

HIV TESTING AND SEX CRIMES

About the Project: This chart is a joint project of the National Conference of State Legislatures (NCSL), 7700 East First Place, Denver, CO 80230 and the National Crime Victim Law Institute (NCVLI) of Lewis & Clark Law School, 10015 SW Terwilliger Boulevard, Portland, OR 97219. This project was updated in August 2005 by NCVLI Staff Attorney Liani Jean Heh Reeves and Lewis & Clark law student Nate Pliska. Questions should be directed to NCVLI at (503) 768-6819 or ncvli@lclark.edu.

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Summary of State Laws: The following chart outlines the rights of victims of sex crimes with regard to HIV testing of the offender and the victim in the U.S. states, the District of Columbia and the U.S. territories. *Note:* HIV testing may encompass a broader range of testing for sexually transmitted diseases.

- ❑ 2 states (OK, TN) provide for some sort of HIV testing upon arrest.
- ❑ 5 states (CO, ID, MO, NJ, TN) provide for mandatory HIV testing at charging.
- ❑ 6 states (DE, FL, KN, NJ, OH, TX) provide for mandatory HIV testing at charging if the victim requests.
- ❑ 4 states (AK, AR, VA, WI) provide for mandatory HIV testing at charging if court finds requisite probability of exposure.
- ❑ 10 states (AZ, CA, GA, HI, IL, IA, MD, NC, OR, SC) provide for mandatory HIV testing at charging if the victim requests and court finds requisite probability of exposure.
- ❑ 12 states (CA, FL, GA, IL, IN, LA, MI, MS, MO, NH, WA, WV) and American Samoa and Guam provide for mandatory HIV testing at conviction.
- ❑ 17 states (AR, CN, HI, KN, ME, MD, MN, MT, NE, NY, OR, PA, RI, SC, UT, VT, VA), the District of Columbia and the Virgin Islands provide for mandatory HIV testing at conviction at the request of the victim.
- ❑ 3 states (AZ, IA, SD) provide for mandatory HIV testing at conviction if victim requests and court finds requisite probability of exposure.

- ❑ 7 states (AL, GA, MS, MO, RI, UT, WY) provide mandatory HIV testing upon confinement.
- ❑ 1 state (KY) provides mandatory HIV testing if recommended by the CDC Guidelines.
- ❑ 1 state (CA) allows a victim of an uncharged crime to request HIV testing of alleged perpetrator if alleged perpetrator is also charged with a sex offense against another victim and the court finds requisite probability of exposure.
- ❑ 18 states (AK, AR, CN, HI, ID, IL, LA, MN, NE, NH, OR, PA, RI, SC, SD, UT, VT, WV) and American Samoa, Guam and the Virgin Islands provide for HIV testing of the victim.
- ❑ No relevant HIV testing statutes were found in Massachusetts, New Mexico, Nevada, North Dakota, Puerto Rico or the Northern Marianas.

Key to Table: V = Victim | D = Defendant | * = at request of V

State	Statute (see statute for specific crime type and degree)	Time of Testing	Requirements to Test	Results Provided to Victim	Victim HIV Test Provided	HIV Counsel & Referral Provided	Applicable to Juvenile Defendants	Who Bears Cost	Notes
AL	Ala. Code § 22-11A-17	Conviction/Confinement	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 sexually transmitted diseases; or if sentenced over 90 days, 30 days before release.	X*		V			What if D is convicted but not sentenced to prison?
AK	Alaska Stat. § 18.15.300 et seq.	Charging	Mandatory when probable cause is established by the court.	X *	X	V, D	Yes	If convicted, D pays.	
AZ	Ariz. Rev. Stat. Ann. § 8-341 [applicable to juveniles only]	Conviction	Prosecuting attorney to petition court for testing per the request of the victim when the perpetrator is a minor; court makes finding of significant exposure or sex offense.	X		V, D	Yes-ONLY		

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	Ariz. Rev. Stat. Ann. § 13-1401 et seq.	Charging	Prosecuting attorney to petition court for testing per the request of the victim; court makes finding of significant exposure or sex offense.				Yes		
AR	Ark. Stat. Ann. § 16-82-101	Charging Conviction	If court determines reasonable cause. Once convicted, mandatory testing if victim requests.	X	X	V	Yes		
CA	Cal Pen Code § 1524.1	Charging	At victim's request if court finds probable cause.	X*		V – pre-request V, D – before disclosure	Yes		Prosecutor must advise victim of right to make request.

