

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

► 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.

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



28 **76-5-504**, as last amended by Laws of Utah 1997, Chapter 10
29 **77-37-3**, as last amended by Laws of Utah 2008, Chapters 339 and 382
30 **78A-6-1104**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

33 Section 1. Section **26-1-30** is amended to read:

34 **26-1-30. Powers and duties of department.**

35 (1) The department shall:

36 (a) enter into cooperative agreements with the Department of Environmental Quality to
37 delineate specific responsibilities to assure that assessment and management of risk to human
38 health from the environment are properly administered; and

39 (b) consult with the Department of Environmental Quality and enter into cooperative
40 agreements, as needed, to ensure efficient use of resources and effective response to potential
41 health and safety threats from the environment, and to prevent gaps in protection from potential
42 risks from the environment to specific individuals or population groups.

43 (2) In addition to all other powers and duties of the department, it shall have and
44 exercise the following powers and duties:

45 (a) promote and protect the health and wellness of the people within the state;

46 (b) establish, maintain, and enforce rules necessary or desirable to carry out the
47 provisions and purposes of this title to promote and protect the public health or to prevent
48 disease and illness;

49 (c) investigate and control the causes of epidemic, infectious, communicable, and other
50 diseases affecting the public health;

51 (d) provide for the detection, reporting, prevention, and control of communicable,
52 infectious, acute, chronic, or any other disease or health hazard which the department considers
53 to be dangerous, important, or likely to affect the public health;

54 (e) collect and report information on causes of injury, sickness, death, and disability
55 and the risk factors that contribute to the causes of injury, sickness, death, and disability within
56 the state;

57 (f) collect, prepare, publish, and disseminate information to inform the public
58 concerning the health and wellness of the population, specific hazards, and risks that may affect

59 the health and wellness of the population and specific activities which may promote and protect
60 the health and wellness of the population;

61 (g) establish and operate programs necessary or desirable for the promotion or
62 protection of the public health and the control of disease or which may be necessary to
63 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the
64 programs may not be established if adequate programs exist in the private sector;

65 (h) establish, maintain, and enforce isolation and quarantine, and for this purpose only,
66 exercise physical control over property and individuals as the department finds necessary for
67 the protection of the public health;

68 (i) close theaters, schools, and other public places and forbid gatherings of people
69 when necessary to protect the public health;

70 (j) abate nuisances when necessary to eliminate sources of filth and infectious and
71 communicable diseases affecting the public health;

72 (k) make necessary sanitary and health investigations and inspections in cooperation
73 with local health departments as to any matters affecting the public health;

74 (l) establish laboratory services necessary to support public health programs and
75 medical services in the state;

76 (m) establish and enforce standards for laboratory services which are provided by any
77 laboratory in the state when the purpose of the services is to protect the public health;

78 (n) cooperate with the Labor Commission to conduct studies of occupational health
79 hazards and occupational diseases arising in and out of employment in industry, and make
80 recommendations for elimination or reduction of the hazards;

81 (o) cooperate with the local health departments, the Department of Corrections, the
82 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
83 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,
84 convicted sexual offenders, and any victims of a sexual offense;

85 (p) investigate the cause of maternal and infant mortality;

86 (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians
87 and drivers of motor vehicles killed in highway accidents be examined for the presence and
88 concentration of alcohol;

89 (r) provide the commissioner of public safety with monthly statistics reflecting the

90 results of the examinations provided for in Subsection (2)(q) and provide safeguards so that
91 information derived from the examinations is not used for a purpose other than the compilation
92 of statistics authorized in this Subsection (2)(r);

93 (s) establish qualifications for individuals permitted to draw blood pursuant to Section
94 41-6a-523, and to issue permits to individuals it finds qualified, which permits may be
95 terminated or revoked by the department;

96 (t) establish a uniform public health program throughout the state which includes
97 continuous service, employment of qualified employees, and a basic program of disease
98 control, vital and health statistics, sanitation, public health nursing, and other preventive health
99 programs necessary or desirable for the protection of public health;

