 2010, available at [http://blog.cleveland.com/metro/2010/02/oman\\_hopes\\_she\\_can\\_warn\\_others.html](http://blog.cleveland.com/metro/2010/02/oman_hopes_she_can_warn_others.html).

<sup>38</sup> *State v. Russell*, 2009 Ohio App. LEXIS 4351 (Ohio Ct. App., Sept. 29, 2009).

<sup>39</sup> *Id.* at \*\*11.

<sup>40</sup> *Id.*, at \*\*2, 11-12,

<sup>41</sup> Tracey Read, *Man Gets 6 More Years in HIV Case*, THE NEWS-HERALD, Sept. 6, 2008, available at <http://www.news-herald.com/general-news/20080906/man-gets-6-more-years-in-hiv-case>.

<sup>42</sup> Dana Wilson, *Man Who Hid HIV Status Charged With Assault*, THE COLUMBUS DISPATCH, June 30, 2008, available at [http://www.dispatch.com/content/stories/local/2008/07/01/ayala\\_hiv.html](http://www.dispatch.com/content/stories/local/2008/07/01/ayala_hiv.html).

<sup>43</sup> *State v. Christian*, 2007 Ohio App. LEXIS 6309, \*\*4 (Ohio Ct. App., December 28, 2007) (stating that "felonious assault . . . when committed with a sexual motivation is a sexually oriented offense . . . An offender having sexual conduct with a person under 18 years of age who is not their spouse when the offender knows he is HIV positive is felonious assault that has a sexual motivation," and that "[a]n offender can be designated a sexual predator if the offender is sentenced for a sexually oriented offense . . ."). *Id.* at \*\*17.

<sup>44</sup> *State v. Geiger*, 2004 Ohio App. LEXIS 6653, \*\*1-2 (Ohio Ct. App. Dec. 22, 2004).

<sup>45</sup> *Id.* at \*\*8.

<sup>46</sup> *State v. Roberts*, 805 N.E.2d 594, 596 (Ohio Ct. App. 2004).

<sup>47</sup> *State v. Eversole*, 912 N.E. 2d 643, 645 (Ohio Ct. App. 2009).

<sup>48</sup> *Id.*

such said individual.”<sup>49</sup> During his community control, the defendant engaged in two sexual relationships, one with a man and one with a woman, both of who were aware of his HIV status, but only one for whom he had received court authorization.<sup>50</sup> In the trial regarding whether the defendant had violated his community control sanctions by engaging in a sexual relationship without court approval, the trial court found the defendant guilty and sentenced him to two years’ imprisonment, along with a period of post-release control.<sup>51</sup>

On appeal, the defendant argued he did not violate the court’s orders because (1) he and the man never had sex; (2) even if they had a sexual relationship the man knew about the defendant’s HIV status; and (3) it was an unconstitutional invasion of his right to privacy to require court approval for potential sex partners.<sup>52</sup> The Ohio Court of Appeals expressed “concerns” about the breadth of the community control imposed, but found that the defendant failed to timely appeal the unconstitutional invasion of privacy issue and would therefore not address it.<sup>53</sup> The appeals court also overruled the defendant’s other claims, finding that the trial court was correct in monitoring the defendant’s activities to “protect the public from the blatant disregard [the defendant] demonstrated when he failed to disclose his condition to the initial victim of his offense.”<sup>54</sup>

### **Persons convicted under the HIV-specific felonious assault law are required to register as sex offenders.**

PLHIV prosecuted for failing to disclose their HIV status to someone else prior to sexual conduct may be classified as a sex offender.<sup>55</sup> Engagement in sexual conduct is an element of the HIV-specific provision of the felonious assault statute. It is considered a sexually oriented offense when a person violates the felonious assault statute “with a sexual motivation,”<sup>56</sup> meaning it was committed to gratify the sexual needs or desires of the offender, including consensual sex.<sup>57</sup> When persons are convicted of or plead guilty to committing felonious assault with a sexual motivation, they are classified as a Tier III sex offender.<sup>58</sup> The duty to comply with the requirements outlined below continues until the person’s death.<sup>59</sup>

Persons must register personally with the sheriff or sheriff’s designee of the county in which they were convicted or pled guilty to the HIV felonious assault statute as soon as sentencing occurs and prior to transfer to a correctional facility.<sup>60</sup> Upon release, the individual must register personally with the sheriff or sheriff’s designee within three days of arrival in the county where they will reside or be

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 646.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 647.

