

Utah

Analysis

People living with HIV (PLHIV) convicted of sex work and solicitation offenses, may receive increased sentences.

Utah is one of many states with a “sentence enhancement” statute that may increase penalties for PLHIV participating in the sex trade, regardless of whether they expose others to a significant risk of HIV infection.¹ In Utah, if an individual pleads guilty or no contest to, or is convicted of any of the following offenses, they are also required to undergo mandatory HIV testing:²

- Prostitution³
- Patronizing a prostitute⁴
- Sexual solicitation⁵

A PLHIV convicted of one of these offenses is guilty of a third-degree felony, punishable by up to five years in prison and a \$5,000 fine, if at the time of the offense the defendant had knowledge of their HIV status or if the PLHIV defendant has a prior conviction for prostitution, patronizing a prostitute, or solicitation, regardless of knowledge of status.⁶ Violation of Utah’s prostitution laws is otherwise a Class B misdemeanor punishable by at most six months in prison and a \$1,000 fine (or one year and a \$2,500 fine for repeat offenses).⁷ PLHIV, on the basis of their status alone, may face a prison sentence over four years longer than that of HIV negative persons.

In September 2010, a PLHIV engaged in sex work was sentenced to five years’ imprisonment after pleading guilty to one count of third-degree felony sexual solicitation.⁸ The woman had tested positive for HIV in 2007 after her fourth prostitution conviction.⁹ She had also been imprisoned in 2008 and 2009 for prostitution.¹⁰

¹ UTAH. CODE. ANN. § 76-10-1309 (2018).

² UTAH. CODE. ANN. § 76-10-1311 (2018).

³ UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1302 (2018).

⁴ UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1303 (2018).

⁵ UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1313 (2018).

⁶ UTAH. CODE. ANN. §§ 76-3-203(3), 76-3-301(1)(b), 76-10-1309(1), 76-10-1309(2), 76-10-1312 (outlining test result notification standard) (2018).

⁷ UTAH. CODE. ANN. §§ 76-3-204, 76-3-301(1)(d), 76-3-301(1)(c), 76-10-1302(2)(a), 76-10-1302(2)(b), 76-10-1303(2), 76-10-1303(3), 76-10-1313(3)(a), 76-10-1313(3)(b) (2018).

⁸ Stephen Hunt, *HIV-positive prostitute sent to prison*, SALT LAKE TRIB., Sept. 17, 2010, available at <http://archive.sltrib.com/article.php?id=50306321&itype=CMSID>.

⁹ *Id.*

¹⁰ *Id.*

In June 2013, a PLHIV was charged with second-degree felony aggravated exploitation of prostitution and sexual solicitation for offering to pay a teenage boy for sex.¹¹ The sexual solicitation charge was elevated to a third-degree felony due to the man's HIV status.¹²

This “penalty enhancement” law increases penalties for PLHIV regardless of whether transmission was even possible under the circumstances. In Utah, a person is guilty of prostitution when 1) they engage in any sexual activity with another person for a fee; 2) they are an inmate of a house of prostitution; or 3) they loiter in or within view of any public place for the purpose of being hired to engage in sexual activity.¹³ “Sexual activity” is defined as “acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.”¹⁴ Under this broad definition, felony-level prison sentences may be imposed in circumstances where HIV could not have been transmitted.

The use of condoms or other protection is not a defense, despite the fact that they can significantly reduce the risk of HIV transmission. Disclosure of HIV status is not a defense on the face of the statute nor is a defendant's viral load taken into consideration, even though an undetectable viral load means there is effectively no risk of transmission.¹⁵

Further, sexual activity itself is not required for prosecution. For PLHIV, “loitering” in a public place for the purpose of being hired for prostitution also results in enhanced penalties,¹⁶ as does offering or agreeing to commit any sexual activity for a fee,¹⁷ offering to pay another person a fee for the purpose of engaging in sexual activity,¹⁸ or entering a house of prostitution for the purpose of having sex for a fee.¹⁹ Thus, acts posing no risk of HIV transmission may result in enhanced penalties. Moreover, there is no consideration given to whether the act, if completed, would carry a risk of HIV exposure or transmission.