100 (u) adopt rules and enforce minimum sanitary standards for the operation and
101 maintenance of:

102 (i) orphanages;

103 (ii) boarding homes;

104 (iii) summer camps for children;

105 (iv) lodging houses;

106 (v) hotels;

107 (vi) restaurants and all other places where food is handled for commercial purposes,
108 sold, or served to the public;

109 (vii) tourist and trailer camps;

110 (viii) service stations;

111 (ix) public conveyances and stations;

112 (x) public and private schools;

113 (xi) factories;

114 (xii) private sanatoria;

115 (xiii) barber shops;

116 (xiv) beauty shops;

117 (xv) physicians' offices;

118 (xvi) dentists' offices;

119 (xvii) workshops;

120 (xviii) industrial, labor, or construction camps;

- 121 (xix) recreational resorts and camps;
 - 122 (xx) swimming pools, public baths, and bathing beaches;
 - 123 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
124 centers, and places used for public gatherings; and
 - 125 (xxii) of any other facilities in public buildings and on public grounds;
 - 126 (v) conduct health planning for the state;
 - 127 (w) monitor the costs of health care in the state and foster price competition in the
128 health care delivery system;
 - 129 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
130 Chapter 21, Health Care Facility Licensing and Inspection Act;
 - 131 (y) license the provision of child care;
 - 132 (z) accept contributions to and administer the funds contained in the Organ Donation
133 Contribution Fund created in Section 26-18b-101; and
 - 134 (aa) serve as the collecting agent, on behalf of the state, for the nursing care facility
135 assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act,
136 and adopt rules for the enforcement and administration of the nursing facility assessment
137 consistent with the provisions of Title 26, Chapter 35a.
- 138 Section 2. Section **26A-1-114** is amended to read:
- 139 **26A-1-114. Powers and duties of departments.**
- 140 (1) A local health department may:
 - 141 (a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances,
142 department rules, and local health department standards and regulations relating to public
143 health and sanitation, including the plumbing code administered by the Division of
144 Occupational and Professional Licensing under Section 58-56-4 and under Title 26, Chapter
145 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas
146 served by the local health department;
 - 147 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
148 control over property and over individuals as the local health department finds necessary for
149 the protection of the public health;
 - 150 (c) establish and maintain medical, environmental, occupational, and other laboratory
151 services considered necessary or proper for the protection of the public health;

152 (d) establish and operate reasonable health programs or measures not in conflict with
153 state law which:

154 (i) are necessary or desirable for the promotion or protection of the public health and
155 the control of disease; or

156 (ii) may be necessary to ameliorate the major risk factors associated with the major
157 causes of injury, sickness, death, and disability in the state;

158 (e) close theaters, schools, and other public places and prohibit gatherings of people
159 when necessary to protect the public health;

160 (f) abate nuisances or eliminate sources of filth and infectious and communicable
161 diseases affecting the public health and bill the owner or other person in charge of the premises
162 upon which this nuisance occurs for the cost of abatement;

163 (g) make necessary sanitary and health investigations and inspections on its own
164 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
165 as to any matters affecting the public health;

166 (h) pursuant to county ordinance or interlocal agreement:

167 (i) establish and collect appropriate fees for the performance of services and operation
168 of authorized or required programs and duties;

169 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
170 property, services, or materials for public health purposes; and

171 (iii) make agreements not in conflict with state law which are conditional to receiving a
172 donation or grant;

173 (i) prepare, publish, and disseminate information necessary to inform and advise the
174 public concerning:

175 (i) the health and wellness of the population, specific hazards, and risk factors that may
176 adversely affect the health and wellness of the population; and

177 (ii) specific activities individuals and institutions can engage in to promote and protect
178 the health and wellness of the population;

179 (j) investigate the causes of morbidity and mortality;

180 (k) issue notices and orders necessary to carry out this part;

181 (l) conduct studies to identify injury problems, establish injury control systems,
182 develop standards for the correction and prevention of future occurrences, and provide public

183 information and instruction to special high risk groups;

184 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
185 within the jurisdiction of the boards;

186 (n) cooperate with the state health department, the Department of Corrections, the
187 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
188 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,
189 convicted sexual offenders, and any victims of a sexual offense;

190 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

191 (p) provide public health assistance in response to a national, state, or local emergency,
192 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
193 of the United States or other federal official requesting public health-related activities.

