

CaraConference 2021

Building Health Equity

September 13–17

Presenting Partner

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MIDWEST AIDS TRAINING + EDUCATION CENTER

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positively changing lives
in the fight against HIV/AIDS

Visit us at caracole.org
or find us on



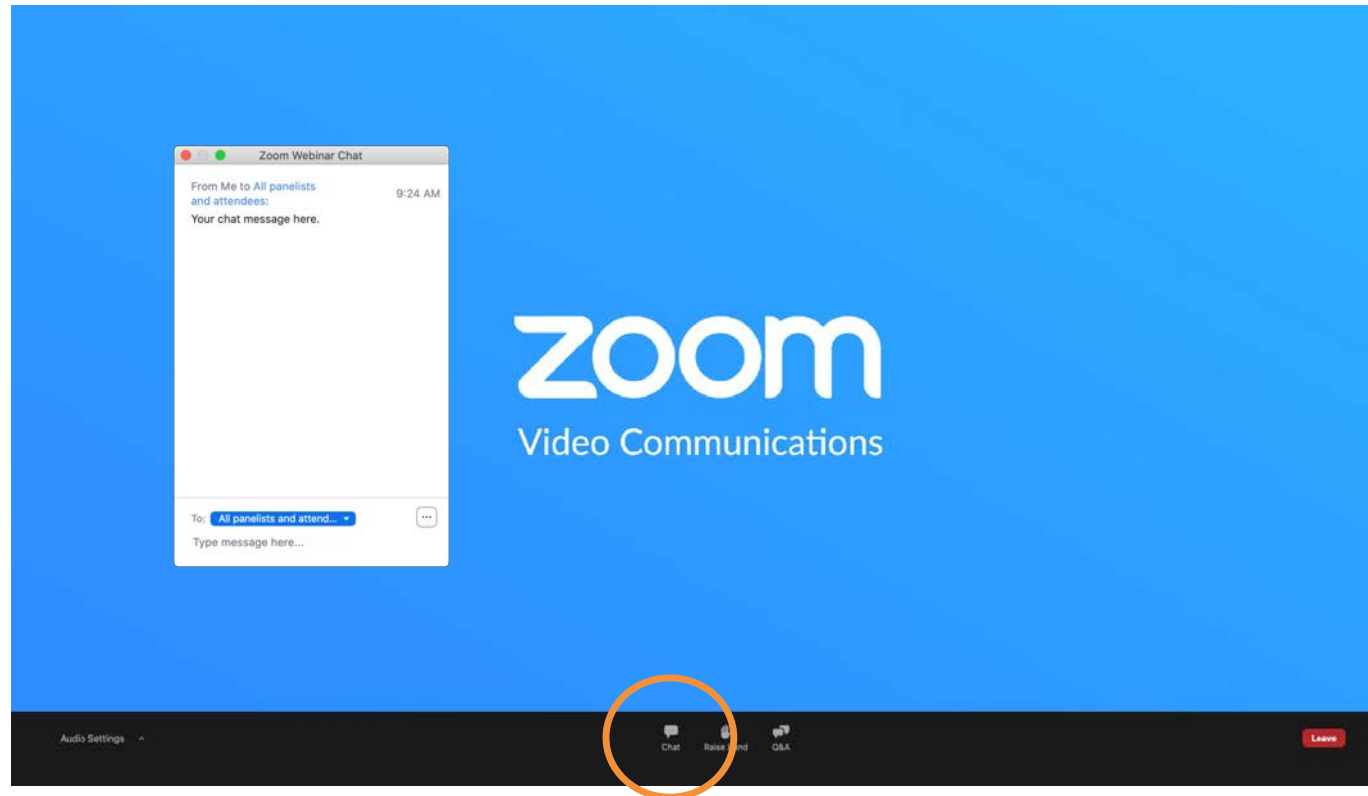
@wearecaracole

Feeling social today?
Tag us and use

#caraconf

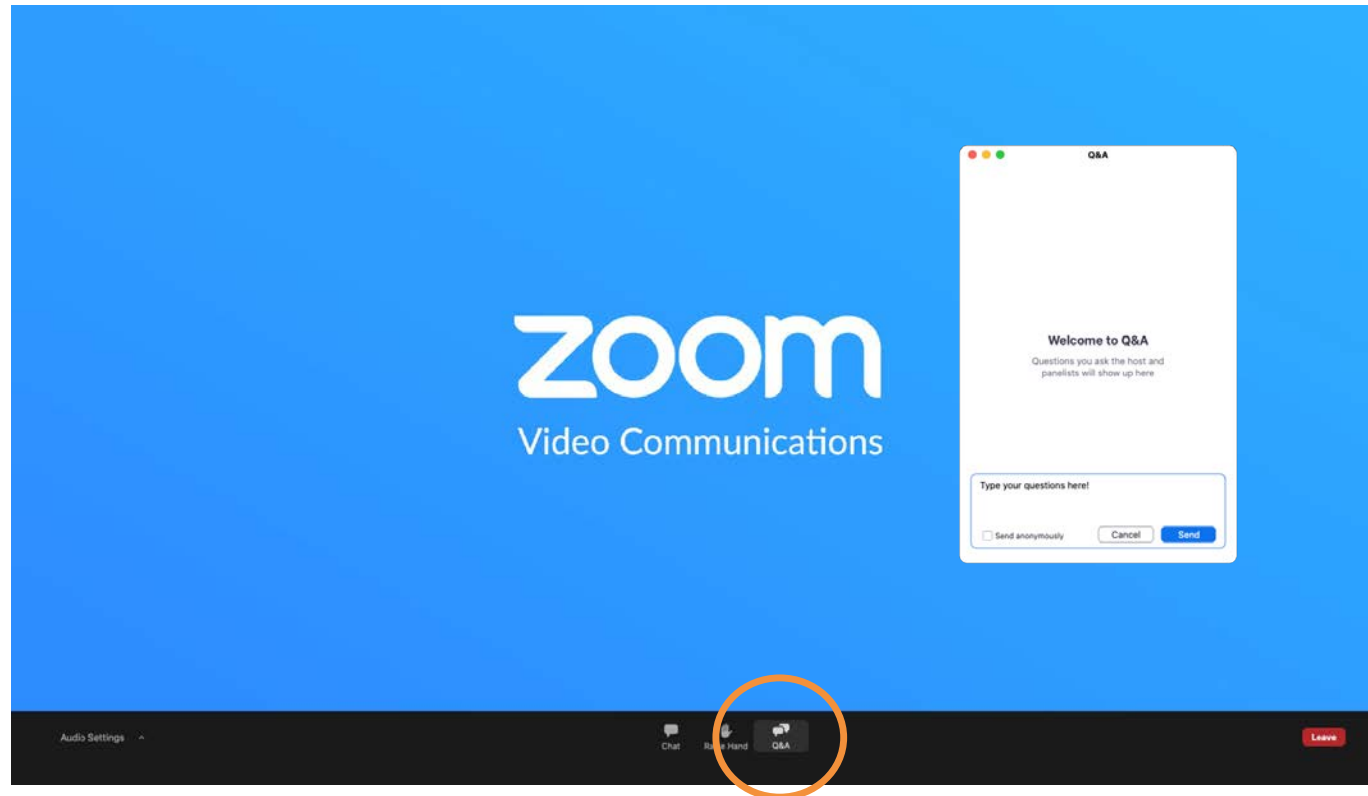
How to participate in today's webinar:

Use “Chat” for technical questions.