<sup>55</sup> OHIO REV. CODE ANN. § 2950.01(G)(1)(c) (2016).

<sup>56</sup> OHIO REV. CODE ANN. §§ 2950.01(A)(4), 2950.01(G)(1)(c) (2016).

<sup>57</sup> *See, e.g., Gonzales*, 796 N.E.2d 12, at 35.

<sup>58</sup> OHIO REV. CODE ANN. § 2950.01(G)(1)(c) (2016).

<sup>59</sup> OHIO REV. CODE ANN. § 2950.07(B)(1) (2016).

<sup>60</sup> OHIO REV. CODE ANN. § 2950.04(A)(1) (2016).

temporarily domiciled for more than three days.<sup>61</sup> The specific registration requirements are complex and numerous.<sup>62</sup> Similarly, the penalties for violation of these requirements—registration, notice of intent to reside, change of address notification, or address verification—are significant and depend upon whether a defendant has previously violated the registration requirements and the classification of the underlying offense, *i.e.*, a misdemeanor or felony, and if a felony, the degree of the felony.<sup>63</sup>

### **PLHIV may face enhanced criminal penalties for prostitution and solicitation of prostitution.**

It is a third-degree felony for a PLHIV to solicit (advertising the illegal sale of sex for hire) or encourage another to solicit prostitution, punishable by nine to 36 months in prison.<sup>64</sup> It is a felony in the fifth degree for a PLHIV to “loiter to engage in solicitation” while in or near a public place, with a prison term of six to 12 months.<sup>65</sup> This includes a range of activities—beckoning to or trying to stop another person, engaging another person in conversation, and approaching or stopping a vehicle—if the intent is to solicit another person to engage in sexual activity for hire. A person can also be charged with loitering to engage in solicitation if they are the driver or passenger in a car and engages in any of the foresaid activities or tries to entice another person to approach or enter the vehicle with the purpose of engaging in sexual activity for hire.<sup>66</sup> This represents a sentence enhancement from the usual charge, a misdemeanor in the third degree, which is punishable by up to 60 days’ imprisonment.<sup>67</sup>

Under this statute, it does not matter whether there was any intent to transmit HIV or any remote possibility of actual HIV transmission—no sexual activity is required. Merely discussing the possibility of arranging sexual activity for hire is sufficient for prosecution, as is “beckoning” at someone if the purpose is solicitation. In *State v. McPherson*, the appellant’s conviction for solicitation of prostitution while living with HIV and three-year sentence were upheld.<sup>68</sup> McPherson was charged when he approached an undercover officer, who knew McPherson’s HIV status and that he had been previously arrested for solicitation.<sup>69</sup> The two engaged in conversation and when McPherson agreed to perform fellatio for \$10, he was arrested.<sup>70</sup>

The Ohio Court of Appeals found that, because the defendant initiated the conversation with the undercover officer and was the first person to propose any sexual activity, the evidence was sufficient to convict him of solicitation, though no exchange of money or sexual activity occurred.<sup>71</sup> Moreover, the court concluded that a medical record documenting McPherson’s HIV test result and the police department’s knowledge of the defendant’s status were sufficient to establish that McPherson knew his

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<sup>61</sup> OHIO REV. CODE ANN. § 2950.04(A)(2)(a) (2016).

<sup>62</sup> See OHIO REV. CODE ANN. §§ 2950.04 - 2950.06 (2016).

<sup>63</sup> See OHIO REV. CODE ANN. § 2950.99(A) (2016).

<sup>64</sup> OHIO REV. CODE ANN. §§ 2907.24(C)(2), 2929.14(A)(3)(b) (2016).

<sup>65</sup> OHIO REV. CODE ANN §§ 2907.241(B), 2907.241(D)(2), 2929.14(A)(5) (2016).

<sup>66</sup> OHIO REV. CODE ANN § 2907.241(A) (2016).

<sup>67</sup> OHIO REV. CODE ANN §§ 2907.241(D)(1), 2929.24(A)(3) (2016).

<sup>68</sup> 758 N.E.2d 1198, 1199 (Ohio Ct. App. 2001).

<sup>69</sup> *Id.* at 1200.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 1200.



