

Defendant HIV Testing

Counseling Messages for Defendants Indicted for Felony Sexual Assault and Court-Ordered to Undergo HIV Testing

Pre-Test Counseling

The following key points concern the rationale for Defendant HIV Testing and the testing process.

1. You have been ordered by a court to be tested for HIV under New York State's Criminal Procedure Law.
2. The purpose of this testing is to provide information about your HIV status to the victim (survivor) of the crime you have been accused of so that they can make informed decisions about their health care needs. If you (the alleged perpetrator) were HIV positive at the time of the attack, the victim could have been exposed to HIV and could have become infected. Additionally, this testing may benefit you because if the victim was HIV positive at the time of the assault, you could have been exposed to HIV and become infected.

The HIV Testing Process

The following section provides information about the HIV testing that may be done.

1. A blood sample will be taken to determine if you have HIV. Testing may consist of a series of HIV tests or, if it has been at least 42 days since the assault, a rapid HIV antibody test can be used for defendant HIV testing.
2. If your blood sample is being sent for laboratory testing, the series will start with an antigen/antibody test:
 - o A laboratory-based HIV combination antigen/ antibody test. Typically, people infected with HIV will develop enough antigen/antibodies to be detected by this test within 14-28 days after their exposure.
 - o If the antigen/antibody test is reactive, an antibody differentiation test will be done to see if you have developed antibodies to HIV.
 - o If that test is negative, an HIV viral load test will be done to determine whether the reason that the antigen/antibody test was reactive was because you have a very early HIV infection.
 - o An HIV viral load test detects the presence of the virus itself and will detect HIV infection as early as 7 days after exposure.

HIV Tests to be Used	
7 - 30 Days from time of exposure	
Laboratory-based HIV antigen/antibody test and HIV RNA test	
30 Days - 6 Months	
30 - 42 Days	Laboratory-based HIV antigen/antibody test
42 Days - 6 Months	Laboratory-based HIV antigen/antibody test or Point of care rapid HIV test - if positive, follow-up laboratory tests will be required

This series of tests is used to ensure that testing results accurately show if you are HIV positive or negative, reducing or eliminating the need for follow-up testing later.

For more detailed information, see the guidance documents on [HIVguidelines.org](https://www.hivguidelines.org)

Test results will be available 2 to 4 days after you are tested. If a rapid HIV test is used, preliminary results can be available within 20 minutes.

Explaining the Meaning of HIV Test Results

The following content describes various test results and their implications. These scenarios are meant as a guide to help the counselor answer questions that the defendant may have prior to having the test but are not meant to be provided as stand-alone responses. Let the defendant know that HIV is treatable and with treatment HIV positive individuals can have a normal lifespan.

1. Laboratory based antigen/antibody test results.

- Laboratory based HIV-1/HIV-2 antigen/antibody screening tests can typically detect HIV as early as 14 days after infection. This means that if you were exposed to HIV in the 14 days before the test was done, the antigen/antibody test may not detect that infection and you may wish to have repeat testing done.
- If the HIV antigen/antibody test result is negative, you do not have HIV.
- If the HIV antigen/antibody test is positive and the antibody differentiation test is positive, you have HIV.
- If the HIV antigen/antibody test is positive, an HIV differentiation antibody test will be done. If this test is negative or indeterminate, an HIV viral load test will be done. If the viral load test is negative, you do not have HIV.
- If the HIV antigen/ antibody test is positive, and the antibody differentiation test is negative, an HIV viral load test will be done. If the viral load test is positive, it indicates that you recently became HIV positive and have acute HIV.

2. Rapid HIV test results

If a rapid HIV test is used because it has been at least 42 days since the assault, a positive (or reactive) result requires follow-up laboratory-based testing. A negative (or non-reactive) result means you do not have HIV as a result of the assault.

Who Can Receive the Test Results?

It is important that the defendant understand who will receive and who will not receive the results of their HIV test. It is also important that the defendant understands there are benefits to knowing if they are HIV positive.

- You can get the results of your tests. However, you don't have to know your HIV test results if you don't want to. But HIV can be treated. If you have HIV, the sooner you find a medical provider and start medical treatment, the better your chances are of staying healthy.
- The victim (survivor) has the right to know whether you have HIV. He or she may share your HIV status with close family members, a guardian, lawyer, doctor, and health care providers. The victim can disclose your HIV test results to any of his or her sex partners or needle-sharing partners if the victim believes any of those partners may have been exposed to HIV. However, the victim cannot disclose your name.
- The court will not allow anyone who knows about your test results to tell anyone else.
- Your HIV test results cannot be shared with the court or used as evidence against you in any criminal or civil case related to the felony rape or sexual assault charges against you.

Post-Test Counseling Messages

The following content describes various test results and their implications for the defendant's HIV status. This information is provided as a guide for the public health officer in addressing questions the defendant may have in the context of a more comprehensive post-test counseling session. In all instances, comprehensive post-test counseling for those who test negative should stress risk reduction including, pre-exposure prophylaxis

(PrEP) and the availability of post-exposure prophylaxis (PEP) in case of future exposures. For those who test positive, should stress the importance of health care, partner notification, and preventing further transmission.

1. HIV antigen/antibody test is negative.

- You are not infected with HIV. Post-test risk reduction counseling including pre-exposure prophylaxis (PrEP) and the availability of post-exposure prophylaxis (PEP) in case of future exposures should be provided.

2. HIV antigen/antibody test positive, antibody differentiation test is negative and viral load test negative.

- You are not infected with HIV. Post-test risk reduction counseling including pre-exposure prophylaxis (PrEP) and the availability of post-exposure HIV prophylaxis (PEP) in case of future exposures should be provided.

3. HIV antigen/antibody test is positive, and the antibody differentiation test is positive.

- You are HIV positive. It is recommended that you seek medical care. The sooner you get medical care, the better your chances are of staying healthy. (Assist the defendant in setting up a medical appointment.)
- Tell your sex partners or needle-sharing partners about your HIV status so they can get tested and begin treatment if they have HIV. The Partner Assistance Program or the Contact Notification Assistance Program (CNAP), in New York City can help you through the process of letting partners know that they should be tested for HIV. (Provide information regarding the PNAP and CNAP program, including contact information)
- Avoid transmitting HIV. Protect your partners by not sharing drug injection equipment and do not have sex without a condom. You will be referred to a medical provider for further testing and HIV care.

4. HIV antigen/antibody test is positive, the HIV differentiation antibody test is negative or indeterminate, and the HIV viral load test is negative.

- You are not infected with HIV. Post-test risk reduction counseling including pre-exposure prophylaxis (PrEP) and the availability of post-exposure HIV antigen/antibody test positive and antibody differentiation test is positive.

5. HIV antigen/ antibody test is positive, the antibody differentiation test is negative, and the viral load test is positive, it is highly likely that you have acute HIV.

- This indicates that you recently became HIV positive and are at a very early stage of HIV. At this stage the viral load is very high, and it is much easier to transmit HIV. Avoid transmitting HIV. Protect your partners by not sharing drug injection equipment and do not have sex without a condom. You will be referred to a medical provider for further testing and HIV care.