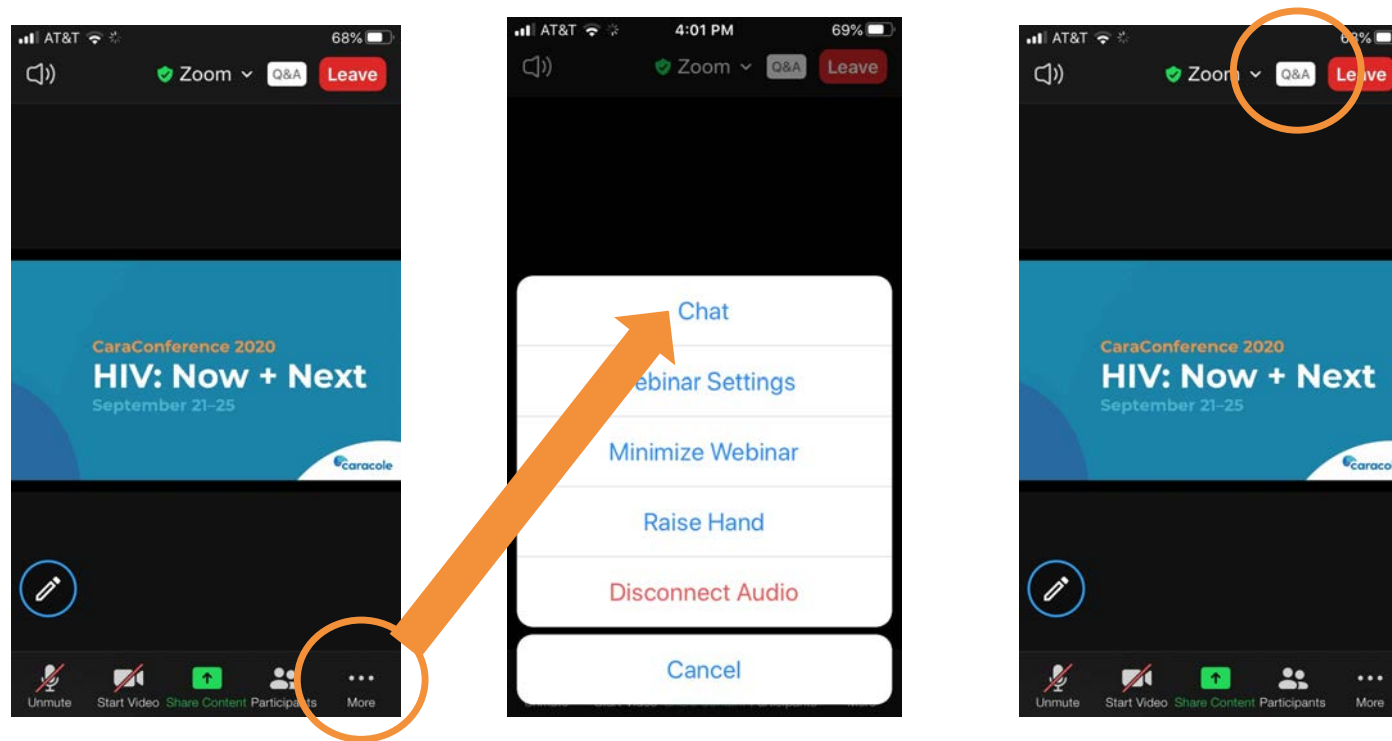
How to participate in today's webinar:

Use “Q&A” for presenter questions.



How to participate in today's webinar:

Use the same options for “Chat” and “Q&A” on your mobile device.





Visit
ohmodernizenow.org
to learn about how you
can join the movement
to MODERNIZE HIV
laws in Ohio.