HIV status.<sup>72</sup> The court reversed the finding that McPherson had to register as a sex offender because solicitation is not considered a sexually oriented offense.<sup>73</sup>

Other examples of prosecutions for solicitation and prostitution after a positive HIV test result include:

- In March 2015, a 26-year-old woman was charged with soliciting and loitering to engage in solicitation after a positive HIV test.<sup>74</sup>
- Also in March 2015, a 27-year-old woman was arrested and charged with solicitation after a positive HIV test and for possession of drug instruments.<sup>75</sup>
- In May 2014, a 54-year-old woman was convicted and sentenced to 18 months in prison for soliciting after a positive HIV test.<sup>76</sup>
- In September 2014, a 69-year-old man pled guilty to soliciting sex from an undercover ranger in a public park after a positive HIV test and was sentenced to an early intervention program.<sup>77</sup> The judge in the case questioned the constitutionality of Ohio's law.<sup>78</sup>
- In December 2013, a 31-year-old PLHIV was convicted of a felony for soliciting while knowing her HIV status. She had already been convicted, in 2011, of soliciting and loitering to engage in solicitation after a positive HIV test.<sup>79</sup>
- In November 2009, a PLHIV's conviction for solicitation and loitering to engage in solicitation after a positive HIV test and her four-year sentence were affirmed.<sup>80</sup>
- In 2003, a PLHIV was sentenced to two years' imprisonment after pleading guilty to solicitation with knowledge of her HIV status.<sup>81</sup>

### **PLHIV face enhanced penalties for exposing others to any bodily fluid.**

PLHIV and those with viral hepatitis face third-degree felony charges, punishable by nine to 36 months' imprisonment, for exposing any other person to their urine, feces, semen, blood, or any other bodily substance with the intent to annoy, threaten, alarm, or harass.<sup>82</sup> These offenses are otherwise only punishable for persons confined in detention facilities and for conduct directed at a law enforcement

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<sup>72</sup> *Id.* at 1200-01 (the trial court noted that the "normal procedure" is for the results of an HIV test to be communicated to the patient, though this communication was not actually part of the record).

<sup>73</sup> *Id.* at 1201-02.

<sup>74</sup> *Grand Jury Indicts HIV-positive Prostitute in Dayton*, WHIO, March 19, 2015, available at <http://www.whio.com/news/crime--law/grand-jury-indicts-hiv-positive-prostitute-dayton/D81MmkP04IPFctwPOHioVK/>.

<sup>75</sup> Jill Drury, *Another HIV prostitute charged in Dayton*, WDTN.COM, March 31, 2015, available at <http://wdtn.com/2015/03/31/another-hiv-prostitute-charged-in-dayton/>.

<sup>76</sup> *Ohio Prostitute Gets 18 Months in Prison*, WASHINGTON TIMES, May 28, 2014, available at <http://www.washingtontimes.com/news/2014/may/28/ohio-prostitute-with-hiv-gets-18-months-in-prison/>.

<sup>77</sup> James McCarty, *West Side Cleveland priest pleads guilty to solicitation; sentenced to early intervention*, CLEVELAND.COM, Sept. 5, 2014, available at [http://www.cleveland.com/court-justice/index.ssf/2014/09/west\\_side\\_cleveland\\_priest\\_ple.html](http://www.cleveland.com/court-justice/index.ssf/2014/09/west_side_cleveland_priest_ple.html).

<sup>78</sup> *Id.*

<sup>79</sup> John Futtly, *HIV-positive woman convicted a third time of soliciting*, COLUMBUS DISPATCH, December 10, 2013, available at <http://www.dispatch.com/content/stories/local/2013/12/09/Woman-soliciting-prostitution-HIV-positive.html>.

<sup>80</sup> *State v. West*, 2009 Ohio App. LEXIS 5276, \*\*1(Ohio. Ct. App. Nov. 25, 2009).

<sup>81</sup> John Futtly, *Prostitute's HIV Status Overlooked in Charges*, THE COLUMBUS DISPATCH, September 13, 2010, available at [http://www.dispatch.com/live/content/local\\_news/stories/2010/09/12/prostitutes-hiv-status-overlooked-in-charges.html?sid=101](http://www.dispatch.com/live/content/local_news/stories/2010/09/12/prostitutes-hiv-status-overlooked-in-charges.html?sid=101).

