

## **Court: Ohio can require people with HIV to tell sex partners**

October 26 2017, by Andrew Welsh-Huggins

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The Ohio Supreme Court on Thursday upheld the constitutionality of a law requiring HIV-infected individuals to tell sexual partners of their status before having sex or risk criminal charges.

The court's unanimous decision rejected a First Amendment challenge, finding that the law regulates conduct, not speech.

The state has a valid interest in curbing HIV transmission to sexual partners who may be unaware of the risk, said Justice Terrence O'Donnell.

The law's "treatment of individuals with knowledge of their HIV-positive status who fail to disclose that status to a sexual partner furthers the state interest here," O'Donnell wrote.

At issue before the court was the conviction of an Ohio man sent to prison in 2015 for failing to tell his girlfriend he had HIV after they started having sex.

Attorneys for defendant Orlando Batista argued the law is unconstitutionally based on outmoded stigmas against the gay community and doesn't take into consideration current survival rates for people with HIV.

Ohio's HIV assault law also violates free speech rights because it focuses only on disclosure, not the actual transmission of the disease, they said.

Breaking the law is considered a felonious assault with a possible prison sentence of up to eight years.

An appeal is likely to the U.S. Supreme Court, Hamilton County Public Defender Raymond Faller said Thursday. He called it a complicated case which will receive a lot of national attention.

The law discourages people from getting tested for HIV, since individuals can't be prosecuted if they don't know their status, Faller said in court arguments last year. There's also evidence showing people take sexual risks with partners despite knowing they're HIV positive.

In Missouri, a former college wrestler is using similar arguments to challenge his conviction and 30-year sentence for infecting another man with HIV and endangering four other [sexual partners](#).

Thirty-four states including Missouri and Ohio have HIV-specific assault laws, according to the New York-based Center for HIV Law and Policy. More than 300 people have been charged under these laws since 2008, the center says.

The Centers for Disease Control and Prevention estimates 1.1 million people live with HIV in the US, with 1 in 7 of them not knowing it. The estimated number of annual HIV infections declined 18 percent from 2008 to 2014, according to the CDC.

Prosecutors argued the law upholds a compelling state interest in discouraging exposure to and spread of an incurable disease.

The law does not require abstinence, limit sexual conduct to a certain type or dictate use of safe sex measures, Paula Adams, an assistant Hamilton County prosecutor, said in a February court filing.

The law is also not a free speech violation because it covers both the failure of a partner to explain something and having sex without a partner being fully informed, Adams said.

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