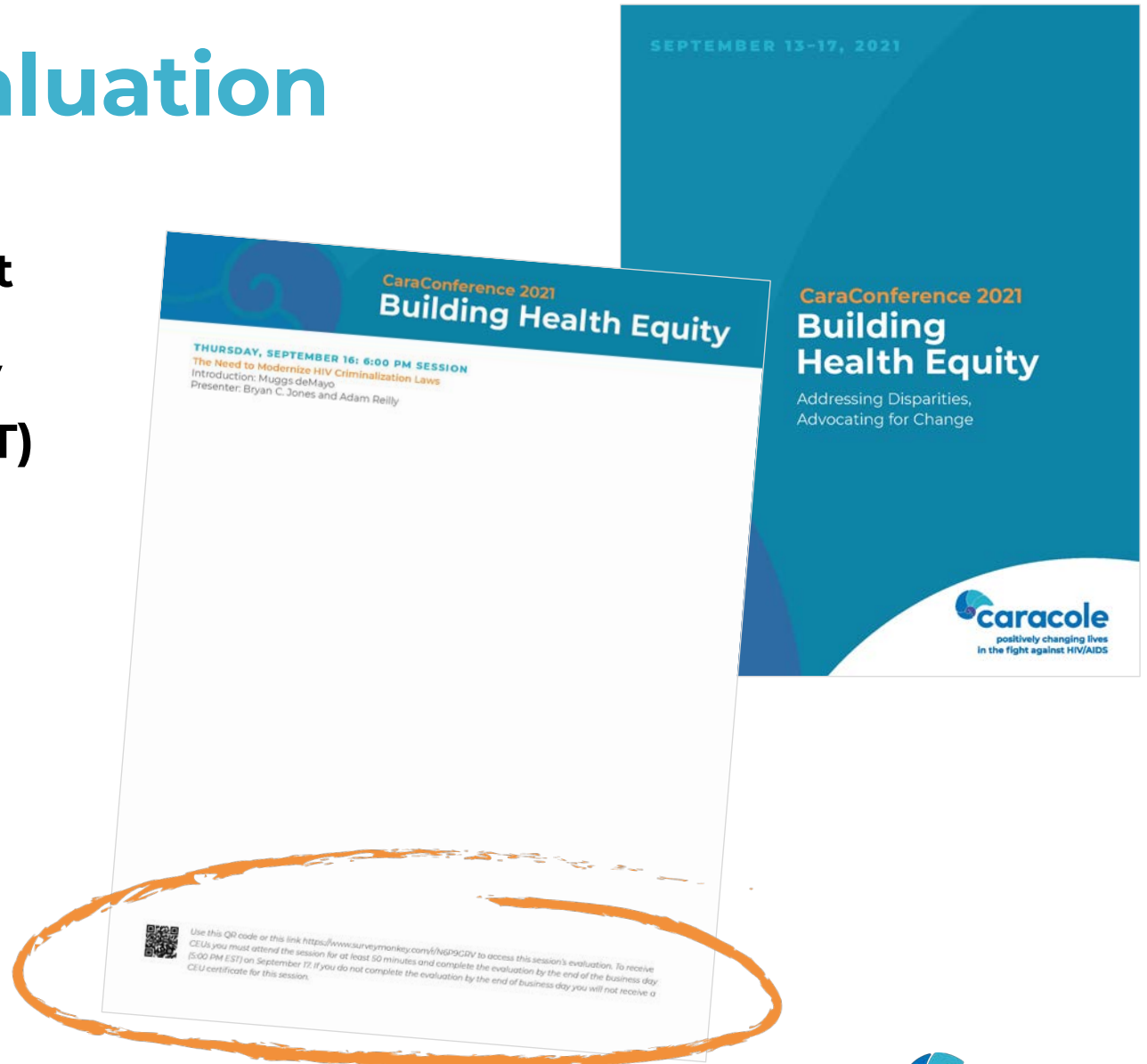
CaraConference 2021

End of session evaluation

Link in program and today's chat

Required for CEUs—complete by
end of business day (5:00 PM EST)
tomorrow

Recommended for all attendees



CaraConference 2021
Thursday, September 16

The Need to Modernize HIV Criminalization Laws

Introduction: Muggs deMayo

Presenters: Bryan C. Jones and Adam Reilly

BUILDING
HEALTH EQUITY

Criminalizing HIV Status in Ohio

Know the Law and How to Protect Yourself and Your Clients



Bryan C. Jones

Activist/advocate for PLWH and
Ohio Health Modernization Movement (OHMM)
Steering Committee Member

I have no financial disclosures to report.



Adam M. Reilly

Prevention Manager, Caracole and
Ohio Health Modernization Movement (OHMM)
Steering Committee Member

I have no financial disclosures to report.

