

**H
I
V**

Issues
for
**Youth and
Young Adults**

YOUR LEGAL RIGHTS

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This is one in a series of booklets published by the AIDS LEGAL COUNCIL OF CHICAGO. All are designed to help you understand **YOUR LEGAL RIGHTS** in Illinois. The booklets in this series are:

HIV and Confidentiality

HIV and Discrimination

HIV and Insurance

HIV and Public Benefits

HIV and Undocumented Immigrants

HIV in the Workplace

HIV: Issues for Families with Children

HIV: Issues for Youth and Young Adults

HIV: Returning to Work

HIV: Wills and Powers of Attorney

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This guide is intended as an overview of HIV-related Illinois and federal law. As with any legal matter, it is always a good idea to consult an attorney concerning the particular circumstances of your case.

HIV: ISSUES FOR YOUTH AND YOUNG ADULTS

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INTRODUCTION

We live in a world where young people are not always given all the facts:

- ◆ about sex,
- ◆ about drug use, or
- ◆ about HIV.

It can be especially difficult for youth and young adults to get the facts about their legal rights.

When it comes to HIV, **it is important for you to know your rights**. Even if you've never taken an HIV test, you should know how the law protects you in case someday you decide to get an HIV test.

You could be infected with HIV if you have ever:

- ◆ HAD SEX WITH A MAN OR A WOMAN AND DID NOT USE A **LATEX** CONDOM
- ◆ BEEN **FORCED TO HAVE SEX** WITH A MAN OR A WOMAN AND DID NOT USE A LATEX CONDOM
- ◆ SHARED A NEEDLE TO PUT ANY KIND OF DRUG IN YOUR BODY
- ◆ BEEN PREGNANT
- ◆ BEEN TOLD YOU HAD A SEXUALLY TRANSMITTED DISEASE LIKE GONORRHEA, CHLAMYDIA, TRICHOMONAS, HERPES OR SYPHILIS

This booklet explains your legal rights to you in plain language. If you have more questions after you're done reading, you can call the AIDS LEGAL COUNCIL OF CHICAGO at **(312) 427.8990**. Someone there will be happy to speak with you.

Chapter One

GETTING AN HIV TEST

1) Do I need permission from my parent or guardian to get tested for HIV?

No. If you are 12 years of age or older, you don't need anyone's permission to get an HIV test. The Illinois public health code says that any person 12 or older can get an HIV test without permission from a parent or guardian. In fact, anyone 12 or older can get a test for any sexually transmitted disease without parental consent. So if you go to get an HIV test, and the doctor tells you that you need your parents' permission, that doctor is wrong.

However, getting an HIV test can be a scary experience. It takes a lot of courage to prepare yourself in case the test comes back positive. It is often a good idea to find a responsible adult who can help you go through this process. This adult may be a parent, guardian, teacher, friend – whoever you trust the most.

2) Where can I get an HIV test? How much does it cost?

You can get an HIV test at a health department clinic, at a private doctor's office, or in the privacy of your own home.

Most health department clinics offer free HIV tests. To find the clinic nearest you, look up the number of your city or county health department in the blue pages of the phone book.

You can also get an HIV test from a private doctor, but it will probably cost you \$30 or \$40. If you don't want your parents to know about your HIV test, be sure to tell your doctor.

3) Do I need to sign anything to get an HIV test?

No. But Illinois law says that medical professionals must document the fact that you consented to an HIV test. So it is legal for a doctor to just ask you if you want an HIV test. If you agree to get the test, the doctor will have to document that fact in your medical chart. This requirement prevents the doctor from testing you for HIV without telling you.

A doctor can ask you to sign a written consent to the test, but it's not required by law. If there is anything written on the form that you don't understand, you should ask someone to explain it to you.

It's important for you to know that you can still change your mind after you've signed the written consent. If you leave the clinic or doctor's office and realize that you don't want an HIV test after all, **you have the right to cancel that test.** You can call the clinic or doctor's office and tell them to stop your HIV test.

4) Do I have to give my name to get an HIV test?

