



**NOTICE TO ALLEGED OFFENDER IN RESPECT OF ORDER FOR HIV TESTING**

*Section 31(5)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007  
(Act No. 32 of 2007)*

**IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF .....**

**HELD AT .....**

Case No.:.....

*(To be handed to the alleged offender by the investigating officer)*

To: .....

(the alleged offender) charged with the offence of .....

.....

against ..... (the victim).

The purpose of this notice is to inform you that the court mentioned above issued an order to have you tested for HIV without your consent and to disclose the result of the test to the victim or an interested person acting on behalf of the victim and, where applicable, to the prosecutor responsible for your prosecution or any other related court proceedings.

**What is HIV infection?**

HIV refers to infection with the human immuno-deficiency virus. HIV destroys important cells that control and support the immune system. As a result, the body's natural built-in defence mechanisms are weakened and find it difficult to offer resistance against illnesses. Most people infected with HIV ultimately develop AIDS and die as their bodies can no longer offer any resistance to illnesses such as TB, pneumonia and meningitis. Infection with HIV therefore has serious consequences for you as an individual. There is currently no cure for HIV/AIDS.

**How is HIV transmitted?**

HIV is transmitted in three different ways:

- during sexual intercourse;
- during a blood transfusion when HIV infected blood is passed directly into the body; and
- from a mother to a fetus during pregnancy, childbirth or whilst breast feeding.

**Can HIV be transmitted during the commission of a sexual offence?**

Yes. If there is any exposure to HIV infected blood, semen or vaginal fluid during the commission of the offence, HIV may be transmitted.

**Why should I be tested for HIV?**

You may have exposed the victim to HIV during the commission of the alleged sexual offence or offence as defined in section 27 of the Act with which you are charged. (Section 27 of the Act defines a “sexual offence” as a sexual offence in terms of which the victim may have been exposed to body

fluids of the alleged offender, and an “offence” is defined as any offence, other than a sexual offence, in which the HIV status of the alleged offender may be relevant for purposes of investigation or prosecution). In the light of the serious consequences of HIV infection and the fear of victims of being infected with HIV, victims have the right to apply for the HIV testing of the alleged offenders and to have the result disclosed to them. The investigating officer may also apply to have you tested for HIV.

### **How will knowledge about my HIV status help the alleged victim?**

The result of the test may help him or her —

- to decide whether to submit himself or herself to medical treatment which is costly and has serious effects but could prevent him or her from contracting the virus;
- to take measures to prevent the virus from being transmitted further from himself or herself to other persons (eg to the sexual partner of the victim or to her baby if she is pregnant or breast-feeding); and
- to provide the victim with peace of mind regarding his or her possible exposure to HIV during the alleged commission of the sexual offence.

### **Who granted the order that I be tested for HIV?**

A magistrate from the magistrate’s court in the district in which you allegedly committed the sexual offence or offence granted the order.

### **On what basis has the court order been granted?**

The magistrate granted the order after considering evidence on oath by the person who applied to have you tested for HIV and by the investigating officer. The magistrate is satisfied that on a *prima facie* basis —

- you have committed a sexual offence or offence against the victim who applied, or on whose behalf application was made, to have you tested for HIV;
- in the course of the commission of the alleged offence, the victim may have been exposed to your body fluids (semen, blood or vaginal fluid); and
- no more than 90 calendar days have lapsed from the date of the alleged commission of the offence.

You must note that the existence of *prima facie* evidence against you does not mean that you will be convicted of the crime. The state must prove beyond reasonable doubt that you committed the offence you are charged with. *Prima facie* evidence is utilized for the application to have you tested for HIV without your consent.

### **May I refuse to have my blood samples tested for HIV?**

No. It is an order of the court. The magistrate may also issue a Warrant of Arrest if there is reason to believe that you may avoid compliance with the order or have already avoided compliance therewith. If you fail to comply with, or avoid compliance with a court order for your HIV testing, you are guilty of an offence and may be liable on conviction to a fine or to imprisonment for a period not exceeding three years.

### **How will I be tested for HIV?**

The investigating officer will take you to a registered medical practitioner or nurse who will take two blood samples from you. The investigating officer will take the properly identified samples to a designated public health establishment where they will be tested for HIV.

**Who will pay for the HIV testing?**

The State. It will not cost you any money.

**Will I be informed about the HIV test result?**

Yes. The investigating officer will ensure that you receive the HIV test result and information on where you can obtain assistance in dealing with the results and the implications thereof.

**What if the charge against me is a false charge?**

Any person who, with malicious intent, lays a charge with the South African Police Service in respect of an alleged sexual offence with the intention to apply in terms of section 30(1) of the Act to ascertain the HIV status of any person, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years.

**Will the test result be disclosed to other persons?**

The HIV test results may only be disclosed to the victim or the interested person who applied for the compulsory HIV testing of the alleged offender, yourself (as the alleged offender), the investigating officer and the prosecutor, where applicable, or any other person who needs to know the test results for purposes of any civil proceedings or an order of the court.

**Will the test result be used in the trial against me?**

Yes. Section 34 of the Act provides that the results of an HIV test may be used as evidence in any civil proceedings ensuing from the sexual offence or to enable the investigating officer to gather information for purposes of criminal proceedings.

**How does my HIV status affect others?**

Your HIV status does not only have serious implications for the alleged victim, but also for your own health and the health of others (eg your sexual partner or baby). Every person has the responsibility not to put others at risk of HIV infection. It is important that you obtain advice, assistance and information on treatment if you are HIV positive and on how to protect yourself and others against infection with HIV.

**Are there any service organizations which can provide counseling and support?**

There are a number of private and public institutions that will assist you to deal with the implications of the HIV test results. Some of these services are free of charge, while others may require the payment of a fee. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist);
- Public medical and social facilities, including —
  - Life Line
  - Child Line
  - Child protection organizations
  - Local State Hospitals and Clinics
  - Rape Crisis
  - FAMSA
  - Departments of Social Welfare
  - Local AIDS Service Organizations

Contact details of these service providers are available in the telephone directory, from the investigating officer and from the prison authorities.