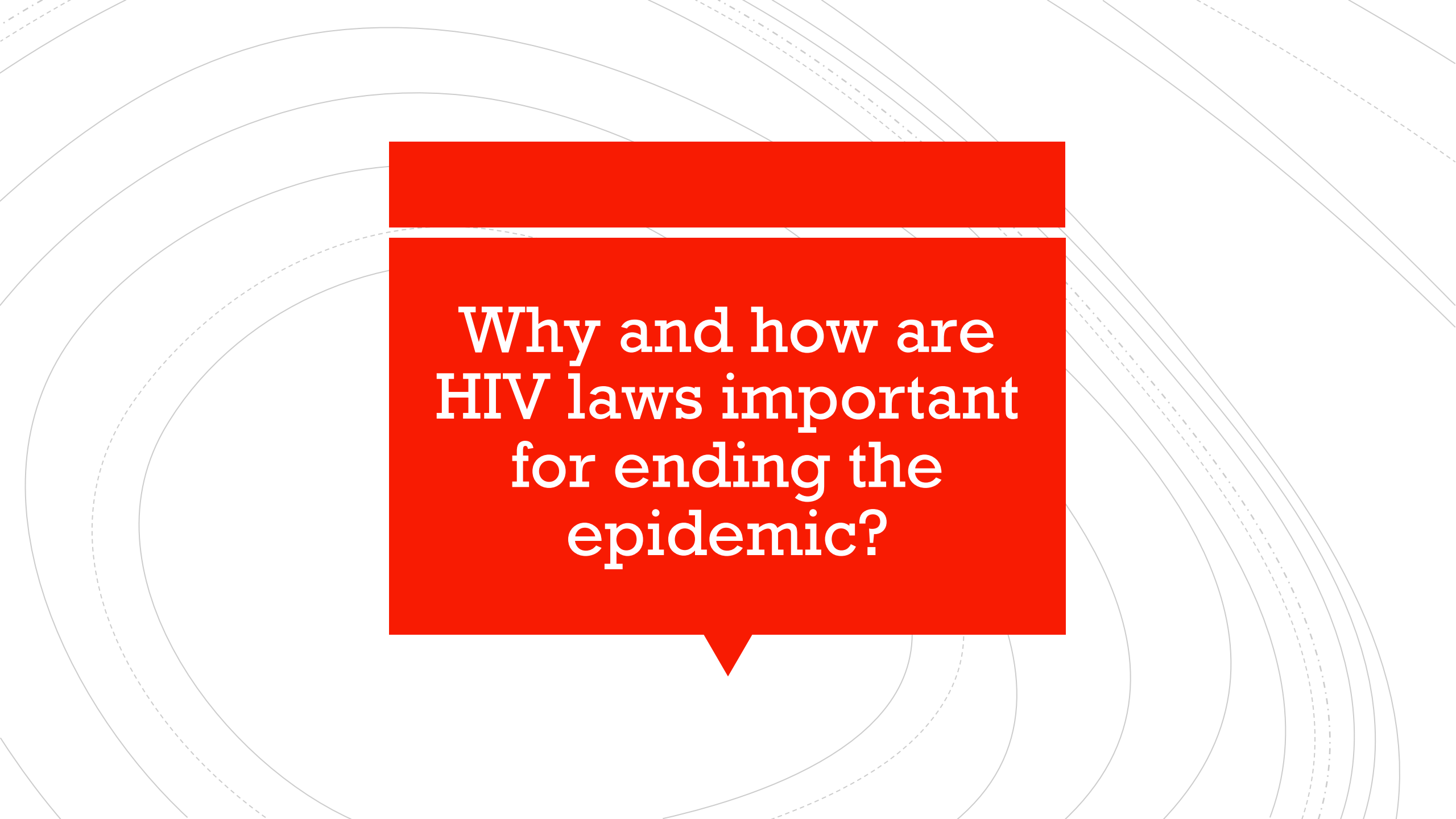
Who are we?



- Ohio Health Modernization Movement is a coalition of organizations and individuals dedicated to ending the criminalization of HIV in Ohio

Learning Objectives

- Gain general information about HIV
- Learn how current Ohio law criminalizes HIV
- Understand the legal requirements for a PLWHA to discuss their status to a potential sexual partner and learn acceptable methods to do so
- Acquire general knowledge about why and how Ohio law can be modernized

The background features a series of concentric circles in light gray, some solid and some dashed, creating a ripple effect. A bright red speech bubble is centered on the page, containing white text. The speech bubble has a rectangular body and a triangular tail pointing downwards.

**Why and how are
HIV laws important
for ending the
epidemic?**

What specific statutes criminalize a person's HIV status in Ohio?

- Felonious Assault - Ohio Rev. Code § 2903.11(B)(1)
- Solicitation - Ohio Rev. Code § 2907.24(B)
- Loitering to engage in solicitation - Ohio Rev. Code § 2907.241(B)
- Prostitution - Ohio Rev. Code § 2907.25(B)
- Harassment with a bodily substance - Ohio Rev. Code § 2921.38(C)
- Selling or donating blood - Ohio Rev. Code § 2927.13