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		Uncharged	Victim of uncharged crime may request if D is also charged with a sex offense; court finds probable cause.						
		Conviction	Mandatory testing at conviction.						
CO	Colo. Rev. Stat. § 18-3-415	Charging	Mandatory testing.				Yes		To be used in mandatory upward sentencing if D had notice of HIV infection prior to date offense was committed.

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	Colo. Rev. Stat. § 18-3-415.5	Charging	Mandatory testing.	X*			Yes		D's voluntary submission to testing admissible as mitigation.
CT	Conn. Gen. Stat. § 54-102b , § 504-102c,	Conviction	Testing ordered upon request of victim or court.	X*	X	V	Yes		Non-compliance is a class C misdemeanor.
DE	Del. Code Ann. tit. 10, § 1077	Charging	Order testing at request of victim.	X*		V, D	Yes	D pays.	Court provides defendant with information concerning HIV testing.
D.C.	D.C. Code Ann. § 22-3901 et seq.	Conviction	Testing is conducted on request of the victim.	X		V, D			

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FL	Fla. Stat. § 775.0877	Conviction	Court orders testing.	X*					Provides for criminal transmission of HIV.
	Fla. Stat. § 960.003	Charging or Conviction	Court orders testing at request of victim.	X*		V	Yes		Victim's request for disclosure shall be considered a standing request for subsequent HIV test results obtained within 1 year after initial test performed.
GA	Ga. Code § 17-10-15, § 31-22-9.1 et seq.	Arrest / Charging	Testing is conducted on request of the victim. If defendant does not consent, testing upon a probable cause finding of the court.	X*		V		Cost borne by victim or arrested person in discretion of court.	

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	Ga. Code § 17-10-15	Conviction	If no prior request by victim, upon conviction testing is mandatory within 45 days.	X		V			
	Ga. Code § 42-5-52.1	Incarceration	Mandatory within 30 days.						
HI	Haw. Rev. Stat. §§ 325-16; 325-16.5	Charging	Upon V's request and after in camera probable cause hearing.	X to V's designee.	X	V, D (pre- and post-testing)	Yes	Dept. of Health funding for V testing.	V shall be informed as soon as practicable after the assault of availability of counseling and right to request testing of person charged and the right to V's own testing.
		Conviction	Mandatory if V requests.	X	X	V, D	No		

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ID	Idaho Code § 39-604	Charging	Mandatory.	X	X if D tests HIV+.	V if D tests HIV+.	Yes	Counsel and testing at no cost to victim if D tests HIV+.	Mandatory for all persons confined or imprisoned in any state prison facility at admission and release.
IL	Ill. Rev. Stat. ch. 705, § 405/5-710 [applicable to juvenile only]	Conviction	Mandatory.	X	X	V	Yes-ONLY	Paid by county and taxed as costs against minor D.	Court has discretion to determine to whom the results may be revealed.
	Ill. Rev. Stat. ch. 720, § 5/12-18	Charging	After probable cause hearing or indictment, prosecutor shall seek order if victim requests.	Court has discretion to decide to whom the results may be revealed.				Paid by county and taxed as costs against D.	In no case shall the identity of the victim be disclosed.

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IN	Ind. Code § 31-37-19-12 [applicable to juvenile only]	Conviction	Mandatory.	X		V	Yes-ONLY		
	Ind. Code § 35-38-1-7.1 et seq.	Sentencing							Aggravating factor if D knew was carrier of HIV and had received risk counseling.
IA	Iowa Code § 915.42 , § 915.43	Allegation or Conviction	Prosecutor petitions for order if victim requests; court holds in camera hearing. Must try to obtain written informed consent first.	X		V –pre-hearing V, D	Yes		D shall be provided lawyer. V may be represented by private counsel. V may not be compelled to testify.

