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# CHAIRMAN'S MEMORANDUM

## NO. 5-2008      May 12, 2008

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**TO: SHERIFFS, JAIL ADMINISTRATORS, FACILITY MEDICAL DIRECTORS, NYSDOCS SUPERINTENDANTS, NYSDOCS FACILITY HEALTH SERVICES DIRECTORS**

**RE: HEALTH ADVISORY: Court Ordered HIV Testing of Defendants**

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**HEALTH ADVISORY: COURT ORDERED HIV TESTING OF DEFENDANTS**

*Please Distribute Immediately*

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

This law also amends NYS Public Health Law (subdivision 1 of section 2805-i) by adding a new paragraph that specifies that health care 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 issued 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.”

A person indicted on a sexual offense may be released on bail or remanded to jail.

**If the defendant is remanded to jail, what is the jail's role in court ordered testing?**

If a victim/survivor requests HIV testing be done, the defendant will be notified by the courts. The district attorney's (DA's) office will communicate with the local county health department or jail to advise them testing has been requested and a court order is in process. If the defendant is in jail, the jail should determine if they have the capacity to provide testing or if they need to work with the county public health

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**Daniel L. Stewart, Chairman**

**Frederick C. Lamy, Commissioner**  
**Frances T. Sullivan, Commissioner**

official to have the testing done.

Most jails already have a protocol in place for testing felons **convicted** of sexual offense. This protocol would need to be modified to implement the new testing recommendations pertaining to individuals that have been **indicted** but not yet convicted.

**If HIV testing is not done on site at the jail**, it is likely that a relationship with the county public health officer has been established to provide HIV testing. The county public health officer will follow their protocol to provide HIV testing in a timely manner.

**If HIV testing is provided on site**, clinical staff of the jail will need to review the medical guidance for “indicted” defendants and develop a new protocol. The New York State Department of Health’s Wadsworth Laboratory will provide testing kits and complete HIV testing free of charge for counties outside of NYC.

Public health officials in each county have responsibilities under this law beyond actual HIV testing. The jail and county health department must work together to make sure each of the following tasks is completed.

Responsibilities to the Defendant – Provide pre-test counseling, obtain HIV test(s) as recommended by medical guidance and provide post-test counseling. Guidance can be found at:  
<http://www.hivguidelines.org/Module.aspx?moduleID=115>

Responsibilities to the Victim/Survivor – Notify victim/survivor of defendant test results. Tell victim/survivor to call health care provider, share results of testing and determine how to proceed with post-exposure prophylaxis.

Responsibilities to the Court – Notify court in writing that the test was performed and that the results were shared with the victim/survivor.

*The note to the court shall not disclose the results of HIV testing.*

Materials:

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

1. The Law-Testing Defendants for HIV – New York Laws 2007, Chapter 571
2. Medical and Psychological Benefit Guidance for Defendant Testing, NYSDOH AIDS Institute, 10/07
3. Health Care 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, NYSDOH, 11/07

Visit these web sites for information and assistance:

1. HIV Clinical Education Initiative Line (CEI) – 24/7 educational consult line for clinical questions regarding HIV disease and post-exposure prophylaxis.
2. [www.hivguidelines.org](http://www.hivguidelines.org).
3. 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).
4. Rape Crisis Center – for a list of local rape crisis centers visit the New York State Coalition against Sexual Assault (NYSCASA) web site.  
[www.nyscasa.org/local-programs-nyscasa.html](http://www.nyscasa.org/local-programs-nyscasa.html).

You can access these sites via the State Commission of Correction links web page:  
[www.scoc.state.ny.us](http://www.scoc.state.ny.us).

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

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**Daniel L. Stewart, Chairman**