

Effective 5/4/2022

Part 8
HIV Testing - Sexual Offenders and Victims

53-10-801 Definitions.

For purposes of this part:

- (1) "Alleged sexual offender" means an individual or a minor regarding whom an indictment, petition, or an information has been filed or an arrest has been made alleging the commission of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and regarding which:
 - (a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and
 - (b) the judge has found probable cause to believe that the alleged victim has been exposed to conduct or activities that may result in an HIV infection as a result of the alleged offense.
- (2) "Department of Health and Human Services" means the Department of Health and Human Services created in Section 26B-1-201.
- (3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:
 - (a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;
 - (b) presence of HIV antigen;
 - (c) isolation of HIV; or
 - (d) demonstration of HIV proviral DNA.
- (4) "HIV positive individual" means an individual who is HIV positive as determined by the State Health Laboratory.
- (5) "Local department of health" means a local health department as defined in Section 26A-1-102.
- (6) "Minor" means an individual younger than 18 years old.
- (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).
- (8) "Sexual offense" means a violation of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses.
- (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health and Human Services.

Amended by Chapter 255, 2022 General Session

Renumbered and Amended by Chapter 430, 2022 General Session

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

- (1)
 - (a) An alleged victim of 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 in Section 26B-6-201 may request that the alleged sexual offender against whom the indictment, information, or petition is filed or regarding whom the arrest has been made be tested to determine whether the alleged offender is an HIV positive individual.

- (b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender be tested, the alleged offender shall submit to being tested not later than 48 hours after an information or indictment is filed or an order requiring a test is signed.
- (c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be tested more than 48 hours after an information or indictment is filed, the offender shall submit to being tested not later than 24 hours after the request is made.
- (d) As soon as practicable, the results of the test conducted pursuant to this section shall be provided to:
 - (i) the alleged victim who requested the test;
 - (ii) the parent or guardian of the alleged victim, if the alleged victim is a minor;
 - (iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 26B-6-201;
 - (iv) the alleged offender; and
 - (v) the parent or legal guardian of the alleged offender, if the offender is a minor.
- (e) If follow-up testing is medically indicated, the results of follow-up testing of the alleged offender shall be sent as soon as practicable to:
 - (i) the alleged victim;
 - (ii) the parent or guardian of the alleged victim if the alleged victim is a minor;
 - (iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as defined in Section 26B-6-201;
 - (iv) the alleged offender; and
 - (v) the parent or legal guardian of the alleged offender, if the alleged offender is a minor.
- (2) If the mandatory test has not been conducted, and the alleged offender or alleged minor offender is already confined in a county jail, state prison, or a secure youth corrections facility, the alleged offender shall be tested while in confinement.
- (3)
 - (a) The secure youth corrections facility or county jail shall cause the blood specimen of the alleged offender under Subsection (1) confined in that facility to be taken and shall forward the specimen to:
 - (i) the Department of Health and Human Services; or
 - (ii) an alternate testing facility, as determined by the secure youth corrections facility or county jail, if testing under Subsection (3)(a)(i) is unavailable.
 - (b) The entity that receives the specimen under Subsection (3)(a) shall provide the result to the prosecutor as soon as practicable for release to the parties as described in Subsection (1)(d) or (e).
- (4) The Department of Corrections shall cause the blood specimen of the alleged offender defined in Subsection (1) confined in any state prison to be taken and shall forward the specimen to the Department of Health and Human Services as provided in Section 64-13-36.
- (5) The alleged offender who is tested is responsible upon conviction for the costs of testing, unless the alleged offender is indigent. The costs will then be paid by the Department of Health and Human Services from the General Fund.

Amended by Chapter 328, 2023 General Session

53-10-803 Voluntary testing -- Victim to request -- Costs paid by Utah Office for Victims of Crime.

- (1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5, Part 4, Sexual Offenses, may request a test for the HIV infection.

- (2)
 - (a) The local health department shall obtain the blood specimen from the victim and forward the specimen to the Department of Health.
 - (b) The Department of Health shall analyze the specimen of the victim.
- (3) The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense.
- (4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if the victim provides a substantiated claim of the sexual offense, does not test HIV positive at the base-line testing phase, and complies with eligibility criteria established by the Utah Office for Victims of Crime.

Renumbered and Amended by Chapter 430, 2022 General Session

53-10-804 Victim notification and counseling.

- (1)
 - (a) The Department of Health of Human Services shall provide the victim who requests testing of the alleged sexual offender's human immunodeficiency virus status counseling regarding HIV disease and referral for appropriate health care and support services.
 - (b) If the local health department in whose jurisdiction the victim resides and the Department of Health and Human Services agree, the Department of Health and Human Services shall forward a report of the alleged sexual offender's human immunodeficiency virus status to the local health department and the local health department shall provide the victim who requests the test with the test results, counseling regarding HIV disease, and referral for appropriate health care and support services.
- (2) Notwithstanding the provisions of Section 26B-7-217, the Department of Health and Human Services and a local health department acting pursuant to an agreement made under Subsection (1) may disclose to the victim the results of the alleged sexual offender's human immunodeficiency virus status as provided in this section.

Amended by Chapter 328, 2023 General Session