

SB0050S01 compared with SB0050

~~{deleted text}~~ shows text that was in SB0050 but was deleted in SB0050S01.

inserted text shows text that was not in SB0050 but was inserted into SB0050S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator Jerry W. Stevenson proposes the following substitute bill:

ENHANCED PENALTIES FOR HIV POSITIVE OFFENDER

AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: ~~{_____}~~ Brad R. Wilson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that an HIV positive person engaged in prostitution, patronizing a prostitute, or sexual solicitation, and who ~~{ "knew or should have known" of the }~~ is HIV positive ~~{ test results }~~, is guilty of a third degree felony;
- ▶ modifies definitions;

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- ▶ provides that a person who has tested positive for the HIV infection shall be notified of the test results in person by a law enforcement agency, Department of Corrections, or Department of Health, or an authorized representative of any of these agencies;
- ▶ requires that the notice contain the signature of the HIV positive individual and the name and signature of the person providing the notice; and
- ▶ provides that failure to provide the notice, or failure to provide notice in the manner or form prescribed, does not create any civil liability and does not create a defense to any prosecution under this part.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

~~[(1) prostitution under Section 76-10-1302 {} shall be {} is] guilty of a {third degree } felony {} of the third degree.}] {}~~

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

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

(1) has actual knowledge of the fact; or

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

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

76-10-1310. Definitions.

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

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

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

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

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

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

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

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

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

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

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person [at the sentencing hearing in the presence of the judge and counsel only.] by the local law enforcement agency, the Department of Corrections, or the state Department of Health, or by an authorized representative of any of these agencies; ~~the~~

~~[(2) Whenever practicable, prior to notification in the district court, the offender shall be served personally with written notice by the local law enforcement agency at a meeting with a local law enforcement officer and a person from the state or county health department.]~~

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

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

(a) the local law enforcement agency;

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

(c) the state Department of Health; or

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

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

(a) the date of the test;

(b) the positive test results;

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

(d) the following language:

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

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

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

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Legislative Review Note

~~as of 12-13-10 7:17 AM~~

~~Office of Legislative Research and General Counsel}~~