Finally, merely being an “inmate of a house of prostitution” also triggers enhanced sentencing.²⁰ Presumably, this means that PLHIV engaged in sex work in a commercial sex establishment may face up to five years in prison,²¹ regardless of whether they engaged in sexual activities posing any risk of HIV transmission.

¹¹ Erin Alberty, *Price police say HIV-positive man solicited sex from teen*, SALT LAKE TRIB., June 7, 2013, available at <http://archive.sltrib.com/story.php?ref=/sltrib/news/56428611-78/mead-barnes-police-sex.html.csp>.

¹² *Id.*

¹³ UTAH. CODE. ANN. § 76-10-1302(1) (2018).

¹⁴ UTAH. CODE. ANN. § 76-10-1301(5) (2018).

¹⁵ CTR. FOR DISEASE CONTROL AND PREVENTION, *Dear Colleague Letter*, September 27, 2017, available at <https://www.cdc.gov/hiv/library/dcl/dcl/092717.html>.

¹⁶ UTAH. CODE. ANN. § 76-10-1302(1)(c) (2018).

¹⁷ UTAH. CODE. ANN. § 76-10-1313(1)(a) (2018).

¹⁸ UTAH. CODE. ANN. § 76-10-1303(1)(a) (2018).

¹⁹ UTAH. CODE. ANN. § 76-10-1303(1)(b) (2018).

²⁰ UTAH. CODE. ANN. § 76-10-1302(1)(b) (2018).

²¹ UTAH. CODE. ANN. §§ 76-10-1301(2), 76-10-1301(3) (2018).

HIV status may be considered during sentencing.

Transmission of HIV may be a factor in sentencing decisions. In *State v. Scott*, a man with chlamydia pleaded guilty to three counts of sodomy on a child for sexually abusing a six-year-old girl.²² He was subsequently sentenced to three 10 years to life prison terms.²³ On appeal, the defendant argued that the trial court should not have considered his victim's infection with chlamydia as an "aggravating factor" when deciding whether to impose concurrent sentences or consecutive sentences, because there was no evidence that defendant was the source of the victim's infection.²⁴ The Utah Court of Appeals disagreed, as evidence suggested that the defendant had chlamydia, and the transmission of a sexually transmitted infection (STI) to the victim was a valid aggravating factor.²⁵ The reasoning in *Scott* suggests that the transmission of HIV could also function as an aggravating factor in a court's assessment of whether a defendant's sentences should run consecutively or concurrently.

Assaulting a police or correctional officer with bodily fluids can result in increased prison sentences.

Utah has an HIV exposure statute specifically addressing situations where inmates living with HIV throw or otherwise expose others to their bodily fluids.²⁶ In Utah, it is a Class A misdemeanor, punishable by one year in prison and a \$2,500 fine, if any prisoner or detained person throws or otherwise propels any substance or object at a police or correctional officer.²⁷ However, it is a third-degree felony, punishable by up to five years in prison and a \$5,000 fine,²⁸ if the object or substance comes into contact with an officer's face, eyes, mouth, or an open wound on the officer's body²⁹ and is (1) an infectious agent or material that carries an infectious agent³⁰ or; (2) the saliva of a person who knows they are infected with HIV, hepatitis B, or hepatitis C.³¹ Since any material carrying a virus meets the statutory definition of material carrying an infectious agent, bodily fluids other than saliva of an inmate living with HIV might be interpreted to fall within this subsection of the statute, such as blood, semen or other bodily fluids that may contain trace amounts of blood. Neither the intent to transmit HIV nor actual transmission is required for prosecution. The CDC has concluded that there exists only a "negligible" risk that HIV could be transmitted through the throwing of bodily fluids.³² With regard to saliva specifically, the CDC has concluded that spitting alone has never been shown to transmit HIV.³³

²² *State v. Scott*, 180 P.3d 774, 775-76 (Utah Ct. App. 2008).

²³ *Id.* at 776.

²⁴ *Id.* at 777-78.

