

Are there different kinds of HIV tests?

Two kinds of HIV tests can be done:

- **HIV antibody test.** This test looks for cells in your body that develop to fight infection. They are called “antibodies.” When you get infected with HIV, this test cannot detect HIV antibodies right away. There’s a gap (or “window period”) between when you get infected and when the antibodies can be detected. Most people develop antibodies within a month of being infected with HIV. Almost everyone develops HIV antibodies within three months.
- **HIV viral load test.** This test measures any HIV in your body. It can find HIV even before antibodies develop. So, an HIV viral load test is a more accurate test if you have been infected in the past month.

The kind of test you take depends on how much time has passed since the rape or sexual assault that you are accused of committing:

- **If it has been more than 7 days since the rape or sexual assault – but less than 30 days:** You will be given both an HIV antibody test and an HIV viral load test.
- **If it has been 30 days to 6 months since the rape or sexual assault:** You will have to take an HIV antibody test.
- **If it has been 6 months or more since the rape or sexual assault:** You will not have to take any HIV test.

The court can also order a follow-up HIV test. But, the antibody test and viral load test should detect any HIV in your body at the time you are first tested. So, there may be no medical need for a follow-up test.

Learn more about HIV

If you tested positive for HIV, the **Centers for Disease Control and Prevention website has a page about HIV and Treatment** (<https://www.cdc.gov/hiv/basics/livingwithhiv/treatment.html>).

Go to the New York State Department of Health AIDS Institute website to learn more about:

- HIV Testing (<https://www.health.ny.gov/publications/9822.pdf>)
- New York State Confidentiality Law (<https://www.health.ny.gov/publications/9192.pdf>)
- Partner Services (<https://www.health.ny.gov/publications/9676.pdf>)



Information for Defendants in Sexual Assault Cases



Department of Health

#9596

02/24



Department of Health

If you have been charged with rape or felony sexual assault, you may have to take tests for HIV – human immunodeficiency virus. This is the virus that causes AIDS. Under New York State law, the person you are accused of raping or sexually assaulting (the victim) can ask the court to make you take HIV tests. If the court agrees, you (the defendant) will have to take these tests. This is called Defendant HIV Testing.

How does Defendant HIV Testing work?

If the court orders you to undergo HIV testing, a county or state public health officer will conduct the test. Before the test, the officer will tell you:

- What positive HIV test results mean.
- What negative HIV test results mean.
- Your health risks if you test positive for HIV.

Why is the "window period" so important?

If you were recently infected with HIV at the time of the sexual assault, you may test negative on a regular HIV antibody test for a month or more (the "window period") before you develop antibodies to HIV. That's why you will take an HIV viral load test if the victim asks for the test within 30 days of the assault. This test can find any HIV in your body, even before antibodies develop.

What happens if I test positive for HIV?

The public health officer who did the HIV tests will explain what your positive test results mean. Here are some main points they cover:

- **Getting treatment.** An HIV infection can be treated. The sooner you get medical treatment, the better your chances of staying healthy.
- **Telling your sex partner(s), if any – or needle-sharing partner(s), if any.** Your partner(s) needs to know they may have been exposed to HIV so they can get tested. They also need to get treated if they have HIV. Ask the public health officer who does your HIV tests for help telling your partner(s).
- **Don't pass HIV to others.** Avoid sharing drug injection equipment or having unprotected sex – sex without a condom.

What happens if I test negative for HIV?

If you took an HIV antibody test or an HIV viral load test and the results were negative, you do not have HIV. You will not have to take a follow-up test.

What happens with my HIV test results?

Who finds out?

Whether you test positive or negative for HIV, you have a right to privacy, or confidentiality with your test results. The court that orders your HIV tests must protect your privacy. The court must make sure your HIV test results are not shared with anyone who does not have a legal right to know the results.

Under the HIV defendant testing law, your HIV test results can be shared only with:

- **You, the defendant.** You do not have to know your HIV test results if you don't want to. But remember, HIV can be treated. If you have HIV, the sooner you find a health care provider and start medical treatment, the better your chances of staying healthy.
- **The victim.** The victim has the right to know whether you have HIV. This is known as your HIV status. They may share your status with close family members, a guardian, lawyer, doctor, and health care providers.
- What can the victim do if they believe their partner(s) may have been exposed to HIV? If the victim has a sex partner(s) or a needle-sharing partner(s), they can give them your HIV test results. The victim cannot tell them your name.

The court will not let anyone who knows about your test results tell anyone else.

Your HIV test results cannot be used as evidence against you.

- Your HIV test results cannot be shared with the court.
- 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.