194 (2) The local health department shall:

195 (a) establish programs or measures to promote and protect the health and general
196 wellness of the people within the boundaries of the local health department;

197 (b) investigate infectious and other diseases of public health importance and implement
198 measures to control the causes of epidemic and communicable diseases and other conditions
199 significantly affecting the public health which may include involuntary testing of [~~convicted~~]
200 alleged sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary
201 testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

202 (c) cooperate with the department in matters pertaining to the public health and in the
203 administration of state health laws; and

204 (d) coordinate implementation of environmental programs to maximize efficient use of
205 resources by developing with the Department of Environmental Quality a Comprehensive
206 Environmental Service Delivery Plan which:

207 (i) recognizes that the Department of Environmental Quality and local health
208 departments are the foundation for providing environmental health programs in the state;

209 (ii) delineates the responsibilities of the department and each local health department
210 for the efficient delivery of environmental programs using federal, state, and local authorities,
211 responsibilities, and resources;

212 (iii) provides for the delegation of authority and pass through of funding to local health
213 departments for environmental programs, to the extent allowed by applicable law, identified in

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 juvenile [~~as provided~~
243 ~~in Subsection 76-5-502(1)] regarding whom an indictment or an information approved by a
244 judge alleges has committed a sexual offense or an attempted sexual offense under Title 76,~~

245 Chapter 5, Part 4, Sexual Offenses.

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) 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 alleged victim of
285 the offense described in the indictment or information may request that the alleged offender
286 against whom the indictment or information is filed be tested 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.

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; and

298 (iii) the alleged offender.

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; and

304 (iii) the alleged offender.

305 (2) If the mandatory test has not been conducted, and the ~~[convicted]~~ alleged offender
306 or ~~[adjudicated]~~ alleged juvenile offender is already confined in a county jail, state prison, or a

307 secure youth corrections facility, the ~~[person]~~ alleged offender shall be tested while in
308 confinement.

309 (3) The secure youth corrections facility or county jail shall cause the blood specimen
310 of the alleged offender ~~[as defined in]~~ under Subsection (1) confined in that facility to be taken
311 and shall forward the specimen to the Department of Health.

312 (4) The Department of Corrections shall cause the blood specimen of the alleged
313 offender defined in Subsection (1) confined in any state prison to be taken and shall forward
314 the specimen to the Department of Health as provided in Section 64-13-36.

315 (5) The ~~[person]~~ alleged offender who is tested ~~[shall be]~~ is responsible upon
316 conviction for the costs of testing, unless the ~~[person]~~ alleged offender is indigent. The costs
317 will then be paid by the Department of Health from the General Fund.

318 Section 5. Section **76-5-504** is amended to read:

319 **76-5-504. Victim notification and counseling.**

320 (1) (a) The Department of Health shall provide the victim who requests testing of the
321 ~~[convicted]~~ alleged sexual offender's human immunodeficiency virus status counseling
322 regarding HIV disease and referral for appropriate health care and support services.

323 (b) If the local health department ~~[where]~~ in whose jurisdiction the victim resides and
324 the Department of Health agree, the Department of Health shall forward a report of the
325 ~~[convicted]~~ alleged sexual offender's human immunodeficiency virus status to the local health
326 department and the local health department shall provide the victim who requests the test with
327 the test results, counseling regarding HIV disease, and referral for appropriate health care and
328 support services.

329 (2) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a
330 local health department acting pursuant to an agreement made under Subsection (1) may
331 disclose to the victim the results of the ~~[convicted]~~ alleged sexual offender's human
332 immunodeficiency virus status as provided in this section.