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KS	Kan. Stat. Ann. § 38-1692 [applicable to juvenile only]	Charging Conviction	Court orders if victim requests. Once convicted, court may order or shall order if victim requests.	Released to V's designated health care provider.		V	Yes-ONLY	Paid by health dept.; shall order restitution from D.	At time of first appearance, judge shall inform each victim that testing and counseling is available. If test negative, court shall order another test 6 months later.
	Kan. Stat. Ann. § 65-6009	Arrest or Charging Conviction	Court orders if victim or district attorney requests. Once convicted, court may order or shall order if victim requests.	Released to V's designated health care provider.		V		Paid by health dept.; shall order restitution from D.	At time of first appearance, judge shall inform each victim that testing and counseling is available.

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KY	Ky. Rev. Stat. § 438.250	Conviction	Mandatory if recommended by CDC guidelines.	X pursuant to 510.320.			?	Cost to D.	Mandatory
LA	L.a. Rev. Stat. Ann. § 15:535 , L.a. Crim. Ann. art. 499	Conviction	Mandatory.	X	X is D tests HIV+.	V	X? See Juv: Ch C art. 908.1		
ME	Me. Rev. Stat. Ann. tit. 5, § 19203-F	Conviction	Testing conducted on request of the victim; must request no later than 180 days after conviction.	Released to victim advocate.		V, D Mandatory pre-disclosure counseling.	Yes		
MD	Md. Crim. Proc. Code Ann. § 11-109 et seq.	Charging Conviction	Testing conducted if victim requests and court finds probable cause. Mandatory if victim requests.	X		V –pre and post-test counseling, D	Yes		Victim shall be notified of date, time, location of hearing and the right to be present.

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MI	Mich. Comp. Laws § 333.5129	Charging Conviction	Court may order. Mandatory testing.	Victim must consent to give name and address.	X?	D	Yes	Court may order D to pay actual and reasonable costs of testing upon conviction.	
MN	Minn. Stat. § 611A.19	Conviction	Testing is conducted at the request of or with consent of the victim	X *		V	Yes		
MS	Miss. Code Ann. § 99-19-203	Conviction	Mandatory at conviction. If confined over 90 days, test 30 days prior to release.	X and V's spouse.		V			
	Miss. Code Ann. § 43-21-623 [applicable to juvenile only]						Yes-ONLY		

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MO	Mo. Rev. Stat. § 191.659 et seq. § 566-135	Charging Conviction Confinement	Court ordered testing of defendants charged certain crimes. Mandatory upon conviction. All persons imprisoned or confined in the Department of Corrections will undergo HIV testing.	X			Yes		
MT	Mont. Code Ann. § 46-18-256	Conviction	Testing is mandatory at the request of the victim.	X	X	V -if requested	Yes		
NE	Neb. Rev. Stat. § 29-2290	Conviction	Testing is mandatory at the request of the victim.	X	X	V, D	Yes	Cost by D unless court finds indigent.	

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NV	Nev. Rev. Stat. § 201.358								Provides for B felony if person engages in conduct likely to transmit disease if person has tested positive and received actual notice of HIV+ result.
NH	N.H. Rev. Stat. Ann. § 632-A:10-b	Conviction	Mandatory	X to V/W Office; V/W Office may notify V regardless of V's request.	X	V, D	Yes		
NJ	N.J. Stat. Ann. § 2A:4A-43.1 et seq. [applicable to juvenile only]	Charging	Mandatory test for SA or aggravated SA.	Disclose to victim witness office.		V	Yes-ONLY	May order D to reimburse cost.	

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	N.J. Stat. § 2C:43-2.2 et seq.	Charging	Mandatory at request of victim.	Disclose to victim witness office.		V	Yes	May order D to reimburse.	
NY	N.Y. Crim. Proc. Law § 390.15 , Pub. Health Law § 2785 et seq.	Conviction	Mandatory upon request of victim in writing within 10 days of conviction.	X		V	Yes		
NC	N.C. Gen. Stat. § 15A-615	Charging	Testing on request of the victim and probable cause finding.	X		V, D			
OH	Ohio Rev. Code Ann. 2907.27	Charging	Testing is mandatory on request of the prosecutor or victim.	X*					Must inform victim of test and right to receive results; is an ongoing request.

