

152790

**LEGISLATION AUTHORIZING  
HIV TESTING OF SEX OFFENDERS**

**Current through December 31, 1993**

152790

U.S. Department of Justice  
National Institute of Justice

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The National Center for Prosecution of Child Abuse maintains a collection of state statutes and relevant case law covering more than 40 areas of criminal child abuse and neglect. This compilation and others listed below represent a unique, comprehensive and up-to-date summary of state legislation significant to child abuse prosecution. The collection is updated annually and expands with the passage of new state legislation and major appellate decisions. The following summaries can be ordered from Publications, American Prosecutors Research Institute, 99 Canal Center, Suite 510, Alexandria VA 22314 (FAX: 703/549-6259):

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**Legislation Authorizing  
HIV Testing of Sex Offenders\***  
(Current through December 31, 1993)

**STATE STATUTES**

Arizona	Ariz. Rev. Stat. Ann. § 13-1415 (1990)
Arkansas	Ark. Stat. Ann. § 16-82-101 (1989)
California	Cal. Penal Code § 1202.1 (1988) Cal. Penal Code § 1524.1 (1989)
Colorado	Colo. Rev. Stat. § 18-3-415 (1993)
Florida	Fla. Stat. Ann. § 960.003 (1992)
Georgia	Ga. Code Ann. § 17-10-15 (1991) Ga. Code Ann. § 15-11-35.1 (1992) Ga. Code Ann. § 31-22-9.1 (1989)
Idaho	Idaho Code § 39-601 (1990) Idaho Code § 39-604 (1993)
Illinois	730 Ill. Comp. Stat. Ann. § 5/5-5-3(g) (1992)
Indiana	Ind. Code § 35-38-1-10.5 (1993) Ind. Code § 35-38-1-10.6 (1993)
Iowa	Iowa Code § 709B.1. (1993) Iowa Code § 709B.2 (1993) Iowa Code § 709B.3 (1993)
Kansas	Kan. Stat. Ann. § 22-2913 (1993)
Kentucky	Ky. Rev. Stat. Ann. § 510.320 (1992)
Louisiana	La. Rev. Stat. Ann. § 15:535 (1993) La. Code Crim. Proc. Ann. Art. 499 (1991)
Maine	Me. Rev. Stat. Ann. § 19203-A(5) (1991) Me. Rev. Stat. Ann. § 19203-E (1993)

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\* This compilation includes all statutes (excluding military and tribal statutes) that authorize or mandate HIV testing of persons arrested, detained, charged, or convicted for a sexual offense. The citation date refers to the year of passage or latest amendment.

Maryland	Md. Ann. Code art. 27, § 765 (1992)
Michigan	Mich. Comp. Laws § 333.5129 (1988)
Minnesota	Minn. Stat. Ann. § 611A.19 (1992)
Mississippi	Miss. Code Ann. § 99-19-201 (1991) Miss. Code Ann. § 99-19-203 (1991)
Missouri	Mo. Stat. Ann. § 191.663 (1990)
Montana	Mont. Code Ann. § 46-18-256 (1993) Mont. Code Ann. § 50-18-101 (1993)
Nebraska	Neb. Rev. Stat. § 29-2290 (1991)
Nevada	Nev. Rev. Stat. § 441A.320 (1993)
New Hampshire	N.H. Rev. Stat. Ann. § 632-A:10-b (1993)
New Jersey	N.J. Rev. Stat. § 2A:4A-43.1 (1993) N.J. Rev. Stat. § 2C:43-2.2 (1993)
North Carolina	N.C. Gen. Stat. § 15A-534.3 (1989)
North Dakota	N.D. Cent. Code § 23-07-07.5 (1989)
Ohio	Ohio Rev. Code Ann. § 2907.27 (1989) Ohio Rev. Code Ann. § 3701.243 (1989)
Oklahoma	Okla. Stat. tit. 63, § 1-524 (1991) Okla. Stat. tit. 63, § 1-525 (1991)
Oregon	Or. Rev. Stat. § 135.139 (1989) Or. Rev. Stat. § 137.076 (1991)
Pennsylvania	35 Pa. Cons. Stat. Ann. § 7608 (1990)
Rhode Island	R.I. Gen. Laws § 11-34-10 (1990)
South Carolina	S.C. Code Ann. § 16-3-740 (1988) S.C. Code Ann. § 16-15-255 (1988)
South Dakota	S.D. Codified Laws § 23A-35B-1 (1993) S.D. Codified Laws § 23A-35B-3 (1992) S.D. Codified Laws § 23A-35B-4 (1992) S.D. Codified Laws § 23A-35B-5 (1993)