<sup>82</sup> OHIO REV. CODE ANN. §§ 2921.38(C), 2929.14(A)(3)(b) (2016).



officer, for both of which the offense is a fifth-degree felony, punishable by six to 12 months' imprisonment.<sup>83</sup> Urine, feces, and saliva are not known transmitters of HIV.<sup>84</sup>

In *State v. Thompson*, the defendant, a PLHIV at the Southern Ohio Correctional Facility ("SOCF"), threw feces at a nurse, hitting her in the face, hair, arms, chest, and leg.<sup>85</sup> The defendant was placed in disciplinary control for 15 days and also indicted on two counts of harassment by an inmate.<sup>86</sup> The defendant moved to dismiss on the grounds of double jeopardy, and the trial court overruled the motion.<sup>87</sup> The defendant later pled no contest to one count and was sentenced to an additional nine months imprisonment.<sup>88</sup>

The defendant appealed his conviction, contending that the disciplinary proceedings at the SOCF were criminal in nature, and that his subsequent conviction for harassment by an inmate violated the double jeopardy provisions of the U.S. Constitution because he was punished multiple times for the same conduct.<sup>89</sup> The appellate court sustained the defendant's conviction, finding that the legislature intended that the administrative sanctions imposed upon an inmate by prison authorities be civil in nature and that the subsequent criminal action did not violate the Double Jeopardy Clause.<sup>90</sup> Persons imprisoned and convicted under the harassment by inmate statute may face administrative sanctions within the prison system as well as additional criminal penalties from the courts.

In *State v. Lewis*, a PLHIV was found guilty of nine counts of third-degree felony harassment by an inmate,<sup>91</sup> one count of intimidation of a public servant, and was sentenced to 20 years imprisonment.<sup>92</sup> The appellant denied his HIV status, and, although the state produced medical records stating that the appellant had been diagnosed in 1996, those medical records were not provided to the appellant during the discovery phase of the trial.<sup>93</sup> The appellant argued at trial that he needed to obtain exculpatory lab tests proving he did not have HIV to prepare this defense and asked for a continuance, which was denied.<sup>94</sup> On appeal, the Ohio Court of Appeals found that the trial court abused its discretion by admitting the medical records on the first day of the trial before the defendant had time to prepare a defense and rebut the prosecution's assertion regarding his HIV status. The conviction was reversed and the case remanded.<sup>95</sup>

Other prosecutions and cases under this statute include:

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<sup>83</sup> OHIO REV. CODE ANN. §§ 2921.38(A), 2921.38(B), 2921.38(D), 2929.14(A)(5) (2016).

<sup>84</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act* (December 4, 2015) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited November 20, 2016).

<sup>85</sup> 726 N.E.2d 530, 531 (Ohio Ct. App. 1999).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 532.

<sup>90</sup> *Id.* at 532-35.

<sup>91</sup> The former name of this statute was "Harassment by inmate."

<sup>92</sup> 2008 Ohio App. LEXIS 1214, at \*\*1-2 (Ohio Ct. App. Mar. 21, 2008).

<sup>93</sup> *Id.* at \*\*2.

<sup>94</sup> *Id.* at \*\*7-8.

<sup>95</sup> *Id.* at \*\*8-9.

- In 2010, a 41-year-old PLHIV was charged with harassment with a bodily substance, among other charges, for spitting in the eye of an officer after trying to break into a convenience store.<sup>96</sup>

### **PLHIV are also prosecuted under the Felonious Assault Statute for spitting.**

Ohio's felonious attempt statute has also been used to prosecute PLHIV for using their saliva or other bodily fluid as a "deadly weapon."<sup>97</sup> Under the felonious assault statute, "no person shall knowingly . . . [c]ause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon . . . ."<sup>98</sup> In several cases, Ohio courts have determined that the spit of a PLHIV can constitute a "deadly weapon."

