

**NYS Department of Health  
AIDS Institute**

**Court Ordered HIV Testing of Defendants**

New York Laws of 2007, Chapter 571

**HEALTHCARE PROVIDERS ALERT**

As of November 1, 2007, New York State Criminal Procedure Law § 210.16 will require testing of criminal defendants, indicted for certain felony sex offenses, for human immunodeficiency virus (HIV), upon the request of the victim/survivor.

This law also amends New York State Public Health Law (subdivision 1 of section 2805-i) by adding a new paragraph that specifies that healthcare facilities providing treatment to victims/survivors of a sexual offense must:

1. offer and make available “appropriate HIV post-exposure treatment therapies in cases where it has been determined, in accordance with guidelines issues by the commissioner, that a significant exposure to HIV has occurred,” and
2. inform the victim/survivor that “payment assistance for such therapies may be available from the New York State Crime Victims Board (CVB) pursuant to the provisions of Article twenty-two of the Executive Law.”

**What is the effect of this law on the role of the Emergency Department healthcare provider?**

1. The medical treatment of the victim/survivor in the emergency department (ED) does not change. The victim/survivor should be evaluated in an ED as soon as possible for treatment and discussion of post exposure prophylaxis (PEP). If a significant exposure did occur and the decision is made to initiate PEP, it should be initiated ideally within 2 hours and generally no later than 36 hours from the time of the exposure. Studies have shown that the sooner PEP is initiated, the more likely it is to be effective.
2. The law now requires healthcare facilities providing treatment to victims/survivors of a sexual offense to offer appropriate HIV post-exposure treatment when it has been determined, in accordance with NYS Department of Health guidelines, that a significant exposure to HIV has occurred. Refer to [HIV Prophylaxis Following Non-Occupational Exposure Including Sexual Assault](#) for guidance on determining whether a significant exposure has occurred.
3. The ED must inform the victim/survivor that payment assistance for such therapies may be available from the CVB. To request brochures or find your local CVB, refer to <http://www.cvb.state.ny.us/vaps.htm>

Guidelines for [HIV Prophylaxis Following Non-Occupational Exposure Including Sexual Assault](#) (nPEP) may be found at [www.hivguidelines.org](http://www.hivguidelines.org)

**What is the effect of this law on the role of the healthcare provider providing follow-up care for the victim/survivor?**

1. If the defendant is tested for HIV within 30 days of the assault, the results may influence the decision to continue post-exposure prophylaxis. The NYS DOH AIDS Institute has issued guidance as to the type of HIV-related test that should be ordered, when follow-up testing is needed, and when discontinuing PEP may be possible. This guidance is entitled *Medical and Psychological Benefit Guidance for Defendant Testing* and can be found at [www.hivguidelines.org](http://www.hivguidelines.org).
2. It may be important to note that if the defendant tests positive for HIV before the victim's/survivor's own HIV tests results are definitive, there may be an increased need for psychological counseling.

**Materials:**

The following materials may be found at [www.hivguidelines.org](http://www.hivguidelines.org)

1. The Law – Testing Defendants for HIV – The Laws of NY, 2007, Chapter 271
2. Medical and Psychological Benefit Guidance for Defendant Testing, NYS DOH AIDS Institute, 10/07
3. Healthcare Provider Alert
4. Fact Sheet for Judges
5. Victim/Survivor Brochure
6. Defendant Brochure
7. Significant Exposure definition
8. HIV Prophylaxis Following Non-Occupational Exposure Including Sexual Assault, NYS DOH

**Visit these websites for information and assistance:**

1. HIV Clinical Education Initiative Line (CEI) – 24/7 educational consult line to call for clinical questions regarding HIV disease and post-exposure prophylaxis. [www.hivguidelines.org](http://www.hivguidelines.org)
2. Crime Victims Board – application for assistance and list of local Crime Victim Board contacts. [www.cvb.state.ny.us](http://www.cvb.state.ny.us)
3. Rape Crisis Center – for a list of local rape crisis centers, visit the New York Coalition Against Sexual Assault (NYSCASA) web site. [www.nyscasa.org/local-programs-nyscasa.html](http://www.nyscasa.org/local-programs-nyscasa.html)

Please contact Lyn Stevens, NP, MS, ACRN, Associate Director, Office of the Medical Director, NYS DOH AIDS Institute, at 518-473-8815 or [lcs02@health.state.ny.us](mailto:lcs02@health.state.ny.us), for any questions regarding medical guidance.