

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

Testing 7 to 30 Days from Time of Assault:

A. Defendant Counseling Messages

Pre-Test Counseling

I. Test related information (pre-test)

The following are key points to be covered concerning the rationale for Defendant HIV Testing and the testing process.

1. You have been ordered by a court to be tested for HIV under New York State's Criminal Procedure Law.
2. The purpose of this testing is to provide information about your HIV status to the victim (survivor) of the crime you have been accused of so that they can make informed decisions about their health care needs. If you (the alleged perpetrator) were HIV positive at the time of the attack, the victim could have been exposed to HIV and could have become infected. Additionally, this testing may benefit you because if the victim was HIV positive at the time of the assault, you could have been exposed to HIV and become infected.
3. A blood sample will be taken and a series of HIV tests will be done to determine if you have HIV.
4. Your blood sample will be tested using the following tests:
 - Standard HIV antibody test. Most people infected with HIV will develop enough antibodies to be detected by this test within 4 weeks after their exposure.
 - HIV viral load test. This test detects the presence of the virus itself and will detect HIV infection as early as 7 days after exposure.
 - Western blot test. This test is used to confirm a positive HIV antibody test result.
5. This combination of tests is used to ensure that testing results accurately show if you are HIV positive or HIV negative, reducing or eliminating the need for follow-up testing at a later date.

II. Meaning of test results (pre-test counseling)

The following content describes various test results and their implications for the individual's HIV status. These scenarios are meant as a guide to help the pre-test counselor answer questions that the defendant may have and are not meant to be provided as stand alone responses outside the context of the pre-test counseling discussion.

1. If both the antibody and viral load test results are negative, you do not have HIV.
2. If the antibody test is positive, the viral load test is negative and the Western blot (used to confirm the positive antibody result) is negative, you do not have HIV.
3. If the antibody test, viral load test, and Western blot test are positive, you have HIV.
4. If the antibody test is negative but the viral load test is positive, it is highly likely that you have HIV. Follow-up HIV antibody testing by a health care provider is recommended to formally establish an HIV diagnosis.
5. On rare occasions, the results from the Western blot antibody test and/or the HIV viral load tests may be unclear or indeterminate. Tests with indeterminate results should be repeated as soon as possible.

III. When will you know the test results?

1. Test results will be available 2 to 4 days after you are tested.

IV. Who can receive your test results?

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

1. You. You don't have to know your HIV test results if you don't want to. But HIV can be treated. If you have HIV, the sooner you find a doctor and start medical treatment, the better your chances of staying healthy.
2. The victim (survivor) has the right to know whether or not you have HIV. He or she may share your HIV status with close family members, a guardian, lawyer, doctor, and health care providers. The victim can disclose your HIV test results to any of his or her sex partners or needle-sharing partners if the

victim believes any of those partners may have been exposed to HIV. But, the victim cannot disclose your name.

3. The court will not let anyone who knows about your test results tell anyone else.
4. Your HIV test results cannot be shared with the court.
 - HIV test results cannot be used as “evidence” against you.
 - Your HIV test results cannot be used as evidence against you in any criminal or civil case related to the felony rape or sexual assault charges against you.

Post-Test Counseling

The following content describes various test results and their implications for the defendant’s HIV status. This information is provided as a guide for the counselor in addressing questions the defendant may have in the context of a more comprehensive post-test counseling session. In all instances, comprehensive post-test counseling for those who test negative should stress risk reduction; and for those who test positive, it should stress the importance of health care, partner notification, and preventing further transmission.

- I. Antibody test and viral load test negative.
 1. You are not infected with HIV. (Standard post test risk reduction counseling should be given).
- II. Antibody test positive, viral load test negative, and Western blot test negative.
 1. You are not infected with HIV. (Standard post test risk reduction counseling should be given).
- III. Antibody test positive, Viral load test positive, Western Blot test positive.
 1. You are HIV positive. It is recommended that you seek medical care. The sooner you get medical care, the better your chances are of staying healthy.
 2. Tell your sex partners or needle-sharing partners about your HIV status so they can get tested and begin treatment if they have HIV. The Partner Assistance Notification Program (PNAP) or the Contact Notification Assistance Program (CNAP), in New York City can help you through the process of letting partners know that they should be tested for HIV. (Provide information regarding the PNAP and CNAP program, including contact information)

3. Don't pass HIV to others. Do not have sex without a condom or share drug injection equipment.

IV. Antibody test negative, viral load test positive.

Consultation with an HIV Specialist before discussing this test result with the defendant. The viral load test is a quantitative test that requires that a physician determine if a sufficient amount of virus is present to indicate infection. If sufficient virus is present, make the following points during the post-test counseling session.