In *State v. Price*, the appellant, a hemophiliac with HIV and Hepatitis C, spit at and bit a police officer, causing abrasions.<sup>99</sup> He was indicted on one count of felonious assault, one count of attempted felonious assault, and one count of assault on a peace officer.<sup>100</sup> He was sentenced to six years' imprisonment because the court found that his spit and saliva constituted a deadly weapon.<sup>101</sup>

On appeal, the appellant argued that his spit and saliva should not be considered a deadly weapon.<sup>102</sup> A "deadly weapon" is defined as "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon."<sup>103</sup> During trial, the defendant's treating physicians testified that though there is only a remote risk of transmitting HIV via saliva, because the defendant was a hemophiliac his saliva would contain HIV virus.<sup>104</sup> The officer also testified that there was "blood in the spit that [defendant] left on [him]."<sup>105</sup> The court also cited the defendant's past infection of a different officer with Hepatitis C. The court reasoned that the appellant was correctly convicted under the felonious assault statute because he knew about his illness and knew that "his saliva was a deadly weapon capable of inflicting harm to another."<sup>106</sup>

In a similar case, a PLHIV appealed his conviction and four-year sentence for felonious assault on a peace officer after he spit at a police officer.<sup>107</sup> At trial there was evidence to suggest that the spit may have contained blood.<sup>108</sup> A physician testified that there was a small risk of HIV transmission when saliva contains blood, but that saliva alone is not "a significant risk factor in transmitting HIV."<sup>109</sup> On

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<sup>96</sup> *Loogey Loser: Unruly Akron Man Spits in Officer's Face, Claims He's HIV Positive*, CLEVELAND 19 NEW, Feb. 17, 2010, available at <http://www.cleveland19.com/story/11991978/loogey-looser-unruly-akron-man-spits-in-officers-face-claims-hes-hiv-positive>.

<sup>97</sup> *State v. Bird*, 692 N.E.2d 1013, 1014 (Ohio 1998) (since the defendant pleaded no contest, the court found it unnecessary to decide whether HIV may be transmitted through saliva and whether saliva may be considered a "deadly weapon.") *Id.* at 1016.

<sup>98</sup> OHIO REV. CODE ANN. § 2903.11(A)(2).

<sup>99</sup> 834 N.E. 2d 847, 848 (Ohio Ct. App. 2005).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 848-49.

<sup>102</sup> *Id.* at 848.

<sup>103</sup> OHIO REV. CODE ANN. § 2923.11(A) (2016).

<sup>104</sup> *Price*, 834 N.E.2d at 849.

<sup>105</sup> *Id.* at 850.

<sup>106</sup> *Id.*

<sup>107</sup> *State v. Branch*, 2006 Ohio App. LEXIS 3750, \*\*1 (Ohio Ct. App. July 21, 2006).

<sup>108</sup> *Id.* at \*\*2.

<sup>109</sup> *Id.* at \*\*2-3 (quoting the testimony of Dr. Varsha Moudgal).

appeal, the defendant argued that he could not be convicted under the statute because saliva mixed with blood coming into the officer's eye posed only a negligible risk of HIV transmission.<sup>110</sup>

In order to convict the defendant of attempted felonious assault, the prosecution was required to prove that the appellant knowingly “[c]ause[d] or attempt[ed] to cause physical harm to another “ or “[c]ause[d] or attempt[ed] to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance,” and the defendant engaged in “conduct that, if successful, would constitute or result in the offense.”<sup>111</sup> Interpreting the state’s criminal attempt statute, the court determined that even if it was factually or legally impossible under the circumstances for the appellant to transmit HIV to the officer, it was no defense if the act could have been completed had the circumstances been as the appellant believed.<sup>112</sup> The court upheld the conviction, concluding that saliva mixed with blood carries a risk of transmitting disease and that the appellant therefore intended to cause serious physical harm to the officer.<sup>113</sup>

### **PLHIV are prohibited from donating or selling blood or plasma.**

It is a felony, punishable by up to 18 months imprisonment, for PLHIV to donate or sell their blood, plasma, or any other blood product.<sup>114</sup>

### **A person’s HIV status may be disclosed to assist the State in a criminal investigation or prosecution.**

Although a person’s HIV status is generally confidential, a variety of exceptions apply. Medical information may be disclosed to law enforcement authorities pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.<sup>115</sup> However, law enforcement officials may not disclose this information to others without additional court authorization.<sup>116</sup> To illustrate, if a prosecuting attorney subpoenaed HIV test results, they could use that information to determine if there are grounds to pursue a criminal case, but the information must otherwise remain confidential.<sup>117</sup> In order for the State to admit HIV test results into evidence in a trial, it must follow the procedures outlined in a separate exception, which requires any person or agency seeking authority to disclose test results to bring an action in a court of common pleas.<sup>118</sup> The Court may issue an order granting the petitioner authority to disclose results only if it “finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by other means.”<sup>119</sup> In its assessment of whether there is a compelling need, the court weighs the privacy interests of the individual and any harm to the public interest that may result from disclosure (e.g., deterrence of others from being tested)

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<sup>110</sup> *Id.* at \*\*6.

