

HIV/AIDS Testing of Offenders

Maine

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Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	<ul style="list-style-type: none"> • Offenders, both adults and juveniles, convicted of, or adjudicated as having committed (in the case of juveniles), a “sexual crime.” <ul style="list-style-type: none"> • “Sexual crime” means a crime involving a “sexual act”, which is defined as: <ul style="list-style-type: none"> • (1) any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; • (2) any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or • (3) any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. • A sexual act may be proved without allegation or proof of penetration.
Is testing required, and/or available upon victim request?	<ul style="list-style-type: none"> • After the defendant is convicted, available upon request of the victim of a sexual crime, or the victim’s parent, guardian or authorized representative if the victim is a minor or incapacitated adult.
When does testing occur?	<ul style="list-style-type: none"> • A victim of a sexual crime (or the victim’s parent, guardian or authorized representative if the victim is a minor or incapacitated adult) may petition the court at any time prior to sentencing or no later than 180 days after conviction to order the convicted offender to submit to HIV testing and to order that the convicted offender be informed of the test results.
What is the testing process?	<ul style="list-style-type: none"> • The victim may petition the court for the test at any time prior to sentencing or no later than 180 days after conviction. • Once the victim has asked the court for an HIV test to be performed on the offender, the court shall order the test to be conducted by or under the authority of the Department of Health and Human Services. • Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result. • The victim may also petition the court for an order that the convicted offender be informed of the test results.

Who can see test results?	<ul style="list-style-type: none"> • The health care facility in which the offender is tested must disclose the results to the victim/witness advocate, who must disclose the result to the victim. Upon order of the court, the facility must disclose the results to the convicted offender.
Are there related services for victims?	<ul style="list-style-type: none"> • Victims must be offered counseling (including face-to-face counseling and written documentation) regarding the nature, reliability and significance of the HIV test and the confidential nature of the test. Victims may decline such offer by signing a waiver. • Persons testing positive must also be offered counseling.
Anything else I should know?	<ul style="list-style-type: none"> • The fact that an HIV test was given and the results of that test may not appear in a convicted offender's medical record.
Statutory citation(s):	Me. Rev. Stat. Ann. tit. 5, §§ 19203-A, 19203-F, 19204-A; Me. Rev. Stat. Ann. tit. 17-A § 251.