333 Section 6. Section **77-37-3** is amended to read:

334 **77-37-3. Bill of rights.**

335 (1) The bill of rights for victims and witnesses is:

336 (a) Victims and witnesses have a right to be informed as to the level of protection from
337 intimidation and harm available to them, and from what sources, as they participate in criminal

338 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and
339 Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and
340 corrections personnel have the duty to timely provide this information in a form which is useful
341 to the victim.

342 (b) Victims and witnesses, including children and their guardians, have a right to be
343 informed and assisted as to their role in the criminal justice process. All criminal justice
344 agencies have the duty to provide this information and assistance.

345 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
346 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
347 All criminal justice agencies have the duty to provide these explanations.

348 (d) Victims and witnesses should have a secure waiting area that does not require them
349 to be in close proximity to defendants or the family and friends of defendants. Agencies
350 controlling facilities shall, whenever possible, provide this area.

351 (e) Victims may seek restitution or reparations, including medical costs, as provided in
352 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5,
353 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty
354 to have a functional knowledge of the procedures established by the Crime Victim Reparations
355 Board and to inform victims of these procedures.

356 (f) Victims and witnesses have a right to have any personal property returned as
357 provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously
358 return the property when it is no longer needed for court law enforcement or prosecution
359 purposes.

360 (g) Victims and witnesses have the right to reasonable employer intercession services,
361 including pursuing employer cooperation in minimizing employees' loss of pay and other
362 benefits resulting from their participation in the criminal justice process. Officers of the court
363 shall provide these services and shall consider victims' and witnesses' schedules so that
364 activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may
365 request that the responsible agency intercede with employers or other parties.

366 (h) Victims and witnesses, particularly children, should have a speedy disposition of
367 the entire criminal justice process. All involved public agencies shall establish policies and
368 procedures to encourage speedy disposition of criminal cases.

369 (i) Victims and witnesses have the right to timely notice of judicial proceedings they
370 are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies
371 have the duty to provide these notifications. Defense counsel and others have the duty to
372 provide timely notice to prosecution of any continuances or other changes that may be required.

373 (j) Victims of sexual offenses have a right to be informed of their right to request
374 voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to
375 request mandatory testing of the [~~convicted~~] alleged sexual offender for HIV infection as
376 provided in Section 76-5-502. The law enforcement office where the sexual offense is reported
377 shall have the responsibility to inform victims of this right.

378 (2) Informational rights of the victim under this chapter are based upon the victim
379 providing the victim's current address and telephone number to the criminal justice agencies
380 involved in the case.

381 Section 7. Section **78A-6-1104** is amended to read:

382 **78A-6-1104. When photographs, fingerprints, or HIV infection tests may be**
383 **taken -- Distribution -- Expungement.**

384 (1) Photographs may be taken of a minor 14 years of age or older who:

385 (a) is taken into custody for the alleged commission of an offense under Sections
386 78A-6-103, 78A-6-701, and 78A-6-702 that would also be an offense if the minor were 18
387 years of age or older; or

388 (b) has been determined to be a serious habitual offender for tracking under Section
389 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of
390 Juvenile Justice Services.

391 (2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

392 (i) is taken into custody for the alleged commission of an offense that would be a
393 felony if the minor were 18 years of age or older;

394 (ii) has been determined to be a serious habitual offender for tracking under Section
395 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of
396 Juvenile Justice Services; or

397 (iii) is required to provide a DNA specimen under Section 53-10-403.

398 (b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be
399 stored by electronic medium.

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 or the parent or guardian of a
403 [~~child~~] victim younger than 14 years of age.

404 (4) HIV testing shall be conducted on a minor against whom an information or
405 indictment is filed for commission of any offense under Title 76, Chapter 5, Part 4, Sexual
406 Offenses, upon the request of the victim or the parent or guardian of a victim younger than 14
407 years of age.

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
as of 2-4-11 2:13 PM

Office of Legislative Research and General Counsel