

# HIV/AIDS Testing of Offenders

## Oregon

*Last Updated: April 2023*

| Question  | Answer  |
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| Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS? | <ul style="list-style-type: none"> <li>• Persons charged with or convicted of a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved.</li> <li>• Youth offenders who are within the Juvenile Court's jurisdiction for having committed an act from which it appears that the transmission of body fluids from one person to another may have been involved or a sexual act may have occurred. The court may not order the adjudicated youth or the parent or guardian of the adjudicated youth to pay for or reimburse any agency for the cost of the test.</li> </ul>  |
| Is testing required, and/or available upon victim request?                                  | <ul style="list-style-type: none"> <li>• Upon request by the victim or the parent or guardian of a minor or incapacitated victim, the district attorney will petition for a court order requiring a test for HIV and any other communicable disease if the person charged does not give consent or fails to submit to a test. The court will order testing if it determines there is probable cause to believe that:               <ul style="list-style-type: none"> <li>• the person charged committed the crime; and</li> <li>• the victim has received a substantial exposure, as defined by rule of the Oregon Health Authority.</li> </ul> </li> <li>• Upon request by a victim or a parent or guardian of the victim, the court will order testing of a person convicted of any crime in which the court determines from the facts that the transmission of body fluids from one person to another was involved, if the person was not tested when charged, and the person does not consent to testing.</li> </ul> |
| When does testing occur?  | <ul style="list-style-type: none"> <li>• When charged, or upon conviction if not tested earlier.</li> <li>• If the district attorney files a petition at or before the defendant's arraignment on the indictment or information and the court orders the defendant to submit to testing, the testing must be done within 48 hours of the defendant's arraignment.</li> </ul>  |
| What is the testing process?  | <ul style="list-style-type: none"> <li>• When the accused is charged, the accused and the victim, as well as the parent or guardian of a minor or incapacitated victim, will be informed of the availability of HIV testing and may request testing of the accused. At this time, the judge will also inform these persons of the availability for counseling if an HIV test results in a positive reaction.</li> <li>• When a test is ordered, the victim of the crime or a parent or guardian of the victim must designate an attending physician, physician associate, or nurse practitioner to receive such information on behalf of the victim.</li> <li>• If an HIV test is negative, the court may order the person to submit to another HIV test six months after the first test was administered.</li> </ul>   |

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| Who can see test results?               | <ul style="list-style-type: none"> <li>• The results are not a public record and shall be available only to: <ul style="list-style-type: none"> <li>• The victim;</li> <li>• The parent or guardian of a minor or incapacitated victim;</li> <li>• The attending physician, physician associate or nurse practitioner designated by the victim to receive such results on behalf of the victim;</li> <li>• The Oregon Health Authority; and</li> <li>• The person tested.</li> </ul> </li> <li>• The results are confidential and may not be divulged to any person not authorized by statute to receive the information. Any violation is a Class C misdemeanor.</li> </ul> |
| Are there related services for victims? | <ul style="list-style-type: none"> <li>• If an HIV test ordered by the court is positive, the individual subject to the test will receive post-test counseling as required by the Oregon Health Authority. At the request of the victim or the parent or guardian of a minor or incapacitated victim, the victim shall receive counseling and referral for appropriate health care, testing, and support services as directed by the Oregon Health Authority.</li> </ul>   |
| Anything else I should know?            | <ul style="list-style-type: none"> <li>• The costs of testing and counseling are paid through the state's compensation for crime victims program. The costs of any counseling and of any tests will be included by the court in any order requiring the convicted person to pay restitution.</li> </ul>  |
| Statutory citation(s):                  | Or. Rev. Stat. Ann. §§ 135.139 and 419C.475.   |