641—11.72(709B) HIV test—convicted or alleged sexual assault offender.

11.72(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under Iowa Code chapter 709B.

11.72(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.71(709B).

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

11.72(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV test, if all of the following conditions are met:

a. The applicant states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.71(709B) and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.72(4) Upon receipt of the petition or application, the court shall:

a. 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 Iowa Code section 141.22, regarding the nature, reliability and significance of the HIV test and of any test results of the convicted offender. The counselor shall have a certificate of attendance from the department of public health-sponsored workshop on HIV serologic test counseling.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.72(5) A hearing under these rules shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. 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 or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, 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. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. 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 or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim 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 proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

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

11.72(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.72(7) A convicted offender who is required to undergo an HIV 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.