Texas	Tex. Code Crim. Proc. Ann. art. 21.31 (1993)
Utah	Utah Code Ann. § 76-5-502 (1993) Utah Code Ann. § 76-5-504 (1993)
Virginia	Va. Code Ann. § 18.2-62 (1993)
Washington	Wash. Code § 70.24.340 (1988)
West Virginia	W. Va. Code § 16-3C-2(f) (1993)
Wisconsin	Wis. Stat. § 968.38 (1992)

#### **OTHER LEGISLATION**

Puerto Rico	P.R. Laws Ann. tit. 24, § 576 (1988)
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**Summary of Legislation Authorizing  
HIV Testing of Sex Offenders  
(Current through December 31, 1993)**

**ARIZONA**

**Ariz. Rev. Stat. Ann. § 13-1415 (1990)**

A victim or the parent or guardian of a minor victim of a sexual offense or other crime which involved "significant exposure" may request the agency responsible for prosecuting the offense to request the person **arrested** to submit to a test for human immunodeficiency virus (HIV) and to consent to the release of the test result to the victim.

If a person is **convicted** of a sexual offense or other crime which involved "significant exposure," 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 determine if there is sufficient evidence indicating that "significant exposure" occurred. If the court makes this finding, 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 for HIV and shall counsel them regarding the health implications of the results. Notwithstanding any other law, test results shall be released only to the victim of the crime and the Department of Health Services.

"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. Stat. Ann. § 16-82-101 (1989)**

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 (1988)**

The court shall order every person **convicted** 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 acquired immune deficiency syndrome (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 available to the defense attorney and to the prosecuting attorney (for the sole purpose of preparing counts for a subsequent offense or sentence enhancement).

### **Cal. Penal Code § 1524.1 (1989)**

Notwithstanding provisions of the Health and Safety Code, when a defendant has been **charged** by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood with an HIV test.

Prior to the issuance of a search warrant, the court shall conduct a hearing at which both the victim and the defendant have the right to be present. In support of the search warrant, the court must find probable cause to believe that the accused committed the 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.

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. The local health officer and victim shall comply with all laws and policies relating to medical confidentiality. Any victim who receives information from the health officer may disclose the test results as the victim deems

necessary to protect his/her health and safety or the health and safety of his/her family or sexual partner. Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

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

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.

## COLORADO

### Colo. Rev. Stat. § 18-3-415 (1993)

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.

## FLORIDA

### Fla. Stat. Ann. § 960.003 (1992)

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 and Rehabilitative Services to the person charged with the offense, 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 (1991)**

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 (blood, semen or vaginal secretions) 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 (1992)**

As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime (see Ga. Code Ann. § 31-22-9.1 below), 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 Children and Youth Services 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 Human Resources believes the crime posed a reasonable risk of transmitting HIV to the victim.

**Ga. Code Ann. § 31-22-9.1 (1989)**

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

**IDAHO**

**Idaho Code § 39-601 (1990)**

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

**Idaho Code § 39-604 (1993)**

All persons who shall be confined in any county or city jail and who are charged with sex offenses, drug related charges, prostitution or other charges as recommended by public health authorities shall be tested for venereal diseases.

If a person is charged with sexual abuse of a child under the age of 16 years, lewd conduct with a minor or child under 16, rape or male rape and is tested as required in this section, the results of the test shall be revealed to the court upon its request. Upon application to the court by the victim, or if the victim is a minor, by the minor's parent, guardian, or legal custodian, the court may release the results of the test if the court determines the health or safety of the victim may be threatened. The court may impose such conditions on the release of the test results as the court deems necessary and just. 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. Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim, or if the victim is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim or the victim's parent, guardian, or legal custodian, aware of the services to which the victim is entitled.

## ILLINOIS

### 730 Ill. Comp. Stat. Ann. § 5/5-5-3(g) (1992)

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.

The court shall order that the cost of any such test shall be paid by the county and may be taxed as costs against the convicted defendant.

## INDIANA

### Ind. Code § 35-38-1-10.5 (1993)

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.

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 (1993)

The state department of health shall notify victims of sex crimes if the tests conducted under § 10.5 confirm that the person who committed the crime had antibodies for HIV.

## IOWA

### **Iowa Code § 709B.1. (1993)**

As used in this chapter, unless the context otherwise requires:

"Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the offender and the genitalia or anus of the victim.

