

1 **ENHANCED PENALTIES FOR HIV POSITIVE OFFENDER**

2 **AMENDMENTS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jerry W. Stevenson**

6 House Sponsor: Brad R. Wilson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Criminal Code regarding standards for charging an HIV positive
11 offender with certain felony sexual offenses, and also changes the notification
12 requirements regarding the offender's positive HIV test results.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides that an HIV positive person engaged in prostitution, patronizing a
16 prostitute, or sexual solicitation, and who is HIV positive, is guilty of a third degree
17 felony;
- 18 ▶ modifies definitions;
- 19 ▶ provides that a person who has tested positive for the HIV infection shall be notified
20 of the test results in person by a law enforcement agency, Department of
21 Corrections, or Department of Health, or an authorized representative of any of
22 these agencies;
- 23 ▶ requires that the notice contain the signature of the HIV positive individual and the
24 name and signature of the person providing the notice; and
- 25 ▶ provides that failure to provide the notice, or failure to provide notice in the manner
26 or form prescribed, does not create any civil liability and does not create a defense
27 to any prosecution under this part.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **76-10-1309**, as enacted by Laws of Utah 1993, Chapter 179

35 **76-10-1310**, as enacted by Laws of Utah 1993, Chapter 179

36 **76-10-1312**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **76-10-1309** is amended to read:

40 **76-10-1309. Enhanced penalties -- HIV positive offender.**

41 A person who is ~~[an HIV positive individual and has actual knowledge of that fact and~~
42 ~~has received written personal notice of the positive test results from a law enforcement agency~~
43 ~~pursuant to Section 76-10-1312 and is]~~ convicted of prostitution under Section 76-10-1302,
44 patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section
45 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV
46 positive individual, and the person:

47 ~~[(1) prostitution under Section 76-10-1302 shall be guilty of a felony of the third~~
48 ~~degree;]~~

49 ~~[(2) patronizing a prostitute under Section 76-10-1303 shall be guilty of a felony of a~~
50 ~~third degree; or]~~

51 ~~[(3) sexual solicitation under Section 76-10-1313 shall be guilty of a felony of the third~~
52 ~~degree.]~~

53 (1) has actual knowledge of the fact; or

54 (2) has previously been convicted under Section 76-10-1302, 76-10-1303, or
55 76-10-1313.

56 Section 2. Section **76-10-1310** is amended to read:

57 **76-10-1310. Definitions.**

58 (1) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV)
59 infection determined by current medical standards and detected by any of the following:

60 (a) presence of antibodies to HIV, verified by a positive confirmatory test, such as
61 Western blot or other method approved by the Utah State Health Laboratory. Western blot
62 interpretation will be based on criteria currently recommended by the Association of State and
63 Territorial Public Health Laboratory Directors;

64 (b) presence of HIV antigen;

65 (c) isolation of HIV; or

66 (d) demonstration of HIV proviral DNA.

67 (2) "HIV positive individual" means a person who ~~[is HIV positive and has actual~~
68 ~~knowledge of his disease]~~ has an HIV infection as determined under Subsection (1).

69 (3) "Local law enforcement agency" means the agency responsible for investigation of
70 the violations of Sections 76-10-1302, 76-10-1303, and 76-10-1313, the filing of charges
71 which may lead to conviction, and the conducting of or obtaining the results of tests for HIV
72 infection.

73 ~~[(4) "Notice" means the HIV positive individual has been notified by the law~~
74 ~~enforcement agency as provided in Section 76-10-1312.]~~

75 ~~[(5)]~~ (4) "Positive" means an indication of the HIV infection as defined in Subsection
76 (1).

77 ~~[(6)]~~ (5) "Test" or "testing" means a test or tests for HIV infection in accordance with
78 standards recommended by the Department of Health.

79 Section 3. Section **76-10-1312** is amended to read:

80 **76-10-1312. Notice to offender of HIV positive test results.**

81 (1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has
82 tested positive for the HIV infection shall be notified of the test results in person [at the
83 sentencing hearing in the presence of the judge and counsel only.] by:

84 ~~[(2) Whenever practicable, prior to notification in the district court, the offender shall~~
85 ~~be served personally with written notice by the local law enforcement agency at a meeting with~~

86 a local law enforcement officer and a person from the state or county health department.]

87 [(a) At that meeting, the offender shall be informed of the test results and counseled on
88 HIV infection and its effects.]

89 [(b) The local law enforcement agency shall arrange the time and place of notification
90 and counseling.]

91 (a) the local law enforcement agency;

92 (b) the Department of Corrections, for offenders confined in any state prison;

93 (c) the state Department of Health; or

94 (d) an authorized representative of any of the agencies listed in this Subsection (1).

95 [(3)] (2) The notice under Subsection (1) shall contain [the following information] the
96 signature of the HIV positive person, indicating the person's receipt of the notice, the name and
97 signature of the person providing the notice, and:

98 (a) the date of the test;

99 (b) the positive test results;

100 (c) the name of the HIV positive individual; and

101 (d) the following language:

102 "A person who has been convicted of prostitution under Section 76-10-1302,
103 patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section
104 76-10-1313 after being tested and diagnosed as an HIV positive individual and [~~receiving~~
105 ~~actual notice and personal written notice of the positive test results shall be~~] either had actual
106 knowledge that the person is an HIV positive individual or the person has previously been
107 convicted of any of the criminal offenses listed above is guilty of a third degree felony [of the
108 third degree pursuant to] under Section 76-10-1309."

109 (3) Failure to provide this notice, or to provide the notice in the manner or form
110 prescribed under this section, does not create any civil liability and does not create a defense to
111 any prosecution under this part.

112 (4) Upon conviction under Section 76-10-1309, and as a condition of probation, the
113 offender shall receive treatment and counseling for HIV infection and drug abuse as provided

114 in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.