²⁵ *Id.*

²⁶ UTAH. CODE. ANN. § 76-5-102.6 (2018).

²⁷ UTAH. CODE. ANN. §§ 76-3-204(1), 76-3-301(c), 76-5-102.6(1) (2018).

²⁸ UTAH. CODE. ANN. § 76-5-102.6(2) (2018).

²⁹ UTAH. CODE. ANN. § 76-5-102.6(2)(b) (2018).

³⁰ UTAH. CODE. ANN. § 76-5-102.6(2)(a)(ii) (2018). "Infectious agent" is defined as "an organism such as a virus, rickettsia, bacteria, fungus, protozoan or helminth that is capable of producing infection or infectious disease." UTAH. CODE. ANN. § 26-6-2(12) (2018).

³¹ UTAH. CODE. ANN. 76-5-102.6(2)(a)(iv) (2018).

³² CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act* (Dec. 4, 2015), available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited July 11, 2018).

³³ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?* (Mar. 16, 2018), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited July 11, 2018).

Utah's statute ignores these scientific findings, leading to potential prosecutions for behavior that has at most a remote possibility of transmitting HIV.

PLHIV or viral hepatitis may receive increased sentences for sexual offenses.

A person who knows that they have HIV, hepatitis B, or hepatitis C and commits a sexual offense³⁴ is subject to a penalty enhancement of one classification higher than the root offense for which the person was convicted.³⁵ An underlying sex offense that is a first degree felony does not receive the enhancement.³⁶ Neither the intent to transmit disease, nor disease transmission, is required for the sentence enhancement. The enhancement is also applied regardless of the actual transmission risk posed by the conduct at issue, meaning factors such as antiretroviral medication or condom use are irrelevant.

A person with an STI, including HIV, may be prosecuted for the “introduction” of disease.

It is a Class A misdemeanor, punishable by up to one year of imprisonment and a \$2,500 fine, to “willfully or knowingly introduce any communicable or infectious disease into any county, municipality, or community.”³⁷ A range of STIs—including HIV, syphilis, gonorrhea, lymphogranuloma inguinale, and chancroid—are specifically identified by statute as both communicable and infectious, thereby falling squarely within the scope of prohibited conduct.³⁸ The statute does not define “introduce” but the language suggests that actual transmission of disease may be necessary. Intent to transmit disease is not required, as Utah defines the mental state of “knowingly” as acting with awareness that one’s conduct is reasonably certain to cause a particular result.³⁹ It is also unclear what role, if any, disclosure of a person’s infection with an STI or a person’s engaging in risk reduction measures such as use of a condom would play.

Persons with an STI may be subject to mandatory examination and treatment.

Local health officers are empowered to examine a person known or suspected of having certain STIs, including syphilis, gonorrhea, lymphogranuloma inguinale, and chancroid, and may require the individual to report for treatment until cured.⁴⁰ Should an individual who is known or suspected to be infected with a communicable disease that poses a threat to the public health fail to “take action as required by the department or the local health department to prevent spread of disease,” health officials may issue an order of restriction that mandates examination, treatment, isolation or quarantine.⁴¹

³⁴ Chapter 4, Part 5 of Utah’s Criminal Code enumerates a wide range of sex offenses that may be subject to this enhancement, including: unlawful sexual activity with a minor, sexual abuse of a minor, unlawful sexual activity with a 16-17 year old, unlawful adolescent sexual activity, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy on a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual assault, custodial sexual relations, and custodial sexual misconduct with youth receiving state services. See UTAH. CODE. ANN. §§ 76-5-401, 76-5-401.1, 76-5-401.2, 76-5-401.3, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-405, 76-5-412, 76-5-413 (2018).

³⁵ UTAH. CODE. ANN. § 76-3-203.12(1)-(2)(a) (2018)

³⁶ UTAH. CODE. ANN. § 76-3-203.12(2)(b)(2018)

³⁷ UTAH. CODE. ANN. §§ 26-6-5, 76-3-204(1), 76-3-301(c) (2018).

³⁸ UTAH. CODE. ANN. §§ 26-6-3.5(3), 26-6-16 (2018).

