

HIV/AIDS Testing of Offenders

Utah

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Question	Answer
Which charges and/or criminal convictions trigger a sex offender being tested for HIV/AIDS?	- Any person (including a juvenile) against whom an indictment, information, or petition is filed or regarding whom an arrest has been made for a sexual offense or an attempted sexual offense, including, but not limited to, sexual assault, sexual abuse, rape, or sexual abuse of a child, and for whom (a) a judge has signed an accompanying arrest warrant, pick up order or 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 offense. “Sexual Offense” includes many offenses outlined in Utah Code Ann. § 76-5-401 et seq. In most cases, a “sexual offense” includes either penetration or touching.
Is testing required, and/or available upon victim request?	Testing is available by request of the alleged victim, the parent or guardian of an alleged minor victim, or the guardian of an alleged victim who is a vulnerable adult (an elderly adult or adult with mental or physical impairment as defined in §62A-3-301).
When does testing occur?	- If the alleged victim requests that the alleged offender be tested, such offender shall submit to testing within 48 hours after an information or indictment is filed or after an order requiring a test is signed. - If the alleged victim requests that the alleged offender be tested more than 48 hours after the information or indictment is filed, such offender shall submit to being tested within 24 hours of such request. - The individual required to be tested is responsible for the costs of testing, unless the individual is indigent, in which case, the costs for the testing will be paid by the local law enforcement agency or the Department of Corrections from the General Fund.
What is the testing process?	- Testing is available by request of the alleged victim, the parent or guardian of an alleged minor victim, or the guardian of an alleged victim who is a vulnerable adult (an elderly adult or adult with a mental or physical impairment as defined in §62A-3-301). - If not confined, the alleged offender shall submit to being tested upon receipt of an order of the court. - If the mandatory test has not been conducted and the alleged offender or alleged minor offender is already confined in county jail, state prison, or secure youth facility, the alleged offender shall be tested while in confinement.

Who can see test results?	• The alleged victim who requested the test, the parent or guardian of an alleged minor victim, the legal guardian of an alleged victim who is a vulnerable adult, the alleged offender, and the parent or legal guardian of a minor alleged offender. • If follow-up testing is medically indicated, the results of follow-up testing of the defendant shall be provided to the same individuals indicated above.
Are there related services for victims?	• The victim or minor victim of a sexual offense may request a test for the HIV infection. • The Department of Health and Human Services shall analyze the specimen of the victim. The testing shall consist of a base-line test as soon as possible after the alleged occurrence of sexual offense. If the base-line test is not positive, follow-up testing shall occur at 3 months and 6 months after the alleged occurrence of the sexual offense. • 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. • The state Department of Health and Human Services shall also provide counseling to the victim regarding HIV and also refer the victim to appropriate health care and support services.
Anything else I should know?	• Victims of sexual offenses have a right to request voluntary testing for themselves for HIV infection and to request mandatory testing of the alleged sexual offender for HIV infection. • Victims of sexual offenses also have the following rights (at the request of the victim or the victim's designee): • right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence; • right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System; and • right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation. • The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right. • The alleged offender who is tested is responsible upon conviction for the costs of testing, unless the offender is indigent, in which case the costs will be paid by the Department of Health from the General Fund.
Statutory citation(s):	• Utah Code Ann. §§ 53-10-801 to 53-10-804, 62A-3-301, 76-5-401 et seq., 76-5d-201 et seq., 77-37-3.