

CHAPTER 23-07.7
COURT-ORDERED TESTING FOR SEXUALLY TRANSMITTED DISEASES

23-07.7-01. Court-ordered sexual offense medical testing.

1. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-12.1 or 12.1-20-13 or an alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of section 12.1-20-12.1 or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician.
2. If a defendant is charged with a sexual offense under chapter 12.1-20 in which the alleged victim is compelled by force or threat to engage in sexual activity or sexual contact, the prosecuting attorney shall inform the alleged victim that the alleged victim may request that a test for infection with the human immunodeficiency virus or any other identified agent of acquired immunodeficiency syndrome be administered to the defendant. If the alleged victim requests that the test be administered, the prosecuting attorney shall notify the court. The court shall order that the test be administered within forty-eight hours after the date the complaint or information is filed or after the defendant's initial appearance.
3. If a test is ordered under subsection 1 or 2, the physicians for the defendant or alleged juvenile offender and requesting alleged victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

23-07.7-02. Testing procedures - Results of test - Penalty. (Effective through August 31, 2022)

1. If testing is ordered by a court under section 23-07.7-01, only a health care provider, blood bank, blood center, or plasma center may obtain a specimen of bodily fluids or tissues for the purpose of testing.
2. The court shall order that the specimen be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, and sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.
3. The laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health.
4. Every copy of the test results must include the following disclaimer:

The testing was conducted in a medically approved manner, but tests cannot determine exposure to or infection by acquired immunodeficiency syndrome or other sexually transmitted diseases with absolute accuracy. Anyone receiving this test result should continue to monitor their own health and should consult a physician as appropriate.

5. The court shall order all persons, other than the test subject, who receive test results pursuant to section 23-07.7-01, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice. A person who intentionally discloses the results of any test in violation of this subsection and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.
6. The specimens and the results of tests ordered pursuant to section 23-07.7-01 are not admissible evidence in any civil, criminal, or juvenile proceeding.
7. Any person who performs testing, transmits test results, or discloses information pursuant to this chapter is immune from civil liability for any action undertaken in accordance with this chapter, except for an act or omission that constitutes gross negligence.
8. The county in which the alleged violation of chapter 12.1-20 occurred shall pay for the testing. A defendant who is convicted of the offense shall reimburse the county for the costs of testing.

Testing procedures - Results of test - Penalty. (Effective after August 31, 2022)

1. If testing is ordered by a court under section 23-07.7-01, only a health care provider, blood bank, blood center, or plasma center may obtain a specimen of bodily fluids or tissues for the purpose of testing.
2. The court shall order that the specimen be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, and sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.
3. The laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the department of health and human services.
4. Every copy of the test results must include the following disclaimer:

The testing was conducted in a medically approved manner, but tests cannot determine exposure to or infection by acquired immunodeficiency syndrome or other sexually transmitted diseases with absolute accuracy. Anyone receiving this test result should continue to monitor their own health and should consult a physician as appropriate.
5. The court shall order all persons, other than the test subject, who receive test results pursuant to section 23-07.7-01, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice. A person who intentionally discloses the results of any test in violation of this subsection and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.
6. The specimens and the results of tests ordered pursuant to section 23-07.7-01 are not admissible evidence in any civil, criminal, or juvenile proceeding.
7. Any person who performs testing, transmits test results, or discloses information pursuant to this chapter is immune from civil liability for any action undertaken in accordance with this chapter, except for an act or omission that constitutes gross negligence.

8. The county in which the alleged violation of chapter 12.1-20 occurred shall pay for the testing. A defendant who is convicted of the offense shall reimburse the county for the costs of testing.