

HIV TESTING OF ALLEGED SEX OFFENDERS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies Criminal Code and public health provisions regarding testing of sex offenders for HIV to include alleged sex offenders.

Highlighted Provisions:

This bill:

► provides that a defendant charged with a sex offense shall be tested for HIV upon the request of the victim **§→ and in accordance with specified procedures ←§** ; and

► provides that if the defendant is a minor charged with a sex offense, the minor shall be tested for HIV upon the request of the victim, and in accordance with current law regarding testing of a minor **§→ , and in accordance with specified procedures ←§** .

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-30, as last amended by Laws of Utah 2008, Chapter 339

26A-1-114, as last amended by Laws of Utah 2009, Chapters 304 and 339

76-5-501, as enacted by Laws of Utah 1993, Chapter 40

76-5-502, as enacted by Laws of Utah 1993, Chapter 40

H.B. 324



214 the plan, and requested by the local health department; and

215 (iv) is reviewed and updated annually.

216 (3) The local health department has the following duties regarding public and private
217 schools within its boundaries:

218 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
219 persons attending public and private schools;

220 (b) exclude from school attendance any person, including teachers, who is suffering
221 from any communicable or infectious disease, whether acute or chronic, if the person is likely
222 to convey the disease to those in attendance; and

223 (c) (i) make regular inspections of the health-related condition of all school buildings
224 and premises;

225 (ii) report the inspections on forms furnished by the department to those responsible for
226 the condition and provide instructions for correction of any conditions that impair or endanger
227 the health or life of those attending the schools; and

228 (iii) provide a copy of the report to the department at the time the report is made.

229 (4) If those responsible for the health-related condition of the school buildings and
230 premises do not carry out any instructions for corrections provided in a report in Subsection
231 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
232 persons responsible.

233 (5) The local health department may exercise incidental authority as necessary to carry
234 out the provisions and purposes of this part.

235 (6) Nothing in this part may be construed to authorize a local health department to
236 enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon
237 monoxide detector in a residential dwelling against anyone other than the occupant of the
238 dwelling.

239 Section 3. Section **76-5-501** is amended to read:

240 **76-5-501. Definitions.**

241 For purposes of this part:

242 (1) [~~Convicted~~] "Alleged sexual offender" means a person or a ~~Ĥ→~~ [juvenile] minor ~~←Ĥ~~
242a [as provided
243 in Subsection 76-5-502(1)] regarding whom an indictment ~~Ĥ→~~ , petition, ~~←Ĥ~~ or an
243a information ~~Ĥ→~~ [approved by a
244 ~~judge alleges has committed~~] has been filed ~~Ŝ→~~ or an arrest has been made ~~←Ŝ~~ alleging the
244a commission of ~~←Ĥ~~ a sexual offense or an
244a attempted sexual offense under Title 76.

245 Chapter 5, Part 4, Sexual Offenses ~~H→~~, and regarding which ~~S→~~:
 245a (a) ←S a judge has signed an
 245a accompanying arrest warrant, pick up order, or any other order based upon probable cause
 245b regarding the alleged offense ←H S→; and
 245c (b) the judge has found probable cause to believe that the alleged victim has been exposed to
 245d HIV infection as a result of the alleged offense ←S .

246 (2) "Department of Health" means the state Department of Health as defined in Section
 247 26-1-2.

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

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

254 (b) presence of HIV antigen;

255 (c) isolation of HIV; or

256 (d) demonstration of HIV proviral DNA.

257 (4) "HIV positive individual" means a person who is HIV positive as determined by the
 258 State Health Laboratory.

259 (5) "Local department of health" means the department as defined in Subsection
 260 26A-1-102(5).

261 (6) "Minor" means a person younger than 18 years of age.

262 ~~[(6)] (7)~~ "Positive" means an indication of the HIV infection as defined in Subsection
 263 (3).

264 ~~[(7)] (8)~~ "Sexual offense" means a violation of state law prohibiting a sexual offense
 265 under Title 76, Chapter 5, Part 4, Sexual Offenses.

266 ~~[(8)] (9)~~ "Test" or "testing" means a test or tests for HIV infection conducted by and in
 267 accordance with standards recommended by the Department of Health.

268 Section 4. Section **76-5-502** is amended to read:

269 **76-5-502. Mandatory testing -- Liability for costs.**

270 ~~[(1)(a) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty~~
 271 ~~and mentally ill, a plea of not guilty by reason of insanity or been found guilty for violation of a~~
 272 ~~sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, or a juvenile~~
 273 ~~who is adjudicated to have violated or attempted to violate state law prohibiting a sexual~~
 274 ~~offense under Title 76, Chapter 5, Part 4, shall be required to submit to a mandatory test upon~~
 275 ~~the request of a victim or the parent or legal guardian of the minor victim or victim of a sexual~~

276 offense within six months of conviction to determine if the offender is an HIV positive
277 individual.]