### **Iowa Code § 709B.2 (1993)**

If a person is **convicted** of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the person convicted 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 included sufficient contact between the victim and the offender to be deemed a significant exposure pursuant to section 709B.1.
- 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 who is authorized to provide the counseling required pursuant to section 141.22, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted 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.

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.

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 provided sufficient contact between the victim and the 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.

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

Following the hearing, the court may 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.

#### **Iowa Code § 709B.3 (1993)**

The physician or other practitioner who orders the test of a convicted offender for HIV under this chapter shall disclose the results of the test to the convicted offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

Results of a test performed under this chapter, except as provided herein, shall be disclosed only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, and the parent, guardian, or custodian of the victim, if the victim is a minor. Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted offender. A person to whom the results of a test have been disclosed under this chapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23(1).

Test results shall not be disclosed to a convicted offender who elects against disclosure.

The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

## **KANSAS**

### **Kan. Stat. Ann. § 22-2913 (1993)**

Upon **conviction** of a person for any crime which the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, or involved a sexual act, the court may order the convicted person to submit to an HIV test or shall order the convicted person to submit to an HIV test if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to make such order. If an HIV test is ordered, the victim of the crime who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the convicted person to submit to another HIV test six months after the first test was administered.

The results of any HIV test ordered under this section shall be disclosed to the court which ordered the test, the convicted person and to each person designated by a victim or by the parent or legal guardian of a victim. If an HIV test ordered under this section results in a laboratory confirmation of HIV, the results shall be reported to the secretary of health and environment and to the secretary of corrections for inclusion in the convicted person's medical file. If the test results in a negative reaction, the court shall order the convicted person to submit to another HIV test six months after the first test was administered. The court shall order the convicted person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and for the costs of any test ordered or otherwise performed under this section.

The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the results or information.

## **KENTUCKY**

### **Ky. Rev. Stat. Ann. § 510.320 (1992)**

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 and to any other agency as directed pursuant to Ky. Rev. Stat. Chapter 214.

## LOUISIANA

### **La. Rev. Stat. Ann. § 15:535 (1993)**

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 (1991)**

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. § 19203-A(5) (1991)**

Informed consent need not be obtained when a victim of gross sexual assault has been exposed to the blood or body fluids of the **convicted** offender and the exposure creates a significant risk of infection, provided that a court order has been obtained under this section.

**Me. Rev. Stat. Ann. § 19203-E (1993)**

A person who is the victim of gross sexual assault who allegedly has been exposed to the blood or body fluids of the **convicted** offender may petition the District Court with jurisdiction over the convicted offender to require the convicted offender to submit to HIV testing. The court may not order a convicted offender to obtain HIV testing unless the petitioner has consented to and obtained an HIV test within 6 weeks following the gross sexual assault. The court shall schedule a hearing as soon as practicable upon receipt of the petition. The court may require the convicted offender to obtain HIV testing if the petitioner proves by a preponderance of the evidence that the alleged exposure to blood or body fluids of the convicted offender created a significant risk of HIV infection as defined by the Department of Human Services; an authorized representative of the petitioner, the prosecuting attorney, or the court has sought to obtain written informed consent from the convicted offender; and written informed consent was not given by the convicted offender.

Subsequent testing arising out of the same incident of exposure must be conducted in accordance with this section, except that the court is not required but has discretion to order subsequent testing under the subsection on determination (5), if the requirements are met. Other testing of the convicted offender may not be required except as provided by this section.

**MARYLAND**

**Md. Ann. Code art. 27, § 765 (1992)**

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 1 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 the provisions of this section, including regulations regarding the confidentiality of test results and providing victims with counseling regarding HIV disease, HIV testing, 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. Comp. Laws § 333.5129 (1988)**

If an individual is **arrested and charged** with gross indecency between male persons, gross indecency between female persons, gross indecency between male and female persons, soliciting prostitution, admitting to place for purpose of prostitution, engaging or offering to engage services of female, aiding and abetting, keeping a house of ill-fame, pandering, criminal sexual conduct, or assault with intent to commit conduct involving penetration, or a local ordinance prohibiting prostitution, solicitation, or gross indecency, 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, acquired immunodeficiency syndrome, and acquired immunodeficiency syndrome related complex. Counseling under this subsection shall be voluntary on the part of the individual.

Upon **conviction** of a defendant for gross indecency between male persons, gross indecency between female persons, gross indecency between male and female persons, soliciting prostitution, admitting to place for purpose of prostitution, engaging in or offering to engage services of female, criminal sexual conduct, or assault with intent to commit conduct involving penetration, 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" 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.