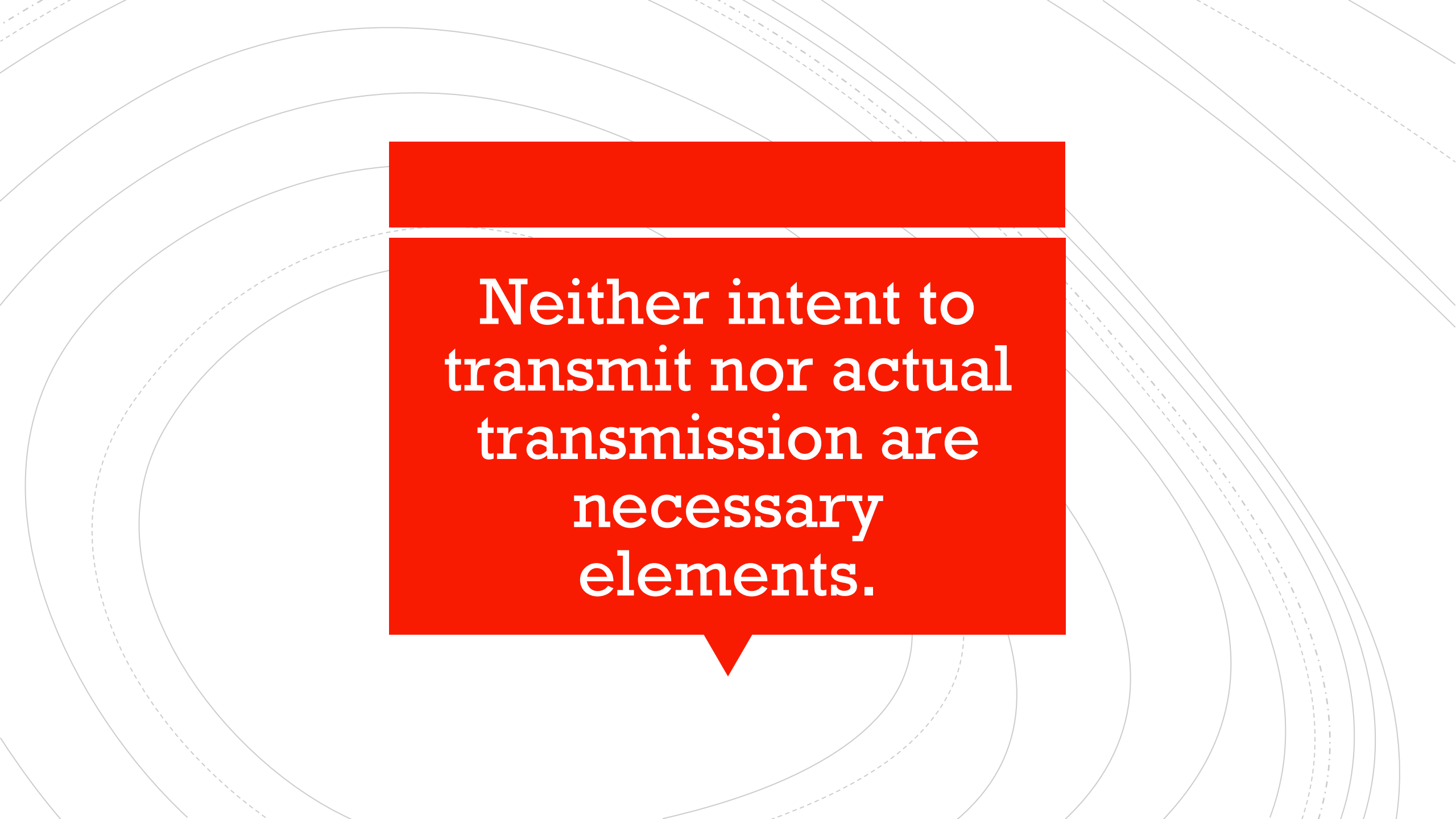
Felonious Assault & Failure to Disclose HIV Status to Consensual Sexual Partner

Ohio **requires** a PLWHIV to disclose one's HIV status prior to sexual conduct or face a 2nd degree felonious assault charge.

- What is considered sexual conduct?
- What is the penalty?

Ohio also prohibits PLWHIV to engage in sexual conduct with anyone under the age of 18 or with a person who lacks the mental capacity to appreciate an individual's HIV status.

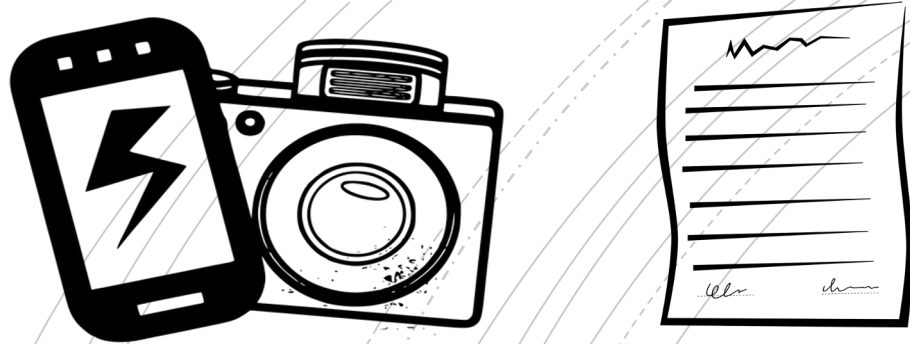
The **ONLY** affirmative defense to prosecution is the disclosure of one's HIV status to a potential sexual partner before engaging in sexual conduct.

