

Current Through December 31, 1999

Child Abuse and Neglect State Statutes Elements

Investigations

Number 16
HIV Testing of Sex Offenders

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

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HIV Testing of Sex Offenders

As of December 1999, 48 states and the federal government have responded to the threat of AIDS exposure posed by child sexual abuse by authorizing courts to order convicted sex offenders to submit to HIV testing. Although the statutes of these states share a common purpose, they vary in several key provisions, including when the test is required, who may access test results, and whether the results are admissible in criminal proceedings.

When Required

Approximately 19 states authorize an HIV test of a defendant at the time of arrest, arraignment, or indictment. In these states, HIV tests typically are ordered by the court at the victim's request, pursuant to the findings of a hearing to determine if the alleged offense included sexual penetration or if bodily fluids were exchanged. However, a few of the states that authorize tests upon arrest (such as Idaho, Nevada, and Tennessee) do not require a hearing or the victim's request. In these states, HIV testing is mandated for anyone arrested for enumerated crimes.

Most of the remaining states authorize an HIV test only after conviction. In such cases, testing is usually mandated upon conviction. Some states do, however, require the victim's request and/or a petition by the prosecuting attorney.

Access to Results

States authorize different individuals and agencies to receive the results of the test. Most states automatically release this information to the victim, although some states specify that the victim must request this information. In other states, the information is released to victim counselors who must then inform the victim of the results of the test. The individuals and agencies allowed access by various states include:

- Health officers
- Court
- Prosecuting attorney
- Jail personnel
- Justice department
- Probation department
- Physician of victim and offender
- Spouse of victim and offender
- The offender

Admissibility of Results

Many states do not specify whether the results of an HIV test are admissible at trial. Of the states that do address this issue, most do not allow the results at trial, although Colorado allows evidence that the offender submitted to the test voluntarily in mitigation of the sentence and a few states allow test results to be considered at sentencing.

**Legislation Authorizing
HIV Testing of Sex Offenders**
(Current through December 31, 1999)

Alabama	Ala. Code § 22-11A-17 (1997)
Alaska	Alaska Stat. § 18.15.300 (Michie Supp. 1998) Alaska Stat. § 18.15.310 (Michie 1996)
Arizona	Ariz. Rev. Stat. Ann. § 13-1415 (West Supp. 1999)
Arkansas	Ark. Code Ann. § 16-82-101(b)(1) (Michie Supp. 1999)
California	Cal. Penal Code § 1202.1 (West Supp. 1998) Cal. Penal Code § 1524.1 (West Supp. 1998)
Colorado	Colo. Rev. Stat. § 18-3-415 (1999)
Connecticut	Conn. Gen. Stat. Ann. § 54-102a (West Supp. 2000) Conn. Gen. Stat. Ann. § 54-102b (West Supp. 2000)
Delaware	Del. Code Ann. tit. 10, § 1077 (Michie 1999) Del. Code Ann. tit. 11, § 3911 (1995) Del. Code Ann. tit. 11, § 3912 (1995)
District of Columbia	D.C. Code Ann. § 24-491 et seq. (Supp. 1999)
Florida	Fla. Stat. Ann. ch. 960.003 (Supp. 2000)
Georgia	Ga. Code Ann. § 17-10-15 (Supp. 1997) Ga. Code Ann. § 15-11-35.1 (Supp. 1999) Ga. Code Ann. § 31-22-9.1 (1996)
Hawaii	Haw. Rev. Stat. Ann. § 801D-4 (1999)
Idaho	Idaho Code § 39-601 (1998) Idaho Code § 39-604 (Supp. 1999)
Illinois	730 Ill. Comp. Stat. Ann. § 5/5-5-3(g) (West Supp. 1998)
Indiana	Ind. Code § 35-38-1-10.5 (Michie Supp. 1999) Ind. Code § 35-38-1-10.6 (Michie Supp. 1999) Ind. Code § 35-38-1-10.7 (Michie Supp. 1999)
Iowa	Iowa Code § 915.42 (West Supp. 2000)
Kentucky	Ky. Rev. Stat. Ann. § 510.320 (1998 & Supp. 1999)

Louisiana	La. Rev. Stat. Ann. § 15:535 (West Supp. 2000) La. Code Crim. Proc. Ann. art. 499 (West Supp. 2000)
Maine	Me. Rev. Stat. Ann. 5 § 19203-A(5) (West Supp. 1999) Me. Rev. Stat. Ann. 5 § 19203-F (West Supp. 1999)
Maryland	Md. Ann. Code art. 27, § 855 (Supp. 1998)
Michigan	Mich. Stat. Ann. § 14.15(5129) (Lexis Supp. 1998)
Minnesota	Minn. Stat. Ann. § 611A.19 (West Supp. 2000)
Mississippi	Miss. Code Ann. § 99-19-201(1994) Miss. Code Ann. § 99-19-203 (1994)
Missouri	Mo. Rev. Stat. § 191.663 (Supp. 2000)
Montana	Mont. Code § 46-18-256 (1999) Mont. Code § 50-18-101 (1999)
Nebraska	Neb. Rev. Stat. § 29-2290 (Supp. 1999)
Nevada	Nev. Rev. Stat. § 441A.320 (1997)
New Hampshire	N.H. Rev. Stat. Ann. § 632-A:10-b (1996)
New Jersey	N.J. Stat. Ann. § 2A:4A-43.1 (West Supp. 1999) N.J. Stat. Ann. Stat. § 2C:43-2.2 (West Supp. 1999)
New Mexico	N.M. Stat. Ann. § 24-2B-5.1 (Michie 1997)
New York	N.Y. Crim. Proc. Law § 390.15 (Supp. 2000)
North Carolina	N.C. Gen. Stat. § 15A-534.3 (Supp. 1999)
North Dakota	N.D. Cent. Code § 23-07-07.5 (1999)
Ohio	Ohio Rev. Code Ann. § 2907.27 (1999 and Supp. 1999) Ohio Rev. Code Ann. § 3701.243 (1999 and Supp. 1999)
Oklahoma	Okla. Stat. tit. 63, § 1-524 (West Supp. 2000) Okla. Stat. tit. 63, § 1-525 (West 1997)
Oregon	Or. Rev. Stat. § 135.139 (Supp. 1998) Or. Rev. Stat. § 137.076 (Supp. 1998)
Pennsylvania	35 Pa. Cons. Stat. Ann. § 7608 (1998) 35 Pa. Cons. Stat. Ann. § 521.11a (West Supp. 2000)
Rhode Island	R.I. Gen. Laws § 11-34-10 (Supp. 1999) R.I. Gen. Laws § 11-37-17 (Supp. 1999)

South Carolina	S.C. Code Ann. § 16-3-740 (West Supp. 1999) S.C. Code Ann. § 16-15-255 (West Supp. 1999)
South Dakota	S.D. Codified Laws § 23A-35B-3 (Michie 1998) S.D. Codified Laws § 23A-35B-4 (Michie 1998) S.D. Codified Laws § 23A-35B-5 (Michie 1998)
Tennessee	Tenn. Code Ann. § 39-13-521 (1997)
Texas	Tex. Code Crim. P. Ann. art. 21.31 (West Supp. 2000)
Utah	Utah Code Ann. § 76-5-502 (Supp. 1999) Utah Code Ann. § 76-5-504 (Supp. 1999)
Virginia	Va. Code Ann. § 18.2-62 (Michie 1996)
Washington	Wash. Rev. Code Ann. § 70.24.340 (West Supp. 2000)
West Virginia	W. Va. Code § 16-3C-2(f) (Supp. 2000)
Wisconsin	Wis. Stat. Ann. § 968.38 (West 1998)

FEDERAL LEGISLATION

U.S. Code	42 U.S.C.A. § 14011 (West 1995 & Supp. 1999)
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**Summary of Legislation Authorizing
HIV Testing of Sex Offenders**
(Current through December 31, 1999)

ALABAMA**Ala. Code § 22-11A-17 (1997)**

All persons **sentenced** to confinement or imprisonment in any city or county jail or any state correctional facility for 30 or more consecutive days shall be tested for those sexually transmitted diseases designated by the state board of health, upon entering the facility, and any inmate so confined for more than 90 days shall be examined for those sexually transmitted diseases 30 days before release.

