

1 **ENHANCED PENALTIES FOR HIV POSITIVE OFFENDER**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: Curtis Oda

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 offenses, and also changes the notification requirements
12 regarding 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, who "knew or should have known" of the HIV
17 positive test results, is guilty of a third degree 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 **Monies 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]~~ knew or should
42 have known of that fact ~~[and has received written personal notice of the positive test results~~
43 ~~from a law enforcement agency pursuant to Section 76-10-1312]~~ and is convicted of:

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

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

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

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

51 **76-10-1310. Definitions.**

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

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

58 (b) presence of HIV antigen;

59 (c) isolation of HIV; or

60 (d) demonstration of HIV proviral DNA.

61 (2) "HIV positive individual" means a person who is HIV positive [~~and has actual~~
62 ~~knowledge of his disease~~].

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

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

69 [~~(5)~~ (4) "Positive" means an indication of the HIV infection as defined in Subsection
70 (1).

71 [~~(6)~~ (5) "Test" or "testing" means a test or tests for HIV infection in accordance with
72 standards recommended by the Department of Health.

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

74 **76-10-1312. Notice to offender of HIV positive test results.**

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

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

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

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

87 [~~(3)~~ (2) The notice under Subsection (1) shall contain [~~the following information~~] the
88 signature of the HIV positive individual, indicating receipt of the notice, the name and
89 signature of the person providing the notice, and:

- 90 (a) the date of the test;
- 91 (b) the positive test results;
- 92 (c) the name of the HIV positive individual; and
- 93 (d) the following language:

94 "A person who has been convicted of prostitution under Section 76-10-1302,
95 patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section
96 76-10-1313 after being tested and diagnosed as an HIV positive individual and [~~receiving~~
97 ~~actual notice and personal written notice of the positive test results shall be~~] who knew or
98 should have known that the person is an HIV positive individual is guilty of a third degree
99 felony [of the third degree pursuant to] under Section 76-10-1309."

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

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

Legislative Review Note
as of 2-5-10 10:30 AM

Office of Legislative Research and General Counsel