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OK	Okla. Stat. tit. 63, § 1-524 et. seq	Arrest	Testing conducted on court order following arrest for certain crimes	Disclose to victim witness coordinator or V's designated professional.	X – victim provided preventative treatment if within 6 hours.			Cost by D. No cost to V for testing or treatment required by V due to positive result.	
OR	Or. Rev. Stat. § 135.139	Charging Conviction	Testing of the defendant can be requested by the victim and probable cause hearing. At conviction, court seeks consent to test or if victim requests testing is mandatory.	Disclose to V's designated physician.	X	V –if requested, D		Cost by CVC; restitution to state.	V must be notified that testing and counseling are available.
PA	Pa. Cons. Stat. tit. 35, § 521.11a	Conviction	Testing is mandatory upon request of the victim.	X	X	V			

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RI	R.I. Gen. Laws § 11-37-17	Conviction	Testing conducted on those persons guilty of a sexual offense when requested by the victim.	X*	X	V	Yes		
	R.I. Gen. Laws § 42-56-37	Confinement	Required testing for HIV if in adult correctional institution.						
SC	S.C. Code Ann. § 16-3-740	Charging Conviction	Testing upon request of V and court orders after probable cause hearing. Once convicted, testing mandatory if V requests.	X	X –if requested	V –if requested, D	Yes	State pays; if convicted, D may reimburse unless indigent.	D has right to counsel at probable cause hearing.
SD	S.D. Codified Laws Ann. § 23A-35B-1 et seq.	Conviction	Testing upon request of the written request of victim and probable cause hearing.	Disclose to V's designee	X	X	Yes	County pays; may request reimbursement if D convicted.	Apply at charging?

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TN	Tenn. Code Ann. § 39-13-112, § 39-13-521	Arrest	Testing upon request of victim in case of aggravated assault (limited to specific victims). Immediate testing required for persons charged with a sexual offense.	X		D		Testing upon request of victim in case of aggravated assault.	
TX	Tex. Crim. Proc. Code Ann. § 21.31	Charging	Testing can occur at either the request of the court or of the victim.	X					
UT	Utah Code Ann. § 64-13-36 [applicable only to prisoners]	Conviction/Confinement	Testing conducted on all prisoners who have been adjudicated and found guilty of a criminal offense and who are in custody of the Department of Corrections.			D			

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	Utah Code Ann. § 76-5-502 et seq.	Conviction	Mandatory if V requests within six months of conviction.	X	X –CVRF pays		Yes	D responsible for cost unless indigent.	
VT	Vt. Stat. Ann. tit. 13, § 3256	Conviction	Testing conducted at request of victim.	X	X	V	Yes	Cost by Dept. of Public Safety.	
VA	Va. Code Ann. § 18.2-62	Charging Conviction	Probable cause hearing. After conviction, testing conducted when the attorney for the Commonwealth has consulted with the victim of a sexual assault.	X		V, D	Yes		
WA	Wash. Rev. Code § 70.24.340 , § 70.24.105	Conviction	Mandatory after conviction.	X*		V, D			

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WV	W. Va. Code § 16-3C-2	Conviction	Mandatory.		X	V, D		V testing and counseling paid by bureau; restitution to state unless indigent goes to "HIV testing fund."	Prosecutor must inform V of availability of and recommendation for voluntary HIV testing and counseling.
WI	Wis. Stat. § 968.38	Charging	DA shall apply if probable cause that victim was significantly exposed or if victim requests; then probable cause hearing.	X					
WY	Wyo. Stat. § 35-4-134	Conviction/Confinement	Mandatory testing of any individual imprisoned or confined in any state penal institution, county or city jail or any community correctional facility.						

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AMERICAN SAMOA	Am. Samoa Code Ann. § 46.3619	Conviction	Mandatory.	X	X	V	No		
GUAM	8 Guam Code Ann. § 120.60	Conviction	Mandatory.	X	X	V	No		
VIRGIN ISLANDS	5 V.I. Code Ann. § 3911	Conviction	Mandatory at request of victim.	X	X	V (pre- and post-testing), D	No		Prosecutor shall advise victim of right to request the testing of D.