

HIV/AIDS Testing of Offenders

California

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Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	Any criminal complaint filed with a magistrate or court (or with respect to a minor, a juvenile court) or indictment with a crime alleging certain offenses including rape, unlawful sexual intercourse, sodomy, oral copulation and certain other offenses where the court finds there is probable cause to believe that the defendant committed the crime and there is probable cause to believe that blood, semen or any other bodily fluid capable of transmitting HIV has been transferred from the accused to the victim.
Is testing required, and/or available upon victim request?	- Testing is available upon request of the alleged victim after charging and upon finding by the court of probable cause. - Testing is required upon conviction for a "sexual offense". "Sexual offense" means rape, unlawful intercourse with a person under 18 years of age, sodomy, oral copulation or any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim: (i) sexual penetration, (ii) aggravated sexual assault of a child, (iii) lewd or lascivious conduct with a child, (iv) continuous sexual abuse of a child, and (v) the attempt to commit any offense described in clauses (i) to (iv), inclusive.
When does testing occur?	- Prior to conviction, only after finding of probable cause to believe that blood, semen or any other bodily fluid capable of transmitting HIV has been transferred from the accused to the victim. - Post-conviction, the court is required to order that the offender is tested within 180 days of the date of conviction.
What is the testing process?	- After the victim makes a written request and either the victim or prosecutor petitions the court, the court must promptly conduct a hearing to determine whether there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the accused to the victim. Both the alleged victim and the defendant have a right to be present at the hearing. - The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens. The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by HIV.

Who can see test results?	• The test results are required to be transmitted by the clerk of the court to the Department of Justice and the local health officer. • The local health officer is responsible for disclosing the test results to the victim who requested the test, and the accused who was tested. If the person subject to the test is a minor, copies of the results shall be sent to the minor's parents or guardians. Positive test results cannot be disclosed to the victim, or to the person tested, without offering or providing professional counseling as appropriate. • Results can also be made available to the prosecuting and/or defending attorney upon request.
Are there related services for victims?	• After a person is convicted of a sexual offense, the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of the right to receive the results of the HIV test performed on the defendant. The victim shall be referred to the local health officer for counseling to assist the victim in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of HIV, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether the victim should make the request. • Victim receives pre-request counseling and the results of a positive test cannot be disclosed to the victim unless he or she is offered or provided professional counseling appropriate to the circumstances.
Anything else I should know?	• Victims may disclose information about the HIV test only as the victim deems necessary to protect his/her health and safety or the health and safety of his/her family or sexual partner.
Statutory citation(s):	Cal. Pen Code §§ 220, 261, 261.5, 264.1, 266c, 269, 286, 287, 288, 288.5, 289, 289.5, 1202.1, 1524.1; Cal. Health & Safety Code §§ 121055, 121060.1, 121065, 120775.