The results of any positive or negative test for HIV of a sexual offender shall be provided to the state health officer.

At the request of the victim of a sexual offense, the state health department shall release the results of any tests on the defendant convicted of such sexual offense, for the presence of etiologic agent for AIDS or HIV to the victim of such sexual offense. The state health department shall also provide the victim of such sexual offense counsel regarding AIDS disease, AIDS testing, in accordance with applicable law and referral for appropriate health care and support services.

ALASKA**Alaska Stat. § 18.15.300 (Michie 1996)**

A defendant **charged** in a criminal complaint, indictment, presentment, or information filed with a magistrate or court with a violation of enumerated crimes that include sexual penetration as an element of the offense, or a minor with respect to whom a petition has been filed in a juvenile court alleging a violation of enumerated crimes that include sexual penetration as an element of the offense, may be ordered by a court having jurisdiction of the complaint, indictment, information, presentment, or juvenile petition to submit to testing.

An alleged victim listed in the complaint, indictment, information, presentment, or juvenile petition, the parent or guardian of an alleged victim who is a minor or incompetent, or the prosecuting attorney on the behalf of an alleged victim, may petition the court for an order authorized under this section.

Upon receipt of a petition filed under this section, the court shall determine if (1) probable cause exists to believe that a crime for which a test may be ordered has been committed, and (2) probable cause exists to believe that sexual penetration took place between the defendant or minor and the alleged victim. In making the determination, the court may rely exclusively on the evidence presented at a grand jury proceeding or preliminary hearing.

If the court finds probable cause exists to believe that a crime for which a test may be ordered has been committed, and that sexual penetration took place, the court shall order that the defendant or minor provide two specimens of blood for testing.

Copies of the blood test results shall be provided to the defendant or minor, each requesting victim, the victim's designee or, if the victim is a minor or incompetent, the victim's parents or legal guardian.

A court may not order a test under this section before seven days after the defendant or minor's arrest; after the entry of a disposition favorable to a defendant; or if the defendant is convicted or adjudicated delinquent or in need of aid, after 90 days after the issuance of the judgment and sentence or of the judgment in a juvenile action.

Alaska Stat. § 18.15.310 (Michie 1996)

The specimens and results of tests ordered under this section are not admissible evidence in a criminal or juvenile proceeding.

ARIZONA

Ariz. Rev. Stat. Ann. § 13-1415 (West Supp. 1999)

A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or other crime which involved significant exposure is subject to a court order that requires the defendant to submit to a test for the HIV virus and to consent to the release of the test result to the victim.

The prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person be tested by the state department of corrections or the department of health services for the presence of HIV. The court shall, within ten days, determine if sufficient evidence exists that indicates that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense, it shall order that the test be performed in compliance with rules adopted by the department of health services.

The department of health services shall notify the victim and the person tested of the results of the test conducted pursuant to this section and shall counsel them regarding the health implications of the results.

Copies of the test results shall be released only to the victim of the crime, the person tested and the department of health services.

"Sexual offense" means oral sexual contact, sexual contact or sexual intercourse.

"Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control has epidemiologically demonstrated can result in transmission of HIV.

ARKANSAS

Ark. Code Ann. § 16-82-101(b)(1) (Michie Supp. 1999)

Any person **arrested and charged** with rape, carnal abuse, sexual misconduct, sexual abuse, violation of a minor, or sodomy, may be required by the court having jurisdiction of the criminal prosecution, upon a finding of reasonable cause to believe that the person committed the offense and subject to constitutional limitations, to be tested for the presence of HIV or any antibody of HIV, unless the court determines that

testing the defendant would be inappropriate and documents the reasons for that determination in the court record.

If the victim or person with whom the defendant engaged in sexual penetration during the course of the crime consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim or person with whom the defendant engaged in sexual penetration during the course of the crime. After the defendant is tested as to the presence of HIV or an antibody to HIV, the person or agency administering the test shall immediately provide the test results to the victim or person with whom the defendant engaged in sexual penetration during the course of the crime, and shall refer the victim or other person for appropriate counseling.

CALIFORNIA

Cal. Penal Code § 1202.1 (West Supp. 1998)

The court shall order every person who is **convicted** of or who is adjudged to be a ward of the court by reason of a violation of committing the offenses of rape, unlawful intercourse with a female under age 18, rape of a spouse, sodomy, or oral copulation, whether or not a sentence or fine is imposed or probation is granted, to submit to a blood test for evidence of antibodies to the probable causative agent of AIDS. Each person tested shall be informed of the results of the blood test.

The results of a blood test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and local health officer.

The Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted, if the results are on file with the department, to the defense attorney upon request; and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a subsequent offense or sentence enhancement, or for notifying the victim of his or her right to receive the blood test results.

The prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the blood test results, and shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of HIV from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

Cal. Penal Code § 1524.1 (West Supp. 1998)

Notwithstanding provisions of the Health and Safety Code, when a defendant has been **charged** by complaint, information, or indictment with enumerated offenses and is the subject of a police report alleging the commission of a separate, uncharged sexual offense, or a minor is the subject of a petition filed in juvenile court alleging the commission of a sexual offense and is the subject of a police report alleging the commission of a separate uncharged sexual offense, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood with an

HIV test, only under the following circumstances: when the court finds probable cause to believe that the accused committed the uncharged offense and probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting HIV, has been transferred from the accused to the victim.

Prior to the issuance of the search warrant, the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present.

The prosecutor shall advise the victim of his/her right to make a request for an HIV test. To assist the victim to determine whether to make this request, the prosecutor shall refer the victim to the local health officer for prerequisite counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused.

A blood test for HIV shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

Test results obtained under this section shall not be used in any criminal proceeding as evidence of either guilt or innocence.

COLORADO

Colo. Rev. Stat. § 18-3-415 (1999)

Any adult or juvenile who is **bound over for trial** for any sexual offense involving sexual penetration, subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to a blood test for HIV. The results of such test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential. If the person bound over for trial or who is indicted for or convicted of any such offense voluntarily submits to the blood test for HIV, the fact of voluntary submission shall be admissible in mitigation of the sentence if the person is convicted of the charged offense.

CONNECTICUT

Conn. Gen. Stat. Ann. § 54-102a (West Supp. 2000)

The court before which is pending any case involving a violation of section 53a-65 to 53a-89, inclusive (injury to children), may, before final disposition of such case, order the testing of the accused person for the presence of the etiologic agent for AIDS or HIV, unless the court from which such case has been transferred has ordered the testing of the accused person for such purpose, in which event the court to which such transfer is taken may determine that a further test is unnecessary. If the victim of the offense

requests that the accused person be tested, the court may order the testing of the accused person in accordance with this subsection and the results of such test may be disclosed to the victim.

