

HIV/AIDS Testing of Offenders

Wisconsin

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Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	• Individuals (including juveniles) indicted for sexual assault, sexual assault of a child, repeated acts of sexual assault of the same child, sexual exploitation of a child, sexual assault of a child placed in substitute care, incest with a child, and sexual assault of a child by a school staff person.
Is testing required, and/or available upon victim request?	• The district attorney must apply to the circuit court of his or her county to order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease if (i) the district attorney has probable cause to believe that the alleged victim or victim has had contact with body fluid of the defendant that constitutes a significant exposure; and (ii) the victim (or parent or guardian if the victim is a minor) requests the district attorney to apply for a court order. • Testing is available upon the victim's request, if the victim is an adult (or parent's or guardian's request if the victim is a child) following a court order (and finding of probable cause).
When does testing occur?	• Testing may occur after the district attorney applies for an order at any of the following times: • at or after the initial appearance and prior to preliminary examination; • if the defendant waives preliminary examination at any time after the defendant is indicted and before a verdict is rendered; • at any time after conviction or found not guilty by reason of mental disease or defect; or • at any time after a court finds that the defendant is not competent to proceed and suspends the criminal proceedings. • In the case of a juvenile offender, testing may occur after the district attorney applies for an order at any of the following times: • at or after the plea hearing and before a dispositional order is entered; • at any time after the juvenile is adjudicated delinquent or found to be in need of protection or services; • at any time after the juvenile is found not responsible by reason of mental disease or defect; or • at any time after a determination that the juvenile is not competent to proceed.
What is the testing process?	• If the district attorney has probable cause to believe that the alleged victim or victim has had contact with the body fluid of the defendant that constitutes a significant exposure, and the alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to apply for an order, then the district attorney shall apply to the circuit court for his or her county to order the defendant to submit to an HIV test and to a test or a series of

	tests to detect the presence of sexually transmitted disease, each of which tests shall be administered by a health care professional. • In the case of a juvenile offender, if the victim or alleged victim (or the parent or guardian of the victim or alleged victim in the case of a minor) requests the district attorney or corporation counsel to apply for an order and the district attorney or corporation counsel has probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure, then the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to an HIV test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional. • The court shall set a hearing to make a determination on the order and give the district attorney and the defendant notice of the hearing at least 72 hours in advance. If the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the defendant that constitutes a significant exposure, the court will order the defendant to submit to testing. • Defendant is entitled to have counsel at the hearing, and counsel can examine and cross-examine witnesses.
Who can see test results?	• Results are disclosed to the defendant, the victim (or the victim's parent/guardian if the victim is a minor), and the victim's health care provider (upon request of the victim or his/her parent/guardian if the victim is a minor). • In the case of a juvenile offender, results are disclosed to the parent, guardian or legal custodian of the juvenile, to the victim (or the victim's parent/guardian if the victim is a minor), to the juvenile's health care provider (upon request by the parent, guardian or legal custodian of the juvenile), and to the victim's health care provider (upon request of the victim or his/her parent/guardian if the victim is a minor). • The test results must not be made part of the defendant's permanent medical record.
Are there related services for victims?	• Known victims of a juvenile's act involving the relevant offenses must be given timely notice of the procedures to request HIV testing.
Anything else I should know?	• Defendant was charged with child enticement and two counts of sexual assault of a child. Even though the defendant was acquitted on the sexual intercourse charge, the court held that the statute authorizing HIV testing required only probable cause to believe that the victim had been exposed. Thus, defendant was properly subjected to HIV testing under the statute. <i>State v. Parr</i>, 513 N.W. 2d 647 (Wis. Ct. App. 1994).
Statutory citation(s):	• W.S.A. §§ 938.296, 938.346, 938.371, 950.04; 968.38; • <i>State v. Parr</i>, 513 N.W. 2d 647 (Wis. Ct. App. 1994)