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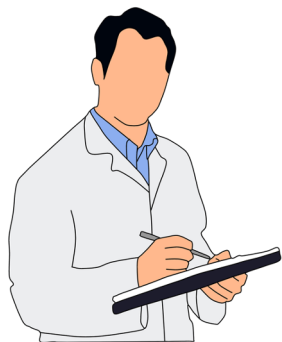
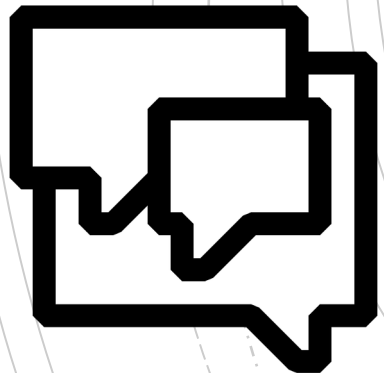
**Neither intent to
transmit nor actual
transmission are
necessary
elements.**

What counts as adequate proof of disclosure?

- *State v. Gonzalez* 796 N.E.2d 12 (1st Dist. 2003).
- Prior disclosure in dispute
- What is someone required to do to satisfy the Ohio disclosure requirement?
 - “A person who has knowledge that he is HIV-positive to tell his sexual partner that he (or she) is HIV-positive before engaging in sexual conduct with that partner.”



What counts as adequate proof of disclosure?



PLWHIV can demonstrate disclosure by the following:

- Recording the verbal disclosure to their partner on video;
- Requesting their partner sign a statement acknowledging your disclosure prior to any sexual conduct;
- Saving screenshots of text, social media, or dating app conversations with date and time stamps
- Request their partner accompany them to a doctor or caseworker's appointment and request a note be made concerning their partner's knowledge in the patient or client's file

Is the Ohio disclosure law constitutional?

According to the Ohio Supreme Court (so far),
YES!?!

State v. Batista

Free Speech Challenge

Equal Protection Challenge



How else does Ohio criminalize HIV?

Sex Work

Spitting, Biting, and Exposure of Bodily Fluids

Donating Blood

What are the prohibited activities?

What are the potential penalties?

How to decrease risk or arrest

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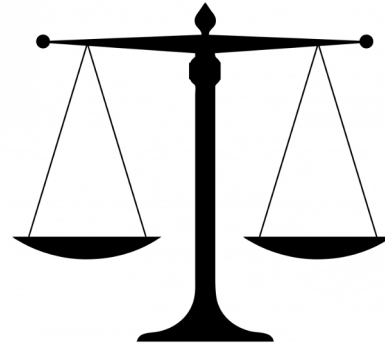
How to Protect Yourself as a PLWHIV

Your Physical Health and Safety



- The only way to know for sure if you have HIV is to be tested. If you are a sexually active person, consult with your healthcare provider and get tested to know your status.
- Once you know your status, you can be fully informed about your options to lead a healthy life; medications exist to reduce your viral load and reduce the impact of this chronic condition.
- Once you know your status, you can also follow our tips to avoid criminal liability.

Protecting Yourself Legally



- As stated previously, the only affirmative defense to being charged with felonious assault is to **disclose if you have HIV BEFORE you have sex with someone.**
- DOCUMENT, DOCUMENT, DOCUMENT your disclosure
- Ways to document:
 - Informed Consent Agreement- sign it and take a picture! (It will have the date and time it was signed in the picture)
 - Video Recording
 - Audio Recording
 - Get creative but make sure you can show you disclosed

**What should a
PLWHIV do if
they are
arrested or at
risk of an arrest?**



- Ask for an attorney as soon as you are questioned by law enforcement or are arrested, whichever occurs first
- Comply with law enforcement when being arrested



**What NOT to
do if a PLWHIV
is arrested or
at risk of an
arrest:**



- Do not disclose or discuss their HIV status to law enforcement officers
- Do not discuss or talk to anyone about the incident other than an attorney
- Do not sign anything without first consulting an attorney
- Do not consent to any medical tests (including blood draws or saliva swabs)

Why Modernize Ohio law?