Conn. Gen. Stat. Ann. § 54-102b (West Supp. 2000)

Notwithstanding any provision of the general statutes, a court entering a judgment of conviction or an adjudication of delinquency for a crime involving a sexual act, shall, at the request of the victim of such crime, order that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome or human immunodeficiency virus and that the results be disclosed to the victim and the offender. The test shall be performed by or at the direction of the Department of Correction in consultation with the Department of Public Health.

For the purposes of this section, sexual act means contact between the penis and the vulva or the penis and the anus, where such contact involving the penis occurs upon penetration, however slight, or contact between the mouth and the penis, the mouth and the vulva or the mouth and the anus.

DELAWARE

Del. Code Ann. tit 10, § 1077 (Michie Supp. 1999)

When a defendant has been **arrested and charged** with an offense which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of HIV, the court, at arraignment, regardless of any prior HIV test on the defendant, shall order, at the request of the victim, the defendant to undergo HIV testing under the direction of the Division of Public Health. The results of such test shall not be a public record.

The result of any HIV testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing and any other person or agency pursuant to Chapters 12 and 12A of Title 16.

In addition, the Division of Public Health shall provide to the Department of Services to Children, Youth and Their Families the result of any HIV test conducted pursuant to this subchapter which indicates that the defendant is infected with HIV. The information shall be used solely for the purpose of providing medical treatment to the defendant while incarcerated.

If the defendant is found to be infected with HIV, the Division of Public Health shall provide counseling to the victim and the defendant and referral for appropriate health care and support services.

Del. Code Ann. tit. 11, § 3911 (1995)

A defendant **charged** with an offense which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of HIV, shall upon initial court appearance on the charge, be informed by the judge of the availability of HIV testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.

Del. Code Ann. tit. 11, § 3912 (1995)

When a defendant has been **arrested and charged** with any offense in § 3911 of this title, other provisions of law to the contrary notwithstanding, the court, at arraignment, regardless of any prior HIV test on the defendant, shall order the defendant to undergo HIV testing at the request of the victim, under the direction of the Division of Public Health.

DISTRICT OF COLUMBIA**D.C. Code Ann. § 24-491 (Supp. 1999)**

Offense means any prohibited activity involving a sexual act that includes contact between the penis and the vulva or the penis and the anus, however slight, or contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

D.C. Code Ann. § 24-492 (Supp. 1999)

Upon the request of any victim, the court shall order any individual **convicted** of an offense as defined in § 24-491, to furnish a blood sample to be tested for the presence of HIV.

The victim and the convicted individual shall be promptly notified of the results. The victim may disclose the results of the HIV test to any other individual to protect the health and safety of the victim, the victim's sexual partners, or the victim's family.

The results of any HIV test conducted under this section shall not be admissible as evidence of guilt or innocence in any criminal proceeding.

FLORIDA**Fla. Stat. Ann. ch. 960.003 (Harrison 1998)**

In any case in which a person has been **charged** by information or indictment with any sexual offense which involves the transmission of body fluids from one person to another, upon request of the victim, the victim's legal guardian, or the victim's parent (if the victim is a minor), the court shall order such person to undergo HIV testing.

The results of the HIV test shall not be admissible in any criminal proceeding arising out of the alleged sexual offense.

The results of the test shall be disclosed, under the direction of the Department of Health, to the person charged with the offense, or to the person convicted of or adjudicated delinquent for any offense which involves the transmission of body fluids from one person to another, and, upon request, to the victim, the victim's legal guardian, or the victim's parent (if the victim is a minor).

If, for any reason, requested testing has not been undertaken, then upon request of the victim, the victim's legal guardian, or the victim's parent, the court shall order the offender to undergo HIV testing following **conviction**.

GEORGIA**Ga. Code Ann. § 17-10-15 (Supp. 1997)**

A victim or the parent or legal guardian of a minor victim of a sexual offense (rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, prostitution, solicitation of sodomy, incest, or statutory rape), or other crime which involves "significant exposure" may request that the agency responsible for prosecuting the alleged offense request that the person **arrested** for such offense submit to a test for the HIV virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test be performed. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

Upon a **verdict or plea of guilty** or a plea of nolo contendere to any AIDS transmitting crime, the court in which the verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of the verdict or plea.

Any person required under this section to submit to the HIV test who fails or refuses to submit to the test shall be subject to such measures deemed necessary by the court in which the order was entered, verdict was returned, or plea was entered to require involuntary submission to the HIV test. Submission to an HIV test may also be made a condition of suspending or probating any part of that person's sentence for the AIDS transmitting crime.

If a person tested for HIV is found to be infected with HIV, that determination and the name of the person shall be reported to the Department of Human Resources which shall disclose the name of the person, as necessary to provide counseling to each victim of that person's AIDS transmitting crime or to any parent or guardian of any such victim or incompetent person.

"Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or body fluids of the person arrested for such offense, other than tears, saliva, or perspiration, of a magnitude that the Centers for Disease Control has epidemiologically demonstrated can result in transmission of HIV.

Ga. Code Ann. § 15-11-35.1 (Supp. 1998)

As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may, in its discretion, and after conferring with the director of the health district, order that the child submit to an HIV test within 45 days following the adjudication of delinquency. If the child is found to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall be reported to the Department of Juvenile Justice and the Department of Human Resources. If necessary, the Department of Human Resources may disclose the name of the child to provide counseling (which the Department shall provide) to each victim of the child's "AIDS transmitting crime" or to any parent or guardian of any victim who is a minor or incompetent person, if the Department of Juvenile Justice believes the crime posed a reasonable risk of transmitting HIV to the victim.

Ga. Code Ann. § 31-22-9.1 (1996)

"AIDS transmitting crime" means rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, prostitution, solicitation of sodomy, incest, or statutory rape.

HAWAII**Haw. Rev. Stat. Ann. § 801D-4 (1999)**

Upon written request, the victim or the parent or guardian of a minor or incapacitated victim of sexual assault shall have the right to be informed of the human immunodeficiency virus (HIV) status of the person who has been **convicted** or a juvenile who has been adjudicated under that section and to receive counseling regarding HIV. Upon request of the victim, or the parent or guardian of a minor or incapacitated victim, the department of health shall provide counseling.

IDAHO**Idaho Code § 39-601 (1998)**

"Venereal diseases" include syphilis, gonorrhea, AIDS, AIDS related complexes, other manifestations of HIV infections, chancroid and hepatitis B infections.

Idaho Code § 39-604 (Supp. 1999)

All persons, including juveniles, who are charged with sex offenses, drug related charges, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for venereal diseases.

All persons who are charged with any crime in which body fluid has likely been transmitted to another shall be tested for the presence of HIV antibodies or antigens.

If a person is tested, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim, or if the victim is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim by the district health departments at no charge to the victim.

ILLINOIS**730 Ill. Comp. Stat. Ann. § 5/5-5-3(g) (West Supp. 1998)**

Whenever a defendant is **convicted** of prostitution, soliciting for a prostitute, soliciting for a juvenile prostitute, pandering, keeping a place of prostitution, patronizing a prostitute, pimping, juvenile pimping, exploitation of a child, criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse, the defendant shall undergo medical testing to determine whether the defendant has any sexually transmissible disease, including a test for infection with HIV or any other identified causative agent of AIDS. Any such medical test shall be performed only by appropriate licensed medical practitioners and may include an analysis of any bodily fluids as well as an examination of the defendant's person.