1. You are considered to be HIV positive. It is recommended that you seek medical care. The sooner you get medical care, the better your chances are of staying healthy. Your doctor will probably want to repeat HIV antibody testing to confirm your diagnosis for your records.
2. Tell your sex partners or needle-sharing partners about your HIV status so they can get tested and begin treatment if they have HIV. The Partner Assistance Program (PNAP) or the Contact Notification Assistance Program (CNAP), in New York City, can help you through the process of letting partners know they should be tested for HIV. (Provide information regarding the PNAP and CNAP program, including contact information)
3. Don't pass HIV to others. Do not have sex without a condom or share drug infection equipment.

B. Testing 30 day to 6 months from the Assault

Pre-Test Counseling

I. Test related information (pre-test)

The following are key points to be covered concerning the rationale for Defendant HIV Testing and the testing process.

1. You have been ordered by a court to be tested for HIV under New York State's Criminal Procedure Law.
2. The purpose of this testing is to provide information about your HIV status to the victim (survivor) of the crime you have been accused of so that he/she can make informed decisions about his/her health care needs. If you (the alleged perpetrator) were HIV positive at the time of the attack, the victim could have

been exposed to HIV and could have become infected. Additionally, this testing could benefit you because if the victim was HIV positive at the time of the assault, you could have been exposed to HIV and become infected.

3. A blood sample will be taken and a series of HIV tests will be done to determine if you have HIV.
4. Your blood sample will be tested using the following tests:
 - Standard HIV antibody test. Most people infected with HIV will develop enough antibodies to be detected by this test within 4 weeks after their exposure (**Note: if it has been at least 42 days since the assault, a rapid HIV antibody test can be used**).
 - Western blot test. This test is used to confirm a positive HIV antibody test result.
5. These tests are used to ensure that testing results accurately show if you are HIV positive or HIV negative, reducing or eliminating the need for follow-up testing at a later date.

II. Mean of test results (pre-test)

The following content describes various test results and their implications for the individual's HIV status. These scenarios are meant as a guide for the pre-test counselor to help answer questions the defendant may have and are not meant to be stand alone responses outside the context of the pre-test counseling discussion.

1. If the antibody test result is negative you are not infected with HIV.
2. If the antibody test is positive and the Western blot test (used to confirm the positive antibody result) is negative, you do not have HIV.
3. If the antibody test is positive and Western blot is positive, you have HIV.
4. On rare occasions, the results from the Western blot antibody test may be unclear or indeterminate. Tests with indeterminate results should be repeated as soon as possible.

III. When will you know the test results?

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

IV. Who can receive your test results?

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

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

Post Test Counseling

The following content describes various test results and their implications for the individual's HIV status. This information is provided as a guide for the counselor to address questions the defendant may have in the context of a more comprehensive post-test counseling session. In all instances, comprehensive post-test counseling should be provided for those who test negative that stresses risk reduction; for those who test positive, it should stress the importance of health care, partner notification, and preventing further transmission.

I. Antibody test negative

1. You are not infected with HIV. (Standard post test risk reduction counseling should be given).

II. Antibody test positive, Western blot negative.

1. You are not infected with HIV (standard post test risk reduction counseling should be given).

III. Antibody test positive, Western blot positive.

1. You are HIV positive. It is recommended that you seek medical care. The sooner you get medical care, the better your chances are of staying healthy. Provide information concerning the availability of HIV medical care.
2. Tell your sex partners or needle-sharing partners about your HIV status so they can get tested and begin treatment if they have HIV. The Partner Assistance Program (PNAP) or the Contact Notification Assistance Program (CNAP), in New York City can help you through the process of letting partners know that they should be tested for HIV (Provide information regarding the PNAP and CNAP programs, including contact information).
3. Don't pass HIV to others. Do not have sex without a condom or share drug injection equipment.