It depends where you get the test done. It is important for you to know that **Illinois law gives every person the right to an anonymous HIV test.** If you get an anonymous test, then you don't have to give your name. You can get an anonymous HIV test at most public health clinics. When you get an anonymous test, the clinic usually knows you only by a code number; you never have to give your name.

If you go to your regular doctor for an HIV test, he does not have to do it anonymously. So if anonymity is important to you, make sure that you ask about it before the doctor draws your blood. If the doctor says he won't do the test anonymously, you have a right to stop the test from continuing, even if your blood has already been drawn.

5) If I test positive, do my parents or guardian have to be told?

Usually. If you are under 18 and test HIV positive, the Illinois public health code says that the health care worker who gave you your test result must encourage you to tell your parents or guardian. If a reasonable amount of time passes and the health care worker believes you have **not** informed your parents or guardian of your HIV status, then the health care worker must make an effort to tell them.

However, if the health care worker believes that it is **not** in your best interests to inform your parents about your HIV status, then the health care worker **MUST NOT DO SO**. For example, some young adults have been kicked out of the family home once their parents discover they are HIV positive. If you think your parents or guardian will do something bad to you if they find out you are HIV positive, be sure to tell the health care worker.

If you are under 18 and a court has declared you to be an **emancipated minor**, then your parents do not have to be told that you are HIV positive.

Of course, if you get an anonymous HIV test at a health department clinic, or you use a home HIV test kit, only you will know the result of the test. It will then be your decision to tell your parents or not.

6) If I don't want to get an HIV test, can my parents make me get one?

Yes. Unless you are at least 18, or a court has declared you to be an emancipated minor, your parents can ask your doctor to test you for HIV.

Chapter Two

DISCLOSING HIV TEST RESULTS

1) If I test positive for HIV, who will know the results?

The answer depends on whether you test **anonymously** or **confidentially**.

If you test **anonymously**, that means your name is not written on the test result. So the only person who knows your test result is the health care worker who informs you. And if you're testing anonymously, you don't even have to give that person your name. There is no other record of your HIV test. No one else will be informed.

If you test **confidentially**, that means your name is written on your test results. In that case, your doctor may have to disclose your HIV status to certain people, like the department of health or, if you are a student, the principal of your school. The rest of this chapter will discuss these and others situations in detail.

2) If I am a student and I test HIV positive, is my school informed?

Yes, if you test confidentially. Your school is usually informed if you are in elementary, middle or high school. See Chapter Three for more information on this question.

If you test anonymously, or use a home HIV test, no one will know your name and your school will not be told.

3) If I test HIV positive, does my doctor have to tell my husband, wife or sexual partners?

No. Your doctor is **not required** by law to tell your husband, wife or your sexual partners that you are HIV positive.

4) I understand that my doctor is not required by law to tell my husband or wife I'm HIV positive. But could my doctor do it anyway?

Yes, but not right away. According to Illinois law, your doctor **can** inform your husband or wife about your HIV status, **but he first must advise you to tell them yourself.** If later your doctor has reason to believe that you have not told your husband or wife, then your doctor may tell them that you are HIV positive. But your doctor is not required to do so.

The law does **not** allow your doctor to inform any sexual partner except your legal husband or wife.

5) If I test HIV positive, does my doctor have to tell my family or my roommate?

It depends on how old you are. If you are under 18, then your doctor can tell your **parents or guardian** if he believes you haven't. But your doctor can only tell your parents or guardian if there is no risk of your being hurt or thrown out of the house once they find out. See question 5 in Chapter One of this book for more information on this topic.

Your doctor could **not** legally tell your roommate without your permission.

If you are 18 or over, or if a court has declared you an emancipated minor, **then your doctor cannot legally tell anyone in your family your HIV status without your permission.** In fact, your doctor would be in violation of the law if

he told your family or your roommate that you are HIV positive without getting permission from you first. It is **your** decision whether or not to tell your family or roommate about your HIV status.

6) If I test HIV positive, does my doctor have to tell my employer?

Absolutely not. Most people who test HIV positive do not want their employer to know, because they worry that their employer might discriminate against them. **Your doctor has no right to tell your employer about your HIV status unless you say it's all right.**

For more information about your rights on the job, see the Council's booklet *HIV in the Workplace*.