## MINNESOTA

### **Minn. Stat. Ann. § 611A.19 (1992)**

A sentencing court may issue an order requiring a person **convicted** of criminal sexual conduct to submit to testing to determine the presence of the HIV antibody if the prosecutor moves for the test order in camera, the victim requests the test and the 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 commission of the crime.

The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian and positive test results shall be reported to the commissioner of health. Any test results given to a victim or victim's parent or guardian shall be provided by a health professional who is trained to provide counseling.

## MISSISSIPPI

### **Miss. Code Ann. §§ 99-19-201 and 99-19-203 (1991)**

Any person who is **convicted** of a "sex offense" on or after July 1, 1991, and who is **sentenced** to imprisonment in any state correctional facility shall be tested for HIV (including the human immunodeficiency virus or any other identified causative agent of AIDS) and AIDS (including acquired immunodeficiency syndrome, AIDS related complex and any similar disease) by the State Department of Health upon entering the facility. 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. 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 provisions of this section shall not be construed to require either the testing of any person convicted of a sex offense prior to sentencing or the testing of such person held in a city or county jail awaiting transfer to a state correctional facility.

"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. Stat. Ann. § 191.663 (1990)**

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.

## **MONTANA**

### **Mont. Code Ann. § 46-18-256 (1993)**

Following entry of judgement, 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 (1993)**

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

## **NEBRASKA**

### **Neb. Rev. Stat. § 29-2290 (1991)**

Notwithstanding any other provision of law, when a person has been **convicted** of sexual assault or sexual assault of a child, the presiding judge shall, at the request of the victim as part of the sentencing of the convicted person, order the convicted person to submit to an HIV antibody or antigen test. The results of the test shall be reported to the victim of the sexual assault or to the parents or guardian of the victim if the victim is a minor or is mentally incompetent.

The Department of Correctional Services shall adopt and promulgate rules and regulations to carry out this section.

## **NEVADA**

### **Nev. Rev. Stat. § 441A.320 (1993)**

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 (1993)

The state shall, at the request of a victim of any sexual offense, except violations of §§ 632-A:10 or 632-A:19, administer to any person **convicted** for such offense, a test to detect in such person the presence of the etiologic agent for acquired immune deficiency syndrome.

The state shall disclose results of a test administered to any person convicted and the victim.

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.H. Rev. Stat. Ann. § 2A:4A-43.1 (1993)

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 acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS.

### N.H. Rev. Stat. Ann. § 2C:43-2.2 (1993)

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 acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (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.

As used in this section, "formal charge" includes a proceeding by accusation in the event that the defendant has waived the right to an indictment.

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 or at a licensed health facility. 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 subsection a. of this section.

Upon receipt of the result of a test ordered pursuant to subsection a. of 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 a health care provider and employees of the Department of Corrections, 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 subsection a. of 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 acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (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.

## NORTH CAROLINA

### N.C. Gen. Stat. § 15A-534.3 (1989)

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 (1989)

Every individual, whether imprisoned or not, who is **convicted** of gross sexual imposition, solicitation of minors, sexual abuse of wards, sexual assault, fornication, adultery, incest, deviate sexual act, or sexual exploitation by a therapist must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus.

The results of any positive or reactive test must be reported to the state department of health and consolidated laboratories.

## OHIO

### Ohio Rev. Code Ann. § 2907.27 (1989)

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 penal or reformatory 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 (1989)**

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 of a municipal corporation, or village solicitor, in connection with a criminal investigation or prosecution.

**OKLAHOMA**

**Okla. Stat. tit. 63, § 1-524 (1991)**

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, the human immunodeficiency virus (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 (1991)**

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 (1989)**

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 (1991)**

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 (1990)

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 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, 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. A determination that the applicant has incurred a significant risk of exposure to HIV infection must be supported by medical and epidemiologic data regarding the transmission of HIV, including, if available, information about the HIV risk status of the source individual and the circumstances in which the alleged exposure took place, and 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.

## RHODE ISLAND

### R.I. Gen. Laws § 11-34-10 (1990)

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.

## SOUTH CAROLINA

### S.C. Code Ann. § 16-3-740 (1988)

Within fifteen days of a **conviction** of any person for a crime involving sexual battery or sexual conduct, if the conduct results in exposure of the victim to blood or vaginal or seminal fluids of the convicted offender, the solicitor shall require that the convicted offender be tested for HIV. The results must be reported to the South Carolina Department of Health and Environmental Control and to the solicitor who ordered the test. The solicitor shall notify the victim and the convicted sexual offender of the test results.

