

# HIV and Texas Law

## Texas Department of State Health Services HIV/STD Program

In Texas, HIV is a reportable disease (Texas Health and Safety Code Section 81.041) and there are several laws regulating aspects of HIV testing and subsequent reporting.

### Minor Consent to HIV Test

Minors in Texas have the right to consent to the diagnosis and treatment of an infectious, contagious, or communicable disease that is reportable, including HIV (Texas Family Code Section 32.003). Providers should consider whether the minor has the capacity to consent. This means that the minor has the cognitive ability to understand the risks and benefits involved.

### Written Consent for HIV Test

When a general consent form for medical treatment has been signed and verbal consent for HIV testing is documented (thus constituting informed consent), a separate consent form for HIV testing is **not** required (Texas Health and Safety Code Sections 81.105 and 81.106). Other regulations apply to testing for non-medical purposes, such as insurance (Texas Health and Safety Code Section 81.108).

### Confidentiality

State laws that cover the confidentiality of HIV test results include Texas Health and Safety Code Sections 81.046, 81.103, and 81.106(b). Health care providers should also be knowledgeable regarding federal HIPAA requirements.

Confidentiality and HIPAA requirements do not prevent providers from reporting HIV to public health agencies.

### Testing for HIV During Pregnancy

Texas law requires physicians or others permitted by law to attend a woman during pregnancy or delivery to test her for HIV, syphilis and hepatitis B (Texas Health and Safety Code Section 81.090). She must be tested for HIV and syphilis at her first prenatal visit and during the third trimester. If no record of third trimester test results are available, expedited tests for HIV and syphilis must be conducted at delivery.

Expedited HIV testing of infants at delivery is also required if a mother's results are undetermined. The law also requires pregnant women to be tested for hepatitis B at her first prenatal visit and at delivery.



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## Requirements for Delivering a Positive HIV Test Result

Texas Health and Safety Code Section 81.109 requires that persons receiving a positive HIV test result be given the opportunity for immediate, face-to-face counseling about several aspects of the test.

There are several components that must be covered in the counseling to ensure the client understands the test result, is linked to available medical and social support resources, and knows how to prevent HIV transmission.

Health care providers can comply with Texas Health and Safety Code Section 81.109 by providing post-test counseling themselves or by contacting their local health department so a Disease Intervention Specialist (DIS) can deliver the result.

A DIS is specially trained to interview the patient, confidentially locate and notify partners about their potential exposure to HIV, offer appropriate services, and provide prevention counseling to patients and partners.<sup>1</sup>

## HIV and Partner Services

Partner Services refers to help offered to people with HIV and other STDs and their partners.

A key component of Partner Services is Partner Notification, the process of asking patients about partners and confidentially notifying those partners of possible transmission.

Partner Notification is covered under Texas Health and Safety Code Section 81.051 and is most often conducted by DIS.

A partner notification program must also provide linkage to medical and other support services to a person with an HIV infection, even if he or she does not disclose information about a partner.

Health care providers conducting HIV testing can locate services in their area at [dshs.texas.gov/hivstd/services/](https://dshs.texas.gov/hivstd/services/).

## Reporting HIV

Physicians (or a designee) are **required to report any case of HIV and AIDS** according to Texas Administrative Code, Title 25, Part 1, Chapter 97, Subchapter F, Rules §97.131- §97.134.

To learn more about reporting HIV, visit the DSHS HIV/STD disease reporting page at [dshs.texas.gov/hivstd/reporting/](https://dshs.texas.gov/hivstd/reporting/).

*Disclaimer: The Department of State Health Services is providing this information for informational and training purposes only. Nothing in these materials should be construed as legal advice. Please consult your own legal counsel if you have questions concerning any of the laws discussed in this handout.*

<sup>1</sup> Recommendations for Partner Services Programs for HIV Infection, Syphilis, Gonorrhea, and Chlamydia Infection. 2008 Centers for Disease Control and Prevention (CDC). Morbidity and Mortality Weekly Report (MMWR) 57 (1-63).

# RESOURCES FOR HIV & THE LAW

Visit [gettested.cdc.gov](https://gettested.cdc.gov) to find an HIV or STD testing site.

Call 211 or (800) CDC-INFO to find an HIV/AIDS service provider in Texas or locate other patient resources.

Test Texas HIV Coalition has provider resources for HIV testing at [testtexas.org](https://testtexas.org).

The DSHS HIV/STD program provides links to Texas rules and laws. Visit [dshs.texas.gov/hivstd/policy/laws.shtm](https://dshs.texas.gov/hivstd/policy/laws.shtm) for more information.

## DSHS HIV/STD Program

(737) 255-4300  
[dshs.texas.gov/hivstd](https://dshs.texas.gov/hivstd)

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