7) If I test HIV positive, do I have to tell anyone when I have sex or share needles?

Illinois law says that any HIV positive person who does something which *could* transmit HIV is breaking the law. **You don't have to actually infect someone to break this law.** Just putting someone at risk is enough.

If you do not inform sexual or needle-sharing partners that you are HIV positive before you have sex or share needles, then you are breaking Illinois law. This is even true if you are practicing safer sex. Under Illinois law, if you wear a condom during intercourse but don't tell your sexual partner your HIV status, you might still be breaking the law.

To protect yourself legally, you should always disclose your HIV status before engaging in any sexual or needle-sharing behaviors.

8) I don't think I can bring myself to tell my sexual partners that I'm HIV positive. But I'd feel better if someone told them to get tested. Is there any way this can happen without using my name?

Yes. Your local department of health can notify your sexual and needle-sharing partners that they may be at risk for HIV, but they won't disclose your name. If you want the department of health to do this for you, you should call your local office and tell them you want to cooperate with their **voluntary partner notification program**. You will go down to the health department office and meet with a worker who will talk to you about your sexual and needle-sharing history. That worker will determine which of those people should be notified about the risk of HIV infection, and will contact those people. **But the worker will not disclose your name.**

Chapter Three

BEING HIV POSITIVE IN SCHOOL

1) If I test HIV positive, do I have to inform my school?

No. You have no legal obligation to inform the school about your HIV status. But as you will see in the next question, the school may be told by the public health department.

2) If I test HIV positive, will my school be told?

The answer depends on whether you test anonymously or not.

If you test anonymously, then no one knows your test result except you. So no one will be able to tell your school about your HIV status.

But if you don't test anonymously and your result is positive, then your school will be told. According to Illinois law, whenever a student aged 3 to 21 tests HIV positive, the department of public health must notify the principal at the school the student attends. The department must give the principal the student's name. If you are enrolled in a public school, then the principal must also inform the superintendent of your school district.

The principal and the superintendent are the only people who *must* be informed. However, the law says that the principal *may* inform certain specific other people:

- ◆ the school nurse
- ◆ your classroom teachers
- ◆ people who are required to decide placement or educational programs for you

These are the only people in the school who may be given your name.

In addition, the principal is allowed to tell other people working in the school that there is an HIV-positive student enrolled. *But the principal cannot reveal your name to these people.*

3) If I test HIV positive, do I have to tell the other students in my classes?

No. Legally the other students in your school have no right to know. It is your business, not theirs.

If the school announced your HIV status to other students, or the parents of other students, that would be a violation of the **Illinois AIDS Confidentiality Act**. For more information on confidentiality law, see our booklet *HIV and Confidentiality* or call the AIDS Legal Council at (312) 427.8990.

4) Once the principal finds out that I'm HIV positive, can the school keep me out?

No. You have just as much right to be in school as any other student. The only time the school could temporarily keep you out would be if you pose a "direct threat" of infecting other students. An HIV-positive student would not pose a direct threat, because HIV is not spread through casual contact.

5) The school just found out that I'm HIV positive. Now the principal says my younger brother can't come to school until he gets an HIV test. Is that legal?

Absolutely not. An HIV test is not required for any student to stay in school.

6) I'm HIV positive, and in the school cafeteria I have to use special silverware that no one else uses. Is this right?

No. HIV is not spread by reusing utensils. You should be treated like everyone else in the cafeteria.

Chapter Four

PLANNING FOR THE FUTURE

1) If I'm HIV positive, can I join the military?

No. The United States military will not allow anyone who is HIV positive to enlist at this time. It is also important to know that the military will test you for HIV before accepting you.

2) If I am applying for college, do I have to disclose my HIV status?

Absolutely not. Your HIV status is irrelevant to your academic abilities.

3) If I'm applying for a job, do I have to disclose my HIV status?

No. Your HIV status is not related to your ability to be a good worker. In fact, you cannot even be asked about your HIV status during a job interview. See our booklet *HIV in the Workplace* for more information on this topic.

Your HIV status would be a factor in applying for a job only if you might pose a direct threat to others by performing the job. About the only time you might pose such a threat would be if you were working as a surgeon.