<sup>111</sup> OHIO REV. CODE ANN. §§ 2903.11(A)(1), 2903.11(A)(2), 2923.02(A) (2016).

<sup>112</sup> *Branch*, 2006 Ohio App. LEXIS 3750, at \*\* (citing OHIO REV. CODE ANN. § 2923.02(B)).

<sup>113</sup> *Id.* at \*\*9.

<sup>114</sup> OHIO REV. CODE ANN. §§ 2927.13, 2929.14(A)(4) (2016).

<sup>115</sup> OHIO REV. CODE ANN. § 3701.243 (B)(1)(h) (2016).

<sup>116</sup> See *Gonzales*, 796 N.E.2d 12, at 25-28.

<sup>117</sup> *Id.* at 27-28.

<sup>118</sup> *Id.* OHIO REV. CODE ANN. § 3701.243 (C)(1)(a) (2016).

<sup>119</sup> OHIO REV. CODE ANN. § 3701.243 (C)(1)(b) (2016).

against the need for disclosure.<sup>120</sup> Any resulting order issued by the court includes provisions intended to prevent unauthorized disclosure, including specifying those who are to have access to the information, the purposes for which the information is sought, and prohibitions against future disclosure.<sup>121</sup>

A person or government agency that seeks disclosure of an individual's HIV test results in an action in which it is a party, may seek disclosure by filing an in camera motion with the court in which the action is proceeding.<sup>122</sup>

### **A person with an STI may be prosecuted for exposing others to disease.**

It is a second degree misdemeanor, punishable by up to 90 days in jail,<sup>123</sup> for a person who has a "dangerous, contagious disease" to fail to take "reasonable measures to prevent exposing himself [or herself] to other persons."<sup>124</sup> Dangerous contagious disease is not defined in the statute, but courts have interpreted it to include venereal disease<sup>125</sup> and HIV<sup>126</sup> in the context of claims brought in tort.

Reports on arrests of sex workers have included reference to charges of "spreading contagion," which is the title of the statute.<sup>127</sup> A 2010 article reported that the misdemeanor "spreading contagion" charge had been filed in 55 cases in the preceding three years, with the overwhelming majority of instances occurring in conjunction with a charge for solicitation and in response to Methicillin-resistant Staphylococcus aureus (MRSA) infection, as opposed to HIV or any particular STI.<sup>128</sup> According to the article, the most common outcome of these cases is a guilty verdict for soliciting and a dismissal of the spreading contagion charge.<sup>129</sup>

**Important note:** *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, should not be used as a substitute for legal advice.*

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<sup>120</sup> *Id.*

<sup>121</sup> OHIO REV. CODE ANN. § 3701.243 (C)(1)(c) (2016).

<sup>122</sup> OHIO REV. CODE ANN. § 3701.243 (C)(2) (2016).

<sup>123</sup> OHIO REV. CODE ANN. § 2929.24(A)(2) (2016)

<sup>124</sup> OHIO REV. CODE ANN. § 3701.81(A) (2016)

<sup>125</sup> *Mussivand v. David*, 45 Ohio St. 3d 314, 319 (Ohio 1989).

<sup>126</sup> *Burris v. Thorpe*, 166 Fed. Appx. 799 (6<sup>th</sup> Cir. 2006)

<sup>127</sup> John Futtly, *Woman faces multiple counts of soliciting with HIV*, COLUMBUS DISPATCH, July 31, 2010, available at <http://www.dispatch.com/content/stories/local/2010/07/31/woman-faces-multiple-counts-of-soliciting-with-hiv.html>.

<sup>128</sup> John Futtly, *Prostitute's HIV status overlooked in charges*, COLUMBUS DISPATCH, September 13, 2010, available at <http://www.dispatch.com/content/stories/local/2010/09/13/prostitutes-hiv-status-overlooked-in-charges.html>.

<sup>129</sup> *Id.*

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## Code of Ohio

**Note:** Provisions imposing punitive restrictions or listing criminal sentences are denoted with \*\* and are generally listed first. Thereafter, provisions within a particular title are listed numerically.