278 ~~[(b) The court shall order the convicted sexual offender to submit to the test upon~~
279 ~~sentencing or as a condition of probation. The order to the convicted sexual offender shall not~~
280 ~~include the identity and address of the victim requesting the test. The court shall forward the~~
281 ~~order to the Department of Health, including separate information about the victim's identity~~
282 ~~and address for notification and counseling purposes.]~~

283 (1) (a) ~~H→~~ **[If an indictment or information alleges that a person who is an adult or a**
284 **juvenile has committed a sexual offense or an attempted sexual offense, the] An ←H** alleged victim of
285 **the H→ sexual ←H offense H→, the parent or guardian of an alleged victim who is a minor,**
285a **or the guardian of an alleged victim who is a vulnerable adult as defined in**
285b **Section 62A-3-301 [described in the indictment or information] ←H** may request that the alleged
285c **H→ sexual ←H offender**
286 **against whom the indictment H→ [or], ←H information H→, or petition ←H is filed S→ or**
286a1 **regarding whom the arrest has been made ←S** be tested
286a **to determine whether the alleged**
287 **offender is an HIV positive individual.**

288 (b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender
289 be tested, the alleged offender shall submit to being tested not later than 48 hours after an
290 information or indictment is filed S→ or an order requiring a test is signed ←S .

291 (c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be
292 tested more than 48 hours after an information or indictment is filed, the offender shall submit
293 to being tested not later than 24 hours after the request is made.

294 (d) As soon as practicable, the results of the test conducted pursuant to this section
295 shall be provided to:

296 (i) the alleged victim who requested the test;

297 (ii) the parent or guardian of the alleged victim, if the alleged victim is a minor H→ ;

297a (iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as
297b defined in Section 62A-3-301 ←H ; H→ [and]

298 [(iii)] (iv) ←H the alleged offender H→ ; and

298a (v) the parent or legal guardian of the alleged offender, if the offender is a minor ←H .

299 (e) If follow-up testing is medically indicated, the results of follow-up testing of the
300 defendant shall be sent as soon as practicable to:

301 (i) the alleged victim;

302 (ii) the parent or guardian of the alleged victim if the alleged victim is younger than 18

303 years of age;
303a **↔ (iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as**
303b **defined in Section 62A-3-301; [and]**
304 **[↔] (iv) ↔ the alleged offender ↔ ; and**
304a **(v) the parent or legal guardian of the alleged offender, if the offender is a minor ↔ .**
305 (2) If the mandatory test has not been conducted, and the [~~convicted~~] alleged offender
306 or [~~adjudicated~~] alleged ↔ **[juvenile] minor ↔** offender is already confined in a county jail,
306a state prison, or a

400 (3) HIV testing ~~[may]~~ shall be conducted on a minor who is taken into custody after
 401 having been adjudicated to have violated state law prohibiting a sexual offense under Title 76,
 402 Chapter 5, Part 4, Sexual Offenses, upon the request of the victim ~~H→~~ ~~[or]~~ , ~~←H~~ the parent or
 402a guardian of a
 403 ~~[child]~~ victim younger than 14 years of age H→ , or the legal guardian of the alleged victim
 403a if the victim is a vulnerable adult as defined in Section 62A-3-301 ←H .

404 (4) HIV testing shall be conducted on a minor against whom ~~S→~~ ~~[an information or~~
 405 ~~indictment is]~~ a petition has been ←S filed S→ or a pickup order has been issued ←S for
 405a commission of any offense under Title 76, Chapter 5, Part 4, Sexual
 406 Offenses, upon the request of the victim H→ [or] , ←H the parent or guardian of a victim
 406a younger than 14
 407 years of age H→ , or the legal guardian of the alleged victim if the victim is a vulnerable
 407a adult as defined in Section 62A-3-301 ←H S→ , and regarding which:

407b (a) a judge has signed an accompanying arrest warrant, pick up order, or any other
 407c order based upon probable cause regarding the alleged offense; and

407d (b) the judge has found probable cause to believe that the alleged victim has been exposed to
 407e HIV infection as a result of the alleged offense ←S .

408 ~~[(4)]~~ (5) HIV tests, photographs, and fingerprints may not be taken of a child younger
 409 than 14 years of age without the consent of the court.

410 ~~[(5)]~~ (6) (a) Photographs may be distributed or disbursed to individuals or agencies
 411 other than state or local law enforcement agencies only when a minor 14 years of age or older
 412 is charged with an offense which would be a felony if committed by an adult.

413 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than
 414 state or local law enforcement agencies.

415 ~~[(6)]~~ (7) When a minor's juvenile record is expunged, all photographs and other records
 416 as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint
 417 records may not be destroyed.

Legislative Review Note
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Office of Legislative Research and General Counsel