

HIV TESTING MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill creates a procedure for HIV testing of an alleged sexual offender if the alleged sexual offender refuses testing.

Highlighted Provisions:

This bill:

► provides a process to obtain a court order if an alleged sexual offender refuses an HIV test at the request of an alleged victim.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-502, as last amended by Laws of Utah 2021, Chapter 58

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

Section 1. Section **76-5-502** is amended to read:

76-5-502. Request for testing -- Mandatory testing -- Liability for costs.

(1) (a) An alleged victim of [the] a sexual offense, the parent or guardian of an alleged victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined



28 in Section 62A-3-301 may request that the alleged sexual offender against whom ~~[the]~~ an
29 indictment, information, or petition is filed or regarding whom the arrest has been made be
30 tested to determine whether the alleged offender is an HIV positive individual.

31 (b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender
32 be tested, the alleged offender shall submit to being tested not later than 48 hours after ~~[an]~~ the
33 request is conveyed to the alleged offender under Subsection (2), the information or indictment
34 is filed, or an order or warrant requiring a test is signed, whichever is earlier.

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

38 (2) A request for testing under Subsection (1) may be made by the alleged victim, or by
39 another individual on behalf of the alleged victim, by written communication to a prosecuting
40 attorney, victim advocate, or other law enforcement officer involved in the investigation,
41 information, or indictment. The recipient of the request, within one business day after receipt,
42 shall convey the request to the alleged offender's counsel of record, if the offender is
43 represented by counsel, or to the alleged offender, if the alleged offender is not represented by
44 counsel.

45 (3) (a) If the alleged offender refuses to be tested after a request by the alleged victim
46 under Subsection (1):

47 (i) the alleged victim, another individual on behalf of the alleged victim, or the
48 prosecuting attorney may petition the district court for an order requiring the alleged offender
49 to submit to testing to determine whether the alleged offender is an HIV positive individual; or

50 (ii) a law enforcement agency involved in the investigation, information, or indictment
51 may submit on behalf of the victim, by electronic or other means, an ex parte request for a
52 warrant ordering testing to determine whether the alleged offender is an HIV positive
53 individual.

54 (b) If a petition is filed under Subsection (3)(a)(i), the petitioning individual shall cause
55 the petition to be served on the alleged offender.

56 (c) The court may decide the petition on motion or, if the court determines material
57 facts are in dispute, schedule a hearing.

58 (d) If the court finds that the alleged offender refused to consent to the testing or was

59 unable to consent, the court shall issue an order or warrant requiring the alleged offender to
 60 submit to testing within 48 hours to determine whether the alleged offender is an HIV positive
 61 individual, and that reasonable force may be used to obtain the sample, if necessary.

62 (e) If the court schedules a hearing, the court shall:

63 (i) set a time for the hearing within 10 days after the petition is filed;

64 (ii) give the petitioner and the alleged offender notice of the hearing at least 48 hours
 65 prior to the hearing;

66 (iii) notify the alleged offender that the alleged offender may have an attorney present
 67 at the hearing; and

68 (iv) conduct the hearing in camera.

69 (f) The court may not require the alleged victim to attend the hearing in person absent
 70 good cause.

71 (4) A sample drawn in accordance with an order or warrant issued under this section
 72 shall be sent for testing to:

73 (a) the Department of Health;

74 (b) the local health authority; or

75 (c) a qualified medical laboratory.

76 ~~[(d)]~~ (5) As soon as practicable, the results of [the] a test conducted pursuant to this
 77 section shall be provided by the testing entity to the prosecuting attorney, who shall, within one
 78 business day after receipt, convey the results of the test to:

79 ~~[(i)]~~ (a) the alleged victim who requested the test;

80 ~~[(ii)]~~ (b) the parent or guardian of the alleged victim, if the alleged victim is a minor;

81 ~~[(iii)]~~ (c) the legal guardian of the alleged victim if the victim is a vulnerable adult as
 82 defined in Section 62A-3-301;

83 ~~[(iv)]~~ (d) the alleged offender; and

84 ~~[(v)]~~ (e) the parent or legal guardian of the alleged offender, if the alleged offender is a
 85 minor.

86 ~~[(e)]~~ (6) If follow-up testing is medically indicated, the results of follow-up testing of
 87 the alleged offender shall be sent as soon as practicable to the prosecuting attorney, who shall,
 88 within one business day after receipt, convey the results of the test to:

89 ~~[(i)]~~ (a) the alleged victim;

90 ~~[(ii)]~~ (b) the parent or guardian of the alleged victim if the alleged victim is [younger
91 than 18 years of age] a minor;

92 ~~[(iii)]~~ (c) the legal guardian of the alleged victim, if the victim is a vulnerable adult as
93 defined in Section 62A-3-301;

94 ~~[(iv)]~~ (d) the alleged offender; and

95 ~~[(v)]~~ (e) the parent or legal guardian of the alleged offender, if the alleged offender is a
96 minor.

97 ~~[(2)]~~ (7) If the ~~[mandatory test has not been conducted, and the]~~ alleged offender ~~[or~~
98 ~~alleged minor offender is already]~~ is confined in a county jail, state prison, or a secure youth
99 corrections facility, the alleged offender shall be tested while in confinement.

100 ~~[(3)]~~ (8) (a) The secure youth corrections facility, state prison, or county jail shall cause
101 the ~~[blood specimen]~~ sample of the alleged offender under Subsection (1) confined in that
102 facility to be taken, either by the facility's medical personnel or by a qualified third party, and
103 shall forward the ~~[specimen]~~ sample to:

104 (i) the Department of Health; ~~[or]~~

105 ~~[(ii) an alternate testing facility, as determined by the secure youth corrections facility~~
106 ~~or county jail, if testing under Subsection (3)(a)(i) is unavailable.]~~

107 (ii) the local health authority; or

108 (iii) a qualified medical laboratory.

109 (b) The testing entity that receives the ~~[specimen]~~ sample under Subsection ~~[(3)(a)]~~ (4)
110 shall provide the result to the ~~[prosecutor]~~ prosecuting attorney as soon as practicable for
111 release to the parties as described in Subsection ~~[(1)(d) or (e)]~~ (5) or (6).

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

115 ~~[(5)]~~ (9) The alleged offender who is tested is responsible upon conviction for the costs
116 of testing and any legal proceedings necessary to obtain an order or warrant authorizing the
117 testing, unless the alleged offender is indigent. ~~[The]~~ If the alleged offender is indigent, the
118 costs will ~~[then]~~ be paid by the Department of Health from the General Fund.