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.

**S.C. Code Ann. § 16-15-255 (1988)**

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-1 (1993)**

"Defendant" is a person held over for trial on a charge of sexual assault; "juvenile" is a minor charged in juvenile court with being a delinquent child as the result of actions that would constitute a sexual assault, an assault or a crime of violence in criminal court.

**S.D. Codified Laws § 23A-35B-3 & 4 (1992)**

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 or law enforcement officer'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 Ann. § 23A-35B-5 (1993)**

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 (1992)**

When a defendant **charged with** aggravated rape or rape initially appears before a general session, circuit or criminal court judge upon such charge, the judge shall inform such defendant of the availability of HIV testing and shall also cause the victim of the offense, or a parent or guardian of the victim, to be notified that the defendant has been so notified. Upon the **conviction** of the defendant for such a crime, the court shall, upon the request of the victim or a parent or guardian of a victim, order the convicted person to submit to an "HIV test."

Upon the **conviction** of the defendant for prostitution, the court shall order the convicted person to submit to an HIV test. The defendant shall obtain a confirmatory test when necessary.

The result of any "HIV test" ordered by this section is not a public record and shall be available only to the victim, the parent or guardian of a minor victim, the attending physician of the defendant and of the victim, the Department of Health, the Department of Corrections, and the person tested.

The cost of testing under this section shall be paid by the department of health, but reimbursement to the department for the cost of the testing shall be included by the court in any order requiring the convicted person to pay restitution.

"HIV test" means a test of an individual for the presence of HIV or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

## TEXAS

### **Tex. Code Crim. Proc. Ann. art. 21.31 (1993)**

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 (1993)

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 (1993)

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 (1993)

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. Code § 70.24.340 (1988)**

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) (1993)**

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. § 968.38 (1992)**

In a criminal action for sexual assault, sexual assault of a 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 court is not required to order the defendant to submit to an HIV test under this section if the court finds substantial reason relating to the health or life of the defendant not to do so and states the reason on the record.

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 court binds the defendant over for trial and before a verdict is rendered, and if the defendant is convicted, before 53 days after conviction.

The court shall require the health care professional who performs the test to refrain from disclosing the test results to the defendant and to disclose the results of the test to the alleged victim or victim if not a minor, to the parent or guardian of the alleged victim or victim if a minor and if the court determines that it is in the alleged victim or victim's best interests that the parent or guardian receive this information, 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.

## **OTHER LEGISLATION**

### **PUERTO RICO**

#### **P.R. Laws Ann. tit. 24, § 576 (1988)**

In every case of rape, incest or sodomy, the magistrate shall direct that the **convicted** person be submitted to examinations to detect the HIV virus.

## **National Center for Prosecution of Child Abuse**

The National Center for Prosecution of Child Abuse was founded by the American Prosecutors Research Institute in 1985 in response to dramatic increases in child abuse cases reported to law enforcement. Its mission is to improve the investigation and prosecution of child abuse through professional specialization, court reform and interagency coordination.

By demanding full accountability for the crime of child abuse along with comprehensive support services for the child, the Center reflects the commitment of prosecutors to a particularly vulnerable group of victims. The Center is serving prosecutors' needs by providing:

**Expert training and technical assistance** through national and regional training conferences, on-site visits and phone consultations. Experienced trial and staff attorneys review cases, offer strategic guidance and forward up-to-date litigation and background documents in response to over 3,000 callers each year. In-depth training is provided to interdisciplinary audiences at some 70 conferences per year.

**Clearinghouse on child abuse case law, statutory initiatives, court reforms and trial strategies.** The Center maintains the only comprehensive collection of criminal child abuse case law and statutes--a continually updated and expanded resource. Written materials are supplemented by computer access to legal, medical and social service data bases.

**Authoritative publications** including the highly acclaimed guide, *Investigation and Prosecution of Child Abuse*, the informative monthly newsletter, *Update*, and a monograph series examining special issues.

**Research** on reducing trauma in court for child sexual abuse victims, child abuse fatalities, drug-affected children and parental abduction. The Center works closely with researchers, local prosecutors and specialists in exploring new avenues to protect children from abuse.

For information, write or call the National Center for Prosecution of Child Abuse, American Prosecutors Research Institute, 99 Canal Center, Suite 510, Alexandria, VA 22314, 703/739-0321. FAX: 703/549-6259.