Except as otherwise provided by law, the results of such test shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the judge

of the court in which the conviction was entered for the judge's inspection in camera. Acting in accordance with the best interests of the victim and the public, the judge shall have discretion to determine to whom, if anyone, the results of testing may be revealed.

INDIANA

Ind. Code § 35-38-1-10.5 (Michie Supp. 1998)

The court shall order that a person undergo a screening test for HIV if the person is **convicted** of a sex crime (rape, criminally deviate conduct, child molesting, child seduction, prostitution, patronizing a prostitute, incest), and the crime created an epidemiologically demonstrated risk of transmission of HIV; or the court may order the person undergo a screening test for HIV if the court has made a finding of probable cause after a hearing.

If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to obtain the medical record of the convicted person from the state department of health, and to determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

Ind. Code § 35-38-1-10.6 (Michie Supp. 1998)

The state department of health shall notify victims of sex crimes if the tests conducted under this chapter confirm that the person tested had antibodies for HIV.

Ind. Code § 35-38-1-10.7 (Michie Supp. 1998)

Upon written request made to a prosecuting attorney by an alleged victim of a sex offense listed in this chapter; and after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of a sex offense listed in this chapter that was committed by the defendant; the court may order an individual **named as defendant** in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following: (1) the defendant and the defendant's counsel; (2) the prosecuting attorney; (3) the department of correction; (4) the victim and the victim's counsel.

A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for: (1) the victim; (2) the victim's sexual partner; or (3) the victim's family.

IOWA**Iowa Code § 915.42 (West Supp. 2000)**

Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under this section.

If a person is **convicted** of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

- The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure.
- The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing.
- Written informed consent was not provided by the convicted offender.

Upon receipt of the petition, the court shall:

- Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim to provide counseling regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted or alleged offender.
- Schedule a hearing to be held as soon as is practicable.
- Cause written notice to be served on the convicted offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted offender is represented by legal counsel, provide written notice to the convicted offender and the convicted offender's legal counsel.
- Provide for the appointment of legal counsel for a convicted offender if the convicted offender desires but is financially unable to employ counsel.
- Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent provided sufficient contact between the victim and the convicted offender to be deemed a significant exposure and to questions of law.

In determining whether the contact should be deemed a significant exposure, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes

of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing.

The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order requiring testing.

The hearing shall be in camera unless the convicted offender and the petitioner agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

Following the hearing, the court shall require a convicted offender to undergo an HIV-related test only if the petitioner proves all of the following by a preponderance of the evidence:

- The sexual assault constituted a significant exposure.
- An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender.
- Written informed consent was not provided by the convicted offender.

A convicted offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

KENTUCKY

Ky. Rev. Stat. Ann. § 510.320 (1998 & Supp. 1999)

A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of HIV, shall upon initial court appearance on the charge, be informed by the judge of the availability of HIV testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.

When a defendant has been **convicted** of any offense listed above, the sentencing court, regardless of any prior HIV test, shall order the defendant to undergo an HIV test, under the direction of the Cabinet for Human Resources.

The result of any HIV test conducted pursuant to this section shall not be a public record. The result shall only be made available to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing.

LOUISIANA**La. Rev. Stat. Ann. § 15:535 (West Supp. 2000)**

The court shall order a person **convicted** of or adjudicated delinquent for aggravated rape, forcible rape, simple rape, sexual battery, aggravated sexual battery, oral sexual battery, and aggravated oral sexual battery to submit to a test designed to determine whether the person is infected with a sexually transmitted disease, or is infected with AIDS, HIV, HIV-1 antibodies or any other probable causative agent of AIDS. The procedure or test shall be performed by a qualified physician or other qualified person who shall report any positive result to the Department of Public Safety and Corrections, make the notification of the test results to the victim of the alleged offense, and notify the victim or the parent or guardian of the victim of the offense, regardless of the results.

La. Code Crim. Proc. Ann. art. 499 (West Supp. 2000)

A person **indicted** by a grand jury for a sexual offense shall, at the direction of the court, undergo a medical procedure or test designed to determine or aid in determining whether the person is infected with a sexually transmitted disease, the AIDS virus, HIV-1, any antibodies to such viruses, or with any other probable causative agent of AIDS. The court may in its discretion provide the results to the victim of the offense, and shall provide them to health authorities in accordance with law. The state shall not use the fact that the medical procedure or test was performed on the alleged offender under this article, or the results thereof, in any criminal proceeding arising out of the alleged offense.

MAINE**Me. Rev. Stat. Ann. tit. 5, § 19203-A(5) (West Supp. 1999)**

Consent need not be obtained when a court order has been issued under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. 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.

Me. Rev. Stat. Ann. tit. 5, § 19203-F (West Supp. 1999)

A person who is the victim of a sexual crime, or that person's parent, guardian or authorized representative if that person 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.

Upon receipt of the petition, the court shall order that the convicted offender obtain HIV testing conducted by or under authority of the Department of Human Services and, if requested by the petitioner, that the convicted offender be informed of the test results.

The health care facility in which a convicted offender is tested pursuant to this section shall disclose the results of the test to the victim-witness advocate, who shall disclose the result to the petitioner. The test result may not be disclosed to the petitioner until the petitioner has received counseling, pursuant to section 19204-A, regarding the nature, reliability and significance of the convicted offender's HIV test and has been offered referrals for health care and support services for the victim. The health care facility shall, upon order of the court, disclose the results of the test to the convicted offender.

MARYLAND**Md. Ann. Code art. 27, § 855 (Supp. 1998)**

Upon the written request of a victim to the office of the State's Attorney in the jurisdiction where an offense involving a prohibited sexual act occurred, the court shall order an individual **convicted** of committing the offense or being **granted probation before judgment** to furnish a blood sample to be tested for the presence of HIV and any other identifying causative agent of AIDS.

If the individual is **charged** within one year after the offense occurred, upon the written request of a victim to the office of the State's Attorney in the jurisdiction where an offense occurred, the court may order, upon a finding of probable cause to believe that an exposure occurred, an individual charged with the offense to furnish a blood sample to be tested for the presence of HIV.

The Department of Health and Mental Hygiene shall adopt regulations to implement this section, including regulations regarding the confidentiality of test results and providing victims with counseling and referral for appropriate health care and support services. The results of any test conducted under this section are not admissible as evidence of either guilt or innocence in any criminal proceeding arising out of the alleged offense.

MICHIGAN**Mich. Stat. Ann. § 14.15(5129) (Lexis Supp. 1998)**

If an individual is **arrested and charged** with enumerated sexual offenses, the judge or magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the information on HIV transmission required to be distributed by county clerks and shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding HIV infection, AIDS, and AIDS related complex. Counseling under this subsection shall be voluntary on the part of the individual.

Upon **conviction** of a defendant for enumerated sexual offenses, the court having jurisdiction of the criminal prosecution shall order the defendant to be tested for the presence of HIV or an antibody to HIV.

