

# Judges' Fact Sheet - Court Ordered HIV Testing of Defendants

As of November 1, 2007, New York State (NYS) [Criminal Procedure Law, Section 210.16](#) requires testing of criminal defendants, indicted for certain sex offenses, for human immunodeficiency virus (HIV), upon the request of the victim/survivor.

This law also amended the NYS Public Health Law ([Subdivision 1 of Section 2805-j](#)) by adding a new paragraph that specifies that health care facilities providing treatment to victims/survivors of a sexual offense must:

1. Offer and make available “appropriate HIV post-exposure treatment therapies; including a seven day starter pack of HIV post-exposure prophylaxis for a person eighteen years of age or older, or the full regimen of HIV post-exposure prophylaxis for a person less than eighteen years of age, in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred, and
2. Inform the victim/survivor that "payment assistance for such therapies may be available from the New York State Victims Crime Board (now known as Office of Victim Services) pursuant to the provisions of article twenty-two of the executive law."

The New York State Department of Health has been requested to provide guidance on the following scenario:

1. **The court must order HIV-related testing of the defendant when the result would provide medical or psychological benefit to the victim/survivor.**
  - o [Guidance for HIV Testing of Sexual Assault Defendants](#), issued by the NYS DOH AIDS Institute (1/2024), can be found [online](#).
  - o This guidance also addresses what type of test should be ordered and whether follow-up testing would be medically appropriate.
2. **The court should designate a county public health officer to conduct the test.**

For test site locations:

- The New York State Association of County Health Officials maintains a list of County Health Departments at [www.nysach.org](http://www.nysach.org) (click on “directory”).

The county public health officials will be responsible for the following:

- **Responsibilities to the Defendant:** Provide pre-test information, obtain appropriate HIV test/s, and provide post-test counseling.
- **Responsibilities to the Victim/Survivor:** Before requesting the court order, discuss the pros and cons of obtaining the defendant's HIV status. Notify the victim/survivor of defendant's test results. Tell the victim/survivor to call health care provider, share results of testing and determine how to proceed with post-exposure prophylaxis.
- **Responsibilities to the Court:** Notify the court in writing that the test was performed and that the results were shared with the victim/survivor. *The note to the court shall not disclose the results of HIV Testing.*

3. **The court's order shall direct compliance with and conform to Public Health Law Article 27-F for disclosure and re-disclosure of defendant's HIV test results.**

- o Criminal Procedure Law Section 210.16(7)(a)(ii) states the test results shall be disclosed to the person making the application and that further disclosure shall be permitted only to the victim/survivor, the victim's/survivor's immediate family, guardian, physicians, attorneys, medical or mental health providers, and to his or her past and future contacts for whom there was or is a reasonable risk of HIV transmission and shall not be permitted to any other person or the court.
- o Consistent with the provisions of Public Health Law Article 27-F, the court order should specifically prohibit re-disclosure by such persons to any other persons.

For questions regarding medical guidance, please contact Charles Gonzalez, MD, Medical Director, NYS DOH AIDS Institute at 212-417-4620.

**Please also see Public Health Law Section 2785-a regarding testing of individuals in custody.**