

**Representative Marsha Judkins** proposes the following substitute bill:

**HIV TESTING MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marsha Judkins**

Senate Sponsor: \_\_\_\_\_

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**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; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-802**, as renumbered and amended by Laws of Utah 2022, Chapter 430

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

Section 1. Section **53-10-802** is amended to read:



26 **53-10-802. Request for testing -- Mandatory testing -- Liability for costs.**

27 (1) (a) An alleged victim of a sexual offense, the parent or guardian of an alleged  
28 victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined  
29 in Section [62A-3-301](#) may request that the alleged sexual offender against whom the  
30 indictment, information, or petition is filed or regarding whom the arrest has been made be  
31 tested to determine whether the alleged offender is an HIV positive individual.

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

36 (2) (a) A request for testing under Subsection (1) may be made by the alleged victim,  
37 or by another individual on behalf of the alleged victim, by written communication to a  
38 prosecuting attorney, victim advocate, or other law enforcement officer involved in the  
39 investigation, information, or indictment.

40 (b) The recipient of the request under Subsection (1) shall, within one business day  
41 after receipt, convey the request to the alleged offender's counsel of record, if the offender is  
42 represented by counsel, or to the alleged offender, if the alleged offender is not represented by  
43 counsel.

44 (3) (a) If the alleged offender refuses to be tested after a request by the alleged victim  
45 under Subsection (1), the prosecuting attorney may, after filing an information or indictment,  
46 petition the district court for an order requiring the alleged offender to submit to testing to  
47 determine whether the alleged offender is an HIV positive individual.

48 (b) If a petition is filed under Subsection (3)(a), the prosecuting attorney shall cause the  
49 petition to be served on the alleged offender.

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

52 (d) If the court finds that the alleged offender refused to consent to the testing or was  
53 unable to consent, the court shall issue an order requiring the alleged offender to submit to  
54 testing within 48 hours to determine whether the alleged offender is an HIV positive individual,  
55 and that reasonable force may be used to obtain the sample, if necessary.

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

- 57 (i) set a time for the hearing within 10 days after the petition is filed;
- 58 (ii) give the prosecuting attorney and the alleged offender notice of the hearing at least
- 59 48 hours prior to the hearing;
- 60 (iii) notify the alleged offender that the alleged offender may have an attorney present
- 61 at the hearing; and
- 62 (iv) conduct the hearing in camera.
- 63 (f) The court may not require the alleged victim to attend the hearing in person absent
- 64 good cause.

65 (4) A sample drawn in accordance with an order issued under this section shall be sent  
 66 for testing to:

- 67 (a) the Department of Health and Human Services; or
- 68 (b) a qualified medical laboratory.

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

72 ~~[(d)]~~ (5) As soon as practicable, the results of [the] a test conducted pursuant to this  
 73 section shall be provided to:

- 74 ~~[(i)]~~ (a) the alleged victim who requested the test;
- 75 ~~[(ii)]~~ (b) the parent or guardian of the alleged victim, if the alleged victim is a minor;
- 76 ~~[(iii)]~~ (c) the legal guardian of the alleged victim if the victim is a vulnerable adult as  
 77 defined in Section 62A-3-301;

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

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

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

- 84 ~~[(i)]~~ (a) the alleged victim;
- 85 ~~[(ii)]~~ (b) the parent or guardian of the alleged victim if the alleged victim is a minor;
- 86 ~~[(iii)]~~ (c) the legal guardian of the alleged victim, if the victim is a vulnerable adult as  
 87 defined in Section 62A-3-301;

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

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

91           ~~[(2)]~~ (7) If the ~~[mandatory test has not been conducted, and the]~~ alleged offender ~~[or~~  
92 ~~alleged minor offender is already]~~ is confined in a county jail, state prison, or a secure youth  
93 corrections facility, the alleged offender shall be tested while in confinement.

94           ~~[(3)]~~ (8) (a) The secure youth corrections facility, state prison, or county jail shall cause  
95 the ~~[blood specimen]~~ sample of the alleged offender under Subsection (1) confined in that  
96 facility to be taken, either by the facility's medical personnel or by a qualified third party, and  
97 shall forward the ~~[specimen]~~ sample to:

98           (i) the Department of Health~~[,] or~~ and Human Services; or

99           (ii) a qualified medical laboratory.

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

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

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

108           ~~[(5)]~~ (9) The alleged offender who is tested is responsible upon conviction for the costs  
109 of testing and any legal proceedings necessary to obtain an order authorizing the testing, unless  
110 the alleged offender is indigent. ~~[The]~~ If the alleged offender is indigent, the costs of testing  
111 will ~~[then]~~ be paid by the Department of Health and Human Services from the General Fund.

112           (10) Results of a test conducted pursuant to this section are presumptively inadmissible  
113 in evidence in the criminal matter in connection with which the testing was requested, unless a  
114 court of competent jurisdiction determines that evidence of the test result may be admitted for  
115 the limited purpose of impeaching a witness.