Upon **conviction** of a defendant aiding and abetting, keeping a house of ill-fame, or pandering, the court having jurisdiction of the criminal prosecution shall order the defendant to be tested for the presence of HIV or an antibody to HIV, unless the court determines that testing the defendant would be inappropriate and documents the reasons for that determination in the court record.

The test shall be confidentially administered by a licensed physician, the department of public health, or a local health department. The court also shall order the defendant to receive counseling regarding HIV infection, AIDS, and AIDS related complex including, at a minimum, information regarding treatment, transmission, and protective measures.

If the victim or person with whom the defendant engaged in "sexual penetration" or sexual contact or who was exposed to a body fluid during the course of the crime consents, the court shall provide the person or agency administering the HIV test with the name, address, and telephone number of the victim. The test results shall be provided immediately to the victim or person with whom the defendant engaged in "sexual penetration" during the course of the crime.

As used in this section, "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

The provisions of this statute also apply to juveniles adjudicated of an offense described in this section.

MINNESOTA

Minn. Stat. Ann. § 611A.19 (West Supp. 2000)

Upon the request or with the consent of the victim, the prosecutor shall make a motion in camera and the sentencing court shall issue an order requiring an adult **convicted** of or a juvenile adjudicated delinquent for criminal sexual conduct in the first degree, criminal sexual conduct in the second degree, criminal sexual conduct in the third degree, criminal sexual conduct in the fourth degree, or any other violent crime to submit to testing to determine the presence of the HIV antibody if: (1) the crime involved sexual penetration, however slight; or (2) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit HIV.

When the court orders an offender to submit to testing, the court shall order that the test be performed by an appropriate health professional who is trained to provide counseling and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services.

MISSISSIPPI

Miss. Code Ann. §§ 99-19-201 (1994) & 99-19-203 (1994)

Any person who is **convicted** of a "sex offense" and who is **sentenced** to imprisonment in any state correctional facility shall be tested for HIV and AIDS. An offender who is confined for more than 90 days shall be tested for HIV and AIDS within 30 days before the date of such offender's release. The results of any positive HIV or AIDS test shall be reported to the victim of such sex offense and the offender. Any positive HIV or AIDS test results shall also be reported to the victim's spouse and to the spouse of the person who is convicted of such sex offense, if either or both of them are lawfully married.

The State Department of Health shall provide counseling and the referral to appropriate treatment for victims of a sex offense where the convicted offender tested positive for HIV or AIDS.

"Sex offense" means any offense involving the crime of rape or carnal knowledge of a child under 14; sexual battery; seduction of a child under 18; touching of a child for lustful purposes; dissemination of sexually oriented material to children; exploitation of children; carnal knowledge of a stepchild, adopted child, or child of a cohabiting partner; unnatural intercourse.

MISSOURI**Mo. Rev. Stat. § 191.663 (Supp. 2000)**

Any person who is **convicted** or who pleads guilty or nolo contendere to rape, sodomy, sexual abuse, sexual assault, deviate sexual assault, and sexual misconduct, which includes sexual intercourse as an element of the crime, shall be ordered by the court to undergo HIV testing prior to incarceration without the right of refusal.

Any defendant **charged** with rape, sodomy, sexual abuse, sexual assault, deviate sexual assault, and sexual misconduct, which includes sexual intercourse as an element of the crime, shall be required to post a minimum bond amount for his/her release prior to trial. The minimum amount shall be sufficient to cover the cost of any post-trial HIV testing ordered by the court.

Notwithstanding any law to the contrary, the victim of any sexual offense, which includes sexual intercourse as an element, shall have a right to access to the results of any HIV testing performed pursuant to the provisions of this statute, and the victim shall be informed of any confirmed positive results of the HIV testing. If the victim is an unemancipated minor, the minor's parents or custodian, if any, shall also be informed.

MONTANA**Mont. Code Ann. § 46-18-256 (1999)**

Following entry of judgment, a person **convicted** of a sexual offense (sexual assault, sexual intercourse without consent, deviate sexual conduct, incest, and sexual abuse of children) must be administered standard testing to detect in the person the presence of antibodies indicative of HIV or other sexually transmitted disease.

The county attorney of the county in which the person was convicted shall arrange for the test and shall release the information concerning the test results to the convicted person and the victim of the offense committed by the convicted person, or to the parent or guardian of the victim if the victim is a minor.

Mont. Code Ann. § 50-18-101 (1999)

"Sexually transmitted diseases" include HIV, syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale.

NEBRASKA**Neb. Rev. Stat. § 29-2290 (Supp. 1999)**

Notwithstanding any other provision of law, when a person has been **convicted** of sexual assault, sexual assault of a child, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentencing of the convicted person when the circumstances of the case demonstrate a possibility of transmission of HIV, order the convicted person to submit to an HIV antibody or antigen test. The Department of Correctional Services shall make the results of the test available only to the victim, to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the

parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health and Human Services.

If the convicted person's HIV test indicates the presence of the human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person and referral to appropriate health care and support services.

The Department of Health and Human Services shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling, HIV testing and referral to appropriate health care and support services.

For purposes of this section, convicted shall include adjudicated under juvenile proceedings; convicted person shall include a child adjudicated of an offense described in this section; and sentence shall include a disposition under juvenile proceedings.

NEVADA

Nev. Rev. Stat. § 441A.320 (1997)

As soon as practicable after a person has been **arrested** for the commission of a crime, or a minor is detained for the commission of an act which, if committed by a person other than a minor would constitute a crime, which the victim or a witness alleges involved the sexual penetration of the victim's body, the health authority shall test a specimen from the arrested person or detained minor for exposure to the HIV virus and any commonly contracted sexually transmitted disease, regardless of whether he or, if a detained minor, his parent or guardian, consents to providing the specimen. The agency that has custody of the arrested person or detained minor shall obtain the specimen and submit it to the health authority for testing. The health authority shall perform the test in accordance with generally accepted medical practices.

The health authority shall disclose the results of all these tests performed to the victim or to the victim's parent or guardian if the victim is a minor, and to the arrested person and, if a minor is detained, to his parent or guardian.

If the health authority determines that a victim of sexual assault may have been exposed to HIV or any commonly contracted sexually transmitted disease, it shall, at the request of the victim, provide him with an examination, counseling, and a referral for health care and other assistance, as appropriate.

"Sexual penetration" includes cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 632-A:10-b (1996)

The state shall administer to any person **convicted** of a sexual offense, a test to detect in such person the presence of the etiologic agent for AIDS.

The results of such test shall be disclosed to any person convicted and to the office of victim/witness assistance. The office of victim/witness assistance is authorized to disclose the test results to the county

attorney victim/witness advocates and to the victim. The victim may be notified whether or not the victim has requested notification.

The state shall provide counseling to the victim and the person convicted for such an offense regarding HIV disease, HIV testing for the victim in accordance with applicable law and referral for appropriate health care and support services.

NEW JERSEY

N.J. Stat. Ann. § 2A:4A-43.1 (West Supp. 1999)

A court shall order a juvenile **charged** with delinquency or **adjudicated** delinquent for an act which if committed by an adult would constitute aggravated sexual assault or sexual assault to submit to an approved serological test for AIDS or infection with the HIV or any other related virus identified as a probable causative agent of AIDS.