Michigan Stigma Index -
https://www.stigmaindex.org/wp-content/uploads/2019/11/USA_Michigan_PLHIV-Stigma-Index-Report_2016.pdf

U = U

**Undetectable
means
Untransmittable**

Ohio Law is not Based in Science

- Punishes behavior that poses no or negligible risk of HIV transmission
- Doesn't account for reasonable prevention steps taken by PLWHIV
 - Condom use, Dental Dam use
 - U = U (HAART Therapy)
 - Low-risk sexual behaviors that greatly reduce the risk of transmission (e.g. oral sex, mutual masturbation)

Can Ohio HIV related convictions be sealed or expunged?

Felonious Assault (failure to disclose) - **No***

Prostitution - **No***

Solicitation - **No***

Loitering to engage in solicitation - **No***

Harassment with a bodily substance - **Eligibility analysis required**

Selling or donating blood - **Eligibility analysis required**

* Special expungement rules apply for victims of human trafficking.



Proposed Changes to Ohio's HIV Laws

Ohio's six separate HIV criminalization laws are not based in science, they do not promote public health, and they perpetuate dangerous stigma against people living with HIV. **The time to modernize Ohio's HIV laws is now.**

The Ohio Health Modernization Movement (OHMM) believes the following proposed changes are necessary to improve our current HIV laws and to end the criminalization of HIV.

Does current OH law...	Current Law	OHMM Proposed Law
Require a state of mind?	No!	<ul style="list-style-type: none">• Prosecution must prove that a person <i>intentionally</i> transmitted HIV or AIDS (HIV/AIDS) to another.• A person is guilty of intentional transmission ONLY IF that person acted with the "specific intent to transmit the disease to another." A prosecutor must prove that an individual had the specific intent to transmit <u>in order to convict</u>.• An individual lacks the specific intent to transmit if they take practical means to prevent transmission (see below).• Substantial risk of transmission must be proven by medical or epidemiological evidence. This definition does not include any conduct that poses a low risk of transmission.
Take into consideration risk reduction measures?	No!	<ul style="list-style-type: none">• Allows the use or attempted use of risk reduction measures – including condom use, barrier protection, prophylactic devices or medication, and medical treatment regimens for people living with HIV – to defend against prosecution.
Remove HIV-specific felonies?	No!	<ul style="list-style-type: none">• Makes penalties for all HIV-related offenses proportionate to the harm.• Eliminates all HIV-specific felony penalties and makes intentional transmission a misdemeanor-level offense.
Require proof of transmission?	No!	<ul style="list-style-type: none">• Prosecutors must demonstrate that an individual <u>actually transmits</u> HIV/AIDS in order to convict.• Any HIV law should EITHER only punish conduct that results in actual transmission OR includes different tiers of punishment based on whether harm occurred.



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Does current OH law...	Current Law	OHMM Proposed Law
Remove HIV-specific penalty enhancements for sex workers?	No!	<ul style="list-style-type: none">Removes discriminatory penalty enhancements for sex workers living with HIV for the following offenses: solicitation, loitering to solicit, and prostitution.
Remove penalties for other health conditions?	No!	<ul style="list-style-type: none">Removes felony enhancement under the bodily fluid statute for people living with HIV.
Remove the requirement to register as a sex offender?	No!	<ul style="list-style-type: none">Removes the requirement for people prosecuted under Ohio's HIV-specific felonious assault statute to register as sex offenders.
Remove donation penalties?	No!	<ul style="list-style-type: none">Removes penalties for blood and organ donation for people living with HIV and repeals the prohibition of such donation.





Where can I
find more
information?

- Ohio Health Modernization Movement:
<http://ohmodernizenow.org>
- <https://www.equalityohio.org/our-work/initiatives/>
- Center for HIV Law and Policy:
<http://www.hivlawandpolicy.org/>
- The SERO Project:
www.seropproject.com/

**I want to
help! Where
can I start?**

- **Ohio Health Modernization Movement:**
 - <http://ohmodernizenow.org>
 - <https://www.equalityohio.org/our-work/initiatives/>
- **Equality Ohio's Attorney Referral Network:**
 - We may become aware of cases that are outside of our income guidelines or practice area; this is where you come in! And you have the added benefit of getting pro-bono hours, which are recommended under the Ohio Ethics Rules.

Other Resources

- National Legal Aid & Defender Association
(www.nlada.org)
- The Center for HIV Law & Policy
(www.hivlawandpolicy.org)
- ACLU AIDS Project (www.aclu.org/hiv-aids)



Questions?