

Defendant HIV Testing Counseling Messages for the Survivor of Felony Sexual Assault

When an individual has been arrested and indicted for felony sexual assault within 6 months of the date of the assault, survivors of the assault should be apprised of their right to ask that HIV testing be done on the person who has been indicted (the defendant).

The county District Attorney's office will call the local health department when there is a survivor in need of counseling. This counseling is provided by county public health staff and consists of a discussion with the survivor about what knowing the defendant's HIV status would mean and not mean in the survivor's specific situation.

The designated public health officer should cover the following key information with the survivor prior to his or her decision regarding a request that the defendant be tested for HIV.

I. Prior to a Defendant HIV Testing Request

1. Explain the purpose of the meeting and emphasize that this discussion is confidential.
2. Review any previous HIV counseling that the survivor may have received at the time of the attack and determine if she or he is currently taking HIV post exposure prophylaxis (PEP). Ensure that the survivor knows that help paying for PEP is available. (PEP is prescribed ideally within two to 36 hours of the assault and is taken for 28 days.)
3. Provide the following information about Defendant HIV Testing:
 - Defendant HIV testing may help you find out if you have been exposed to HIV during the sexual assault. This may include HIV testing for you if that was not done following the assault;
 - You can request the court to order Defendant HIV testing when someone has been arrested and indicted within six months of the assault;
 - The request must be made in writing and within 48 hours after the defendant is charged. The court may, for good cause shown, permit a request to be filed at a later stage of the action within six months of the date of the crimes charged;
 - Follow-up HIV testing can be requested after results of the first tests are received. However, the HIV tests done on the defendant the first time should detect any HIV present at that time, so there may be no medical need for follow-up testing.
4. Outline the current scientific information available regarding risk of HIV infection from various modes of exposure. If possible, explore the nature of the survivor's exposure and risk of infection related to his or her assault.
5. Indicate that there may be limited medical and/or psychological benefits of asking that the defendant be tested for HIV, depending on how long it has been since the assault:
 - If the defendant is tested within 7 to 30 days of the assault, the results of the test may enable you (the survivor) to determine, in consultation with a physician, the need to continue PEP;
 - If the defendant is tested 30 days to six months after the assault, there would be no specific medical benefit for you since the time frame for PEP would have been completed;
 - Testing of the defendant at any time within 6 months of the assault may provide the psychological benefit of knowing that exposure to HIV is unlikely if the defendant tests HIV negative.
6. If the survivor decides to request Defendant HIV Testing, make arrangements to provide test results and counseling to the survivor.

II. Counseling Survivors when Providing the Defendant's HIV Test Results

1. Once the results of the HIV testing of the defendant have been received, meet with the survivor to provide the results and the following key information. Be aware that it may be necessary to review information regarding exposure, risks of infection and the medical/psychological benefits having the defendant's test results that were previously discussed.

Carefully explain what the defendant's test results mean for the survivor:

- If the defendant tests negative, he or she was not infected with HIV at the time of the sexual assault and did not infect you;
 - If the defendant tests positive, he or she may have been HIV infected at the time of the sexual assault;
 - If the defendant was HIV infected at the time, you may have been exposed to HIV and you may be infected. However, being exposed to HIV does not mean you were infected;
 - Results of your own HIV tests are the only way to know for sure whether or not you have HIV. If your test results are negative 3 months after the assault, you were not infected as a result of the assault.
2. Indicate that, regardless of whether the defendant tests positive or negative for HIV, he or she has a right to privacy regarding the test results. Discuss the following information about who can receive the results of the defendant's HIV tests and how it can and can't be used:
 - The defendant can choose to either receive or not receive his or her test results;
 - You (the survivor) have the right to the defendant's HIV status as a result of the tests;
 - You may share information about the defendant's HIV test results with your doctor, legal representative, close family members or legal guardian;
 - You may also share the information with any of your sex or needle-sharing partners if you believe you exposed them to HIV. You cannot tell them the defendant's name.
 3. Stress that these are the only people the survivor is allowed to share the defendant's test results with. **The survivor and any one that they are authorized to tell under the law cannot share this information with anyone else.**
 4. Be sure that the survivor knows that the defendant's HIV test results cannot be used as evidence against them. The defendant's HIV test results cannot be shared with the court and cannot be used in either a criminal or civil case related to the sexual assault against the survivor. Information about the defendant's HIV status is strictly for the medical or psychological benefit of the survivor.
 5. Provide the survivor with information regarding any appropriate medical and psychological services that may be available.