N.J. Stat. Ann. § 2C:43-2.2 (West Supp. 1999)

In addition to any other disposition made pursuant to law, a court shall order a person **convicted** of, **indicted** for or formally **charged** with, or a juvenile charged with delinquency or adjudicated delinquent for an act which if committed by an adult would constitute, aggravated sexual assault or sexual assault to submit to an approved serological test for AIDS or infection with HIV or any other related virus identified as a probable causative agent of AIDS. The court shall issue such an order only upon the request of the victim and upon application of the prosecutor made at the time of indictment, charge, conviction or adjudication of delinquency. The person or juvenile shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary.

A court order issued pursuant to this section shall require testing to be performed as soon as practicable by the Commissioner of the Department of Corrections, by a provider of health care, at a licensed health facility, or the Juvenile Justice Commission. The order shall also require that the results of the test be reported to the offender and to the appropriate Office of Victim-Witness Advocacy.

The Office of Victim-Witness Advocacy shall reimburse the Department of Corrections or Department of Health for the direct costs incurred by these departments for any tests ordered by a court pursuant to subsection a. of this section. Reimbursement shall be made following a request from the department.

In addition to any other disposition authorized, a court may order an offender at the time of sentencing to reimburse the State for the costs of the tests ordered by this section.

Upon receipt of the result of a test ordered pursuant to this section, the Office of Victim-Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling and if appropriate, referral for health care. The office shall notify the victim or make appropriate arrangements for the victim to be notified of the test result.

The result of a test ordered pursuant to this section shall be confidential and employees of the Department of Corrections, the Juvenile Justice Commissions, the Office of Victim-Witness Advocacy, a health care provider, health care facility or counseling service shall not disclose the result of a test performed pursuant to this section except as authorized herein or as otherwise authorized by law or court order. The provisions of this section shall not be deemed to prohibit disclosure of a test result to the person tested.

Persons who perform tests ordered pursuant to this section in accordance with accepted medical standards for the performance of such tests shall be immune from civil and criminal liability arising from their conduct.

This section shall not be construed to preclude or limit any other testing for AIDS or infection with HIV or any other related virus identified as a probable causative agent of AIDS which is otherwise permitted by statute, court rule or common law.

NEW MEXICO

N.M. Stat. Ann. § 24-2B-5.1 (Michie 1997)

A test designed to identify HIV or its antigen or antibody may be performed, without his consent, on an offender convicted pursuant to state law of any criminal offense involving contact between: the penis and vulva, the penis and anus, the mouth and penis, the mouth and vulva, the mouth and anus, or when the court determines from the facts of the case that there was a transmission or likelihood of transmission of blood, semen or vaginal secretions from the offender to the victim.

When the state can not obtain an offender's consent to perform an HIV test, the victim of the offense may petition the court to order that a test be performed. The petition and all proceedings in connection therewith shall be under seal. When the victim is a minor or incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten days after the victim or his parent or guardian files the petition. The results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian. When the offender has a positive test result, both the offender and victim shall be provided with counseling.

NEW YORK

N.Y. Crim. Proc. Law § 390.15 (Supp. 2000)

In any case where the defendant is **convicted** of a felony sex offense, where an act of "sexual intercourse" or "deviate sexual intercourse, is required as an essential element for the commission thereof, the court **must**, upon a request of the victim, order that the defendant submit to HIV related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order, but such results and disclosure need not be completed prior to the imposition of sentence.

The court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense of which the defendant was convicted. The court ordered test must be performed within fifteen days of the date on which the court ordered the test, provided, however, that whenever 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.

Test results shall be disclosed subject to the following limitations, which shall be specified in any order issued pursuant to this section: (i) disclosure of confidential HIV related information shall be limited to that information which is necessary to fulfill the purpose for which the order is granted; (ii) disclosure of confidential HIV related information shall be limited to the person making the application; redisclosure shall

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 shall not be permitted to any other person or the court.

No information obtained as a result of a consent, hearing or court order for testing issued pursuant to this section nor any information derived therefrom may be used as evidence in any criminal or civil proceeding against the defendant which relates to events that were the basis for the defendant's conviction, provided however that nothing herein shall prevent prosecution of a witness testifying in any court hearing held pursuant to this section for perjury pursuant to article two hundred ten of the penal law.

NORTH CAROLINA

N.C. Gen. Stat. § 15A-534.3 (1999)

If a judicial official conducting an **initial appearance or first appearance hearing** finds probable cause that an individual was exposed to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection if required by public health officials.

NORTH DAKOTA

N.D. Cent. Code § 23-07-07.5 (1999)

The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus: every individual, whether imprisoned or not, who is convicted of a sexual offense of a minor.

The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. The section above does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

OHIO

Ohio Rev. Code Ann. § 2907.27 (1999 and Supp. 1999)

If a person is **charged with** rape, sexual battery, or corruption of a minor, the court shall cause the accused to be examined by a physician who shall perform or order the performance of one or more tests designated by the Director of Health to determine if the accused is a carrier of a virus which causes AIDS. The results of the test shall be communicated in confidence to the court, and the court shall inform the accused of the result. The court shall inform the victim that the test was performed and that the victim has a right to receive the results on request.

If the accused tests positive for a virus that causes AIDS, the test results shall be reported to the Department of Health, the sheriff, the head of the state correctional institution, or other person in charge of any jail or prison in which the accused is incarcerated. No other disclosure of the test results or the fact that a test was performed shall be made.

If the test result is negative, and the charge has not been dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court shall order that the test be repeated not earlier than three months nor later than six months after the original test.

The fact that the accused was given a test for a virus that causes AIDS or the results of the test shall not be admitted in evidence over the objection of the accused, in a prosecution for rape, sexual battery, corruption of a minor, or a different offense arising out of the same circumstances as the offense charged.

Ohio Rev. Code Ann. § 3701.243 (1999 and Supp. 1999)

The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS related condition may be disclosed to law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of the grand jury, a prosecuting attorney, city director of law or similar chief legal officer, in connection with a criminal investigation or prosecution.

OKLAHOMA

Okla. Stat. tit. 63, § 1-524 (West Supp. 2000)

A licensed physician shall examine persons who are **arrested** by lawful warrant for the offense of rape, forcible sodomy or the intentional infection or attempt to intentionally infect a person with HIV, for the purpose of determining if they are infected with a venereal disease or a communicable disease including, but not limited to, HIV. The court shall issue an order for this examination upon the arraignment of the person arrested for any of the offenses specified in this section.

Any licensed physicians may examine persons who are arrested by lawful warrant for prostitution, or other sex crimes not specified above, for the purpose of determining if they are infected with a venereal disease or a communicable disease including, but not limited to, HIV. Any such examination shall be made subsequent to arrest and if the examination is for the human immunodeficiency virus, upon order of the court issued at the arraignment of the arrested person. Such person may be detained until the results of the examination are known. A determination as to whether or not the person is infected shall not be based on any prior examination.

Okla. Stat. tit. 63, § 1-525 (West 1997)

Except as otherwise provided by law, the prescription and records required by § 524 (above) shall not be exposed to any person other than the state commissioner of health or local health officer, or when properly ordered by a court of competent jurisdiction to be used as evidence in such court, and no information whatever shall be given to any person concerning any infected person except to appropriate persons for use in the proper courts of this state. Provided, that records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person affected. Provided further, results of examinations conducted on persons arrested for sexual offenses shall be provided to the alleged victim of the crime upon the request of the victim, the parent of the victim if the victim is a minor, or upon request of the legal guardian or custodian of the victim.

