

HIV/AIDS Testing of Offenders

Iowa

Last Updated: April 2023

Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	<ul style="list-style-type: none"> • Individuals convicted, adjudicated delinquent or “alleged offenders” accused of “sexual assault” involving “significant exposure” to HIV/AIDS. <ul style="list-style-type: none"> • “Sexual assault” means “sexual abuse” or any other sexual offense by which a victim has allegedly had sufficient contact with a “convicted offender” or an “alleged offender” to be deemed a “significant exposure.” • “Sexual abuse” means any sex act between persons: (1) when the act is done by force or against the will of the person (or if consent is procured by threats of violence, or the person is under the influence of a sleep inducing drug/is unconscious); or (2) if the person suffers from a mental defect or incapacity which precludes giving consent (or lacks the mental capacity to know right and wrong conduct of sexual matters); or (3) if the person is a child. • “Alleged offender” means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault. • “Convicted offender” means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault. • “Significant exposure” means contact of the victim’s ruptured or broken skin or mucous membranes with the blood or body fluids (other than tears, saliva or perspiration) of the convicted or alleged offender. Significant exposure is presumed when there is a showing that there was penetration of the convicted or alleged offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim. • If a person is an alleged offender, a search warrant shall be applied for.
Is testing required, and/or available upon victim request?	<ul style="list-style-type: none"> • Testing is available at the request of the victim upon court order.
When does testing occur?	<ul style="list-style-type: none"> • Testing for alleged offenders and those convicted or adjudicated delinquent occurs following a hearing as described below.
What is the testing process?	<ul style="list-style-type: none"> • At the request of the victim, the county attorney petitions the court to require the alleged offender or person convicted or adjudicated delinquent to be tested if there was significant exposure and if written informed consent to the testing was attempted to be obtained, but was not provided by the convicted or alleged offender. The court makes its determination after holding a hearing. <ul style="list-style-type: none"> • Prior to scheduling a hearing, the court will refer the victim to counseling.

	<ul style="list-style-type: none"> • The hearing will then be scheduled “as soon as is practicable.” • The court will cause written notice to be served on the convicted or alleged offender, and his/her attorney, if applicable. • The court will conduct a hearing in “an informal manner” (subject to the Iowa rules of evidence) that is limited in scope to determining whether there is “significant exposure” and to questions of law. • The victim may testify at the hearing, but cannot be compelled to do so. Refusal to testify cannot be used by the court as a factor in determining whether to order testing. • The hearing is in camera unless both parties agree otherwise and the court approves. • Testing will be ordered upon showing, by a preponderance of the evidence, that the “sexual assault” constituted a “significant exposure” and that written informed consent to the testing was attempted to be obtained, but was not provided by the convicted or alleged offender.
Who can see test results?	<ul style="list-style-type: none"> • Results of the testing are disclosed to the convicted or alleged offender, the victim, the victim’s counselor or a person requested by the victim who is authorized to provide counseling, the physician or health care provider who performed the test, the physician of the victim (if requested by the victim), the parent/guardian/custodian of the victim (if the victim is a minor), and the county attorney who filed the petition for the testing. • The victim may disclose the results to his/her spouse, members of his/her family (within the 3rd degree of consanguinity), and persons with whom the victim has had intercourse (vaginal, anal or oral) subsequent to the sexual assault. • Results of the testing cannot be disclosed to anyone else without written consent of the convicted or alleged offender. • Within 7 days of the receipt of a test result indicating HIV infection that has been confirmed as positive, or within 7 days of diagnosing a person as having AIDS or an AIDS-related condition, the testing or diagnosing physician or physician’s assistant must make a report to the Department of Public Health.
Are there related services for victims?	<ul style="list-style-type: none"> • Post-testing counseling for sexual offenders is required and provided by the state. • The victim is referred to counseling prior to the hearing and when the test results are received. • The victim is referred to appropriate health care and support services.
Anything else I should know?	<ul style="list-style-type: none"> • The fact that an HIV-related test was performed and the results of the test cannot be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing. • If the initial test is negative, the court must order additional testing within 6 months of the initial test if the physician who ordered the initial test certifies that, based upon prevailing scientific opinion, the initial test could have presented a false-negative and additional testing is needed to determine whether the convicted or alleged offender was HIV-infected at the time of the offense. • If a victim tests positive, a confidential report must be made within 7 working days to the Iowa Department of Public Health.
Statutory citation(s):	Iowa Code §§ 141A.6, 141A.7, 141A.9, 709.1, 915.40, 915.42 and 915.43.