

641—11.34 (915) Testing, reporting, and counseling—penalties.

11.34(1) The physician or other practitioner who orders the testing for HIV of a convicted or alleged offender under Iowa Code chapter 915 shall disclose the results of the test to the convicted or alleged offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner.

11.34(2) Prior to ordering an HIV-related test on a convicted or alleged offender, the physician or practitioner shall provide information to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code section 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

11.34(3) At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage an HIV-infected person to participate in the voluntary partner notification program pursuant to rule 641—11.17(139A,141A).

b. The physician or other practitioner may provide to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment.

11.34(4) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.30(915) to 641—11.34(915).

11.34(5) Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

11.34(6) If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner; the physician of the victim if requested by the victim; and the county attorney, who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

11.34(7) The court shall not consider the disclosure of an alleged offender's serologic status to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.34(8) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.34(9) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.34(10) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.30(915) to 641—11.34(915), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.30(915) to 641—11.34(915), and the rights to a predislosure hearing and to appeal provided under Iowa Code chapter 915 shall apply.

11.34(11) HIV-related testing required under 641—11.30(915) to 641—11.34(915) shall be conducted by the state hygienic laboratory.

11.34(12) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.30(915) to 641—11.34(915).

11.34(13) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.34(14) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

11.34(15) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.34(16) A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1,000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the tested subject, and all documentation shall be maintained in a confidential manner.