### TITLE 29, CRIMES -- PROCEDURE

#### **OHIO REV. CODE ANN. § 2903.11 (2016) \*\***

##### *Felonious assault*

(A) No person shall knowingly do either of the following:

- (1) Cause serious physical harm to another or to another's unborn;
- (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

- (1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;
- (2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;
- (3) Engage in sexual conduct with a person under 18 years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D)

(1)

(a) Whoever violates this section is guilty of felonious assault. Except as otherwise provided in this division or division (D)(1)(b) of this section, felonious assault is a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer or an investigator of the bureau of criminal identification and investigation, felonious assault is a felony of the first degree.

(b) Regardless of whether the felonious assault is a felony of the first or second degree under division (D)(1)(a) of this section, if the offender also is convicted of or pleads guilty to a specification as described in section 2941.1423 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise provided in this division or unless a longer prison term is required under any other provision of law, the court shall sentence the offender to a mandatory

prison term as provided in division (B)(8) of section 2929.14 of the Revised Code. If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(E) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(4) "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.

**OHIO REV. CODE ANN. § 2907.01 (2016) \*\***

***Definitions***

*As used in sections 2907.01 to 2907.38 of the Revised Code:*

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

**OHIO REV. CODE ANN. § 2907.24 (2016) \*\***

*Soliciting; solicitation after positive HIV test*

(A) No person shall solicit another to engage with such other person in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C)

(1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the third degree.

(D) If a person is convicted of or pleads guilty to a violation of any provision of this section, an attempt to commit a violation of any provision of this section, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to any provision of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code. In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court.

**OHIO REV. CODE ANN. § 2907.241 (2016) \*\***

*Loitering to engage in solicitation; loitering to engage in solicitation after positive HIV test*

(A) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

- (1) Beckon to, stop, or attempt to stop another;
- (2) Engage or attempt to engage another in conversation;
- (3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;
- (4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;
- (5) Interfere with the free passage of another.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C) As used in this section:

- (1) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.
- (2) "Public place" means any of the following:
  - (a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility;



(b) A doorway or entrance way to a building that fronts on a place described in division (C)(2)(a) of this section;

(c) A place not described in division (C)(2)(a) or (b) of this section that is open to the public.

(D)

(1) Whoever violates division (A) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of loitering to engage in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fourth degree. If the offender commits the violation on or after July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fifth degree.

**OHIO REV. CODE ANN. § 2907.25 (2016) \*\***

*Prostitution; prostitution after positive HIV test*

(A) No person shall engage in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in sexual activity for hire.

(C)

(1) Whoever violates division (A) of this section is guilty of prostitution, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in prostitution after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the third degree.

**OHIO REV. CODE ANN. § 2921.38 (2016) \*\***

*Harassment with bodily substance*

(A) No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(C) No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with

intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) of this section is a felony of the fifth degree. A violation of division (C) of this section is a felony of the third degree.

(E)

(1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis.

(2) The court shall charge the offender with the costs of the test or tests ordered under division (E)(1) of this section unless the court determines that the accused is unable to pay, in which case the costs shall be charged to the entity that operates the detention facility in which the alleged offense occurred.

(F) This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health or the department of developmental disabilities.

**OHIO REV. CODE ANN. § 2927.13 (2016) \*\***

*Sale or donation of blood by AIDS carrier*

(A) No person, with knowledge that the person is a carrier of a virus that causes acquired immune deficiency syndrome, shall sell or donate the person's blood, plasma, or a product of the person's blood, if the person knows or should know the blood, plasma, or product of the person's blood is being accepted for the purpose of transfusion to another individual.

(B) Whoever violates this section is guilty of selling or donating contaminated blood, a felony of the fourth degree.

**OHIO REV. CODE ANN. § 2929.14 (2016) \*\***

*Basic Prison terms*

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), or (J) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3)(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

**OHIO REV. CODE ANN. § 2929.24 (2016) \*\***

*Definite jail terms for misdemeanor; eligibility for county jail industry program; reimbursement sanction; costs of confinement*

(A) Except as provided in section 2929.22 or 2929.23 of the Revised Code or division (E) or (F) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

(2) For a misdemeanor of the second degree, not more than ninety days;

**OHIO REV. CODE ANN. § 2950.01 (2016)**

*Definitions*

As used in this chapter, unless the context clearly requires otherwise:

(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(4) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(c) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation.