³⁹ UTAH. CODE. ANN. § 76-2-103(2) (2018).

⁴⁰ UTAH. CODE. ANN. § 26-6-17 (2018).

⁴¹ UTAH. CODE. ANN. § 26-6-4(1)(a) (2018).

Refusal to consent to these measures results in health officials ordering involuntary examination, treatment, isolation or quarantine and filing a petition for judicial review to order compliance.⁴²

Persons with an STI may be subject to involuntary examination, treatment, isolation, or quarantine.

Utah specifically identifies several STIs as “communicable and dangerous to the public health”⁴³ and designates HIV as “communicable and infectious.” Chapter 6b of Utah’s Health Code contains extensive procedural requirements required for orders of restriction due to communicable disease. The initial order of restriction must be for the shortest reasonable period to protect public health,⁴⁴ use the least intrusive method of restriction,⁴⁵ contain notice of an individual’s rights,⁴⁶ and be in writing,⁴⁷ barring specific, narrow exceptions for a verbal order.⁴⁸ The order must include the medical or scientific information on which the restriction is based, what actions must occur for termination of the restriction, a statement advising of the right of judicial review of the order, and other essential information, including the rights of the individual under restriction.⁴⁹ An individual subject to restriction has the right to legal counsel in any judicial review proceedings, the right of notice and participation in any hearing concerning the order of restriction, the right to cross examine witnesses and present evidence and arguments on the individual’s own behalf, and the right to review and copy all records in possession of the department that issued the restriction which relate to the order of restriction.⁵⁰

If an individual refuses to consent to an order of restriction, the department of health must file a petition for judicial review in district court within five business days after issuing the order of restriction.⁵¹ The court will issue a short-term order for an examination period upon a finding that there is a reasonable basis to believe involuntary measures are necessary and that the individual has refused to comply.⁵² Within ten days of issuing this order, the court will set another hearing at which the individual under restriction is present in person or remotely and has had the opportunity to be represented by counsel.⁵³ The court may extend its initial order for up to 90 days if it has reason to believe an individual is infected with “a communicable or possibly communicable disease” or a condition that poses a threat to public health that has not been diagnosed despite the exercise of “reasonable diligence.”⁵⁴

The district court may order the individual to submit to the order of restriction, but only if it makes a series of specific findings on the basis of clear and convincing evidence: 1) the individual is infected with a communicable disease; 2) there is no appropriate an less restrictive alternative; 3) the petitioning

⁴² UTAH. CODE. ANN. § 26-6-4(2) (2018).

⁴³ UTAH CODE ANN. § 26-6-16 (2018).

⁴⁴ UTAH. CODE. ANN. § 26-6b-3(2)(b)(i) (2018).

⁴⁵ UTAH. CODE. ANN. § 26-6b-3(2)(b)(ii) (2018).

⁴⁶ UTAH. CODE. ANN. § 26-6b-3(2)(b)(iv) (2018).

⁴⁷ UTAH. CODE. ANN. § 26-6b-3(2)(b)(iii) (2018).

⁴⁸ UTAH. CODE. ANN. § 26-6b-3(2)(c) (2018).

⁴⁹ UTAH CODE ANN. §§ 26-6b-3.3(1)(g), 26-6b-3.3(1)(e), 26-6b-3.3(1)(h), 26-6b-3.3(1)(i) (2018).

⁵⁰ UTAH CODE ANN. § 26-6b-3.3(2) (2018).

⁵¹ UTAH CODE ANN. § 26-6b-3.2(1)(b)(i) (2018).

⁵² UTAH CODE ANN. §§ 26-6b-3(a), 26-6b-3(b) (2018).

⁵³ UTAH CODE ANN. §§ 26-6b-6(1), 26-6b-3(b) (2018).

⁵⁴ UTAH CODE ANN. § 26-6b-6(3)(b) (2018).

health department can provide adequate treatment; and 4) it is in the public interest to order the involuntary measures after weighing a variety of additional factors.⁵⁵ This order may not exceed six months without the benefit of another hearing before the district court.⁵⁶ Two weeks prior to the expiration of an order, