

# HIV/AIDS Testing of Offenders

## New York

*Last Updated: March 2020*

Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	<ul style="list-style-type: none"> <li>• Persons (including juveniles) convicted of, or where an indictment or a superior court information has been filed with a superior court relating to, a felony offense where “sexual intercourse,” “oral sexual conduct,” or “anal sexual conduct” is a required element.               <ul style="list-style-type: none"> <li>• “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight.</li> <li>• “Oral sexual conduct” means conduct between persons consisting of contact between the mouth and the penis, anus, vulva, or vagina.</li> <li>• “Anal sexual conduct” means conduct between persons consisting of contact between the penis and anus.</li> </ul> </li> </ul>
Is testing required, and/or available upon victim request?	<ul style="list-style-type: none"> <li>• Available upon court order at the written request of the victim or representative of a minor or incompetent victim.               <ul style="list-style-type: none"> <li>• In cases where an indictment or information has been filed, such request must be made prior to or within 6 months of the date of the crimes charged and prior to or within 48 hours of the indictment or filing of information with the superior court.</li> <li>• In cases where a defendant has been convicted, such request must be made prior to or within 10 days after entry of the offender’s conviction.</li> </ul> </li> <li>• In cases where an indictment or information has been filed, testing of the defendant shall be ordered when the result would provide medical or psychological benefit to the victim.               <ul style="list-style-type: none"> <li>• Medical benefit shall be found when the following elements are satisfied:                   <ul style="list-style-type: none"> <li>• A decision is pending about beginning, continuing, or discontinuing a medical intervention for the victim; and</li> <li>• The result of an HIV test of the accused could affect that decision, and could provide relevant information beyond that which would be provided by an HIV test of the victim.</li> </ul> </li> </ul> </li> <li>• The court may permit the request to be filed at a later stage of the action within six months of the date of the crimes charged (alleged offender) or at any time before a sentence is imposed (convicted offender), for good cause shown.</li> </ul>
When does testing occur?	<ul style="list-style-type: none"> <li>• For an alleged offender, testing must be done within 48 hours of the date on which the court ordered the testing.</li> <li>• For a convicted offender, testing must be done within 15 days of the date on which the court ordered the testing.</li> </ul>

<p>What is the testing process?</p>	<ul style="list-style-type: none"> <li>• The victim, or representative of a minor or incompetent victim, may request in writing to the court that the alleged offender or offender submit to an HIV test.</li> <li>• Testing is to be conducted by a state, county, or local public health officer designated by the order.</li> <li>• The court may conduct a hearing if necessary to determine if the applicant is the victim of the offense of which the defendant was convicted.</li> </ul>
<p>Who can see test results?</p>	<ul style="list-style-type: none"> <li>• The victim and defendant. The test results are not disclosed to the court.</li> <li>• Test results will be disclosed subject to the following limitations, which will be specified in any order issued by the court: <ul style="list-style-type: none"> <li>• Disclosure of confidential HIV related information will be limited to that information which is necessary to fulfill the purpose for which the order is granted;</li> <li>• Disclosure of confidential HIV related information will be made to the defendant upon his or her request, and disclosure to a person other than the defendant will be limited to the person making the application.</li> <li>• Redislosure of such information will be permitted only to the victim, the victim's immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of HIV transmission and will not be permitted to any other person or the court.</li> </ul> </li> <li>• Any such court order will include measures to protect against disclosure to others of the identity and HIV status of the applicant and of the person tested and may include such other measures as the court deems necessary to protect confidential information</li> </ul>
<p>Are there related services for victims?</p>	<ul style="list-style-type: none"> <li>• In the case of a positive test result, at the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV related test will, directly or through a representative, provide the subject of the test or victim with appropriate health care and support services, or referrals to such available services, counseling with regard to HIV disease and HIV testing in accordance with law, and with counseling or referrals for counseling: <ul style="list-style-type: none"> <li>• For coping with the emotional consequences of learning the test result;</li> <li>• Regarding the discrimination problems that disclosure of the result could cause;</li> <li>• For behavior change to prevent transmission or contraction of HIV infection;</li> <li>• To inform such person of available medical treatments; and</li> <li>• Regarding the need to notify his or her contacts.</li> </ul> </li> </ul>
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> <li>• If the defendant is not tested within the period prescribed by the court, the court must again order that the defendant undergo an HIV related test.</li> <li>• No information from testing may be used as evidence in any criminal or civil proceeding against the defendant.</li> </ul>
<p>Statutory citation(s):</p>	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.00.</li> <li>• N.Y. Crim. Proc. Law § 210.16 and 390.15.</li> <li>• N.Y. Pub. Health Law art. 27-F, § 2785-A.</li> <li>• NY Family Court Act § 347.1.</li> </ul>