**OHIO REV. CODE ANN. § 2950.04 (2016)**

*Duty to register and comply with registration requirements*

(1)

(a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by (the department, the delinquent child shall register as provided in division (A)(3) of this section.

**OHIO REV. CODE ANN. § 2950.07 (2016)**

*Commencement of duty to register; duration*

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041, 29050.05, and 2950.06 of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death.

**OHIO REV. CODE ANN. § 2950.99 (2016) \*\***

*Penalties*

(A)

(1)

(a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code shall be punished as follows . . .

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

## **TITLE 31, DOMESTIC RELATIONS -- CHILDREN**

### **OHIO REV. CODE ANN. § 3101.06 (2016)**

#### *Denial of license*

No marriage license shall be granted when either of the applicants is under the influence of an intoxicating liquor or controlled substance or is infected with syphilis in a form that is communicable or likely to become communicable.

## **TITLE 37, HEALTH – SAFETY – MORALS**

### **OHIO REV. CODE ANN. § 3701.24 (2016)**

#### *Report as to contagious or infectious diseases; AIDS and HIV*

(A) As used in the section and sections 3701.241 to 3701.249 of the Revised Code:

- (1) "AIDS" means the illness designated as acquired immunodeficiency syndrome.
- (2) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS
- (3) "AIDS related condition" means symptoms of illness related to HIV infection, including AIDS related complex, that are confirmed by a positive HIV test.

### **OHIO REV. CODE ANN. § 3701.81 (2016) \*\***

#### *Spreading contagion*

(A) No person, knowing or having reasonable cause to believe that he is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort, or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion.

**OHIO REV. CODE ANN. § 3701.99 (2016) \*\***

*Penalties*

(C) Whoever violates section 3701.352 or 3701.81 of the Revised Code is guilty of a misdemeanor of the second degree.

**OHIO REV. CODE ANN. § 3701.243 (2016)**

*Disclosure of HIV test results or diagnosis*

(B)

(1) Except as provided in divisions (B)(2), (C), (D), and (F) of this section, the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed only to the following:

(h) To law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney, a city director of law or similar chief legal officer of a municipal corporation, or a village solicitor, in connection with a criminal investigation or prosecution.

(C)

(1) Any person or government agency may seek access to or authority to disclose the HIV test records of an individual in accordance with the following provisions:

(a) The person or government agency shall bring an action in a court of common pleas requesting disclosure of or authority to disclose the results of an HIV test of a specific individual, who shall be identified in the complaint by a pseudonym but whose name shall be communicated to the court confidentially, pursuant to a court order restricting the use of the name. The court shall provide the individual with notice and an opportunity to participate in the proceedings if the individual is not named as a party. Proceedings shall be conducted in chambers unless the individual agrees to a hearing in open court.

(b) The court may issue an order granting the plaintiff access to or authority to disclose the test results only if the court finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy right of the individual tested and against any disservice to the public interest that might result from the disclosure, such as discrimination against the individual or the deterrence of others from being tested

(c) If the court issues an order, it shall guard against unauthorized disclosure by specifying the persons who may have access to the information, the purposes for which the information shall be used, and prohibitions against future disclosure.

(2) A person or government agency that considers it necessary to disclose the results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing an in camera motion with the court in which the action is being heard. In hearing the motion, the court shall employ procedures for confidentiality similar to those specified in division (C)(1) of this section. The court shall grant the motion only if it finds by clear and convincing evidence that a compelling need for the disclosure has been demonstrated.

(3) Except for an order issued in a criminal prosecution or an order under division (C)(1) or (2) of this section granting disclosure of the result of an HIV test of a specific individual, a court shall not compel a blood bank, hospital blood center, or blood collection facility to disclose the result of HIV tests performed on the blood of voluntary donors in a way that reveals the identity of any donor.

(F) An individual who knows that the individual has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS-related condition shall disclose this information to any other person with whom the individual intends to make common use of a hypodermic needle or engage in sexual conduct as defined in section 2907.01 of the Revised Code. An individual's compliance with this division does not prohibit a prosecution of the individual for a violation of division (B) of section 2903.11 of the Revised Code.

(G) Nothing in this section prohibits the introduction of evidence concerning an HIV test of a specific individual in a criminal proceeding.