OREGON**Or. Rev. Stat. § 135.139 (Supp. 1998)**

Notwithstanding other provisions of law, upon **conviction** of a person for any crime in which the court determines that the "transmission of body fluids" from one person to another was involved or was likely to have been involved, the court shall seek the consent of the convicted person to submit to an HIV test. In the absence of such consent or failure to submit to the test, the court may order the convicted person to submit to an HIV test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such an order after the victim has been tested for HIV.

If an HIV test is ordered, the victim of the crime, or a parent or guardian of the victim, shall designate an attending physician to receive such information on behalf of the victim.

If the test results in a negative reaction, the court may order the convicted person to submit to another HIV test six months after the first test was administered. The result of any HIV test ordered under this section is not a public record and shall be available only to the victim, the parent or guardian of a minor or incapacitated victim, the attending physician who is licensed to practice medicine, the Health Division, and the person tested.

If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as required by the Health Division, by rule. The results of HIV tests ordered under this section shall be reported to the Health Division. Counseling as directed by the Assistant Director for Health shall be provided to the victim or victims.

The costs of testing and counseling shall be paid through the compensation for crime victims program from amounts appropriated for such purposes. Restitution to the state for such payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

"Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or any other body fluids identified by rule of the Health Division, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

Or. Rev. Stat. § 137.076 (Supp. 1998)

When a person is **convicted** of rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest, or using a child in a display of sexually explicit conduct, the person shall provide a blood sample at the request of the law enforcement agency attending upon the court, whether or not ordered to do so by the court. In a judgment of conviction, the court shall order a blood sample to be drawn at the request of the law enforcement agency attending the court. If the judgment places the convicted person on probation, the court shall order the convicted person to submit to the drawing of a blood sample as a condition of the probation.

No sample is required to be drawn if the Department of State Police notifies the court that it has previously received an adequate blood sample drawn from the convicted person, or the court determines that drawing a sample would create a substantial and unreasonable risk to the health of the convicted person.

PENNSYLVANIA**35 Pa. Cons. Stat. Ann. § 7608 (1998)**

No court may order the performance of an HIV-related test and allow access to the test result unless the court finds, upon application, that all of the following exist: (1) the individual whose test is sought was afforded informed consent and pretest counseling procedures required by law and the subject refused to give consent or was not capable of providing consent, (2) the applicant was exposed to a body fluid of the individual whose test is sought and that exposure presents a significant risk of exposure to HIV infection, (3) the applicant has a compelling need to ascertain the HIV test result of the source individual.

The court shall provide for an expedited proceeding if it is requested by the applicant and the application includes verified statements that the applicant has been exposed to a body fluid that poses a risk of HIV infection from the individual whose test result is sought, the exposure occurred within six weeks of the filing of the application, the exposure involves a percutaneous injury to the applicant's skin from a needle stick or other sharp object, contact of the applicant's eyes, mouth, or other mucous membrane, contact of chapped or abraded skin of the applicant, or prolonged contact of the applicant's skin. An expedited proceeding on the application shall be held no later than five days after the court complies with the notice requirements.

35 Pa. Cons. Stat. Ann. § 521.11a (West Supp. 2000)

When an individual has been **convicted or adjudicated delinquent** of rape, statutory rape, involuntary deviate sexual intercourse, spousal sexual assault, incest, corruption of minors involving sexual intercourse, the victim may request that an HIV-related test be performed on the individual who has been convicted or adjudicated delinquent, and the results of that test shall be disclosed to the victim. If the victim requests a test within six weeks of the conviction or adjudication of delinquency, then the individual who has been convicted or adjudicated delinquent shall be deemed to have consented to the performance of an HIV-related test.

The department or local board or local health department shall make provisions for: administration of the HIV-related test to the individual convicted or adjudicated delinquent; notification to the victim of the results of the test; HIV-related testing of and counseling to the victim; referral of the victim to appropriate health care and support services.

RHODE ISLAND**R.I. Gen. Laws § 11-34-10 (Supp. 1999)**

Any person **convicted** of prostitution and lewdness shall be required to be tested for HIV. No consent for such testing shall be required.

The Department of Health shall be responsible for reasonable costs associated with performing and reporting the results of the HIV tests, including the costs of pretest and post-test counseling.

R.I. Gen. Laws § 11-37-17 (Supp. 1999)

Any person who has admitted to or been convicted of or adjudicated wayward or delinquent by reason of having committed any sexual offense involving sexual penetration, whether or not sentence or fine is imposed or probation granted, shall be ordered by the court upon the petition of the victim, immediate

family members of the victim or legal guardian of the victim to submit to a blood test for the presence of a sexually transmitted disease including, but not limited to, HIV, which causes AIDS. Notwithstanding the provision of section 23-6-12, no consent for such testing shall be required.

The results of such tests shall be reported to the court, which shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential.

SOUTH CAROLINA

S.C. Code Ann. § 16-3-740 (West Supp. 1999)

Within fifteen days of a **conviction** of a person or adjudication of a juvenile for a crime involving sexual battery or sexual conduct, the solicitor shall make a motion, and the court shall order that the convicted offender or adjudicated juvenile be tested for Hepatitis B and all sexually transmitted diseases, including HIV.

Within fifteen days of the **conviction** of any person or adjudication of a juvenile under state law for a criminal offense, other than those provided for in section 16-15-255, where the victim has been exposed to blood or vaginal, seminal, or other body fluids of the convicted offender, upon motion of the solicitor or upon the court's own motion, the court may order that the convicted offender be tested for Hepatitis B and all sexually transmitted diseases, including HIV.

The results must be reported to the South Carolina Department of Health and Environmental Control and to the solicitor who ordered the tests. The solicitor shall notify the victim or the parent or guardian of a victim who is a minor and the convicted sexual offender or adjudicated juvenile offender and the juvenile offender's parent or guardian of the test results.

S.C. Code Ann. § 16-15-255 (West Supp. 1999)

Any person **convicted** of committing or attempting to commit a lewd act upon a child under 14, prostitution, lewdness or buggery, if the violation results in the exposure of the victim to blood or vaginal or seminal fluids of the convicted offender, *must* be tested for HIV. The results of the test must be reported to the South Carolina Department of Health and Environmental Control, to the convicted offender, and to any person who may have been exposed to HIV as a direct result of the act leading to the conviction. The convicted offender shall pay for the test unless he/she is indigent, in which case the cost of the test must be paid by the state.

SOUTH DAKOTA

S.D. Codified Laws § 23A-35B-3 (Michie 1998)

S.D. Codified Laws § 23A-35B-4 (Michie 1998)

A victim of a sexual assault or a law enforcement officer may request in writing to the state's attorney that the defendant or the juvenile be tested for HIV infection by the department of health and that a search warrant be obtained for the purpose of taking a blood sample from the defendant or the juvenile for HIV testing. The written request shall state that the victim or law enforcement officer believes there was an exchange of blood, semen or other bodily fluids from the defendant to the victim or law enforcement

officer and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the victim or law enforcement officer and the defendant or the juvenile may be present. If the court finds probable cause to believe that the defendant or the juvenile committed the offense and that there was an exchange of blood, semen or other bodily fluids from the defendant or the juvenile to the victim or from the defendant to the law enforcement officer, the court may order a search warrant for the purpose of taking a blood sample from the defendant or the juvenile for HIV testing.

A licensed physician designated by the victim or the law enforcement officer to receive the results of the test shall notify the victim or the law enforcement officer of the results of the victim's test and shall notify the victim or the law enforcement officer and the defendant or the juvenile of the results of the defendant's or the juvenile's test within forty-eight hours after receipt. The county in which the alleged crime of violence, assault, sexual assault or equivalent juvenile offense occurred shall pay for the services of the licensed or certified health professionals involved in the counseling and the testing, and a defendant, if convicted, shall reimburse the county for the cost of the testing.

S.D. Codified Laws § 23A-35B-5 (Michie 1998)

All persons involved in carrying out HIV testing in this chapter shall act in a manner that will protect the confidentiality of the victim and the defendant or juvenile. The results of the test for infection by blood-borne pathogens may not be used to establish a defendant's guilt or innocence of the charge and may not be used to determine a juvenile's status as a delinquent child.

TENNESSEE

Tenn. Code Ann. § 39-13-521 (1997)

When a person is **initially arrested** for allegedly committing aggravated rape, rape or rape of a child, that person shall undergo HIV testing immediately. A licensed medical laboratory shall perform such test at the expense of the arrestee. The arrestee shall obtain a confirmatory test when necessary, and shall be referred to appropriate counseling.

The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim. The result of the HIV test is not a public record and shall be available only to: the victim; the parent or guardian of a minor or incapacitated victim; the attending physician of the person tested and of the victim; the department of health; the department of correction; the person tested; and the district attorney general prosecuting the case.

If the arrestee is convicted, the court shall review the HIV test results prior to sentencing. The court may consider as an enhancement factor at the time of sentencing that the defendant has tested positive for HIV.

TEXAS

Tex. Code Crim. P. Ann. art. 21.31 (West Supp. 2000)

A person who is **indicted** or who waives indictment for sexual assault or aggravated sexual assault shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on

the request of the victim of the alleged offense. If the person refuses to submit voluntarily, the court may require the person to submit to the test. The person performing the test shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test result to the victim of the alleged offense.

The state may not use the fact that a medical procedure or test was performed on a person under this section or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense. Nothing in this section would allow a court to release a test result to anyone other than those specifically authorized by law.

UTAH

Utah Code Ann. § 76-5-502 (Supp. 1999)

A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, a plea of not guilty by reason of insanity or has been **found guilty** of a sexual offense or an attempted sexual offense, or a juvenile who is adjudicated to have violated or attempted to violate state law prohibiting a sexual offense, shall be required to submit to a mandatory test upon the request of the victim or the parent or legal guardian of the minor victim or victim of a sexual offense within six months of conviction to determine if the offender is HIV positive.

Utah Code Ann. § 76-5-504 (Supp. 1999)

The Department of Health shall provide the victim who requests testing of the convicted sexual offender's HIV status counseling regarding HIV disease and referral for appropriate health care. The Department of Health may disclose to the victim the results of the convicted sexual offender's HIV status.

VIRGINIA

Va. Code Ann. § 18.2-62 (Michie 1996)

As soon as practicable **following arrest**, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with any crime involving sexual assault pursuant to this article or any offenses against children (including crimes against nature, incest, taking indecent liberties with children, and taking indecent liberties with child by person in custodial or supervisory relationship) be requested to submit to HIV testing. The person so charged shall be counseled about the meaning of the test, about AIDS, and about the transmission and prevention of HIV. If the person so charged refuses to submit to the test, the court with jurisdiction of the case shall, after a finding of probable cause that the individual has committed the crime with which he is charged, order the accused to undergo testing for infection with HIV.

Upon **conviction**, or adjudication as delinquent in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children, as listed above, the attorney for the Commonwealth may, after consultation with any victim and, upon the request of any victim shall, request and the court shall order the defendant to submit to testing for infection with HIV.

Confirmatory tests shall be conducted before any test result shall be determined to be positive. The results of the tests for HIV shall be confidential; however, the Department of Health shall also disclose the results to any victim and offer appropriate counseling. The results of such tests shall not be admissible as

evidence in any criminal proceeding. The costs of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

WASHINGTON

Wash. Rev. Code Ann. § 70.24.340 (West Supp. 2000)

Local health departments shall conduct or cause to be conducted pretest counseling, HIV testing, and post-test counseling of all persons **convicted** of a sexual offense, or of prostitution or offenses relating to prostitution, as soon as possible after sentencing. Such testing shall be so ordered by the sentencing judge.

WEST VIRGINIA

W. Va. Code § 16-3C-2(f) (Supp. 2000)

The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons **convicted** of prostitution, sexual abuse, sexual assault, incest, or molestation. A person convicted of such offenses shall be required to undergo HIV-related testing and counseling immediately upon conviction and the court shall not release such convicted person such convicted person from custody and shall revoke any order admitting the defendant to bail until HIV-related testing and counseling have been performed. The test result is made part of the court record; if the convicted person is placed in the custody of the department of corrections, the court shall transmit a copy of the test results to the division of corrections. The results shall be closed and confidential and disclosed by the court only to the subject of the test and the victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is an infant where disclosure of the HIV-related test results of the convicted sex offender are requested.

The performance of any HIV-related testing that is or becomes mandatory shall not require consent of the subject but will include counseling.

WISCONSIN

Wis. Stat. Ann. § 968.38 (West 1998)

In a criminal action for sexual assault, sexual assault of a child, repeated acts of sexual assault with the same child, sexual exploitation of a child, or incest with a child, the district attorney shall apply to the court for his or her county to order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV or a sexually transmitted disease to disclose the results of the tests as specified in this section. The district attorney must show probable cause to believe that the defendant has significantly exposed the alleged victim or victim, and that 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 so apply for an order.

The district attorney may apply for an order under this section at or after the initial appearance and prior to the preliminary examination, if the defendant waives the preliminary examination, at any time after the defendant is convicted or is found not guilty by reason of disease or defect.

The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following: the alleged victim or victim, if the alleged victim or victim is not a minor; to the parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor; and the health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim, or if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

FEDERAL LEGISLATION

U.S. CODE

42 U.S.C.A. § 14011 (West 1995 & Supp. 1999)

The victim of enumerated sexual offenses may obtain an order in the district court of the United States for the district in which charges are brought against the defendant charged with the offense, after notice to the defendant and an opportunity to be heard, requiring that the defendant be tested for the presence of the etiologic agent for AIDS, and that the results of the test be communicated to the victim and the defendant. Any test result of the defendant given to the victim or the defendant must be accompanied by appropriate counseling.

The victim must demonstrate that the defendant has been charged with the offense in a state or federal court, and if the defendant has been arrested without a warrant, a probable cause determination has been made; the test for the etiologic agent for AIDS is requested by the victim after appropriate counseling; and the test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Centers for Disease Control, of the etiologic agent for AIDS to the victim.

The court may order follow-up tests and counseling under this section if the initial test was negative. Such follow-up tests and counseling shall be performed at the request of the victim on dates that occur six months and twelve months following the initial test.

An order for follow-up testing shall be terminated if the person obtains an acquittal on, or dismissal of, all charges of the type referred to in this section.

The results of any test ordered under this section shall be disclosed only to the victim or, where the court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to any medical professional, counselor, family member or sexual partner(s) the victim may have had since the attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.

The court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this section to anyone other than those mentioned in this section. The contents of the court proceedings and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.

Any person who discloses the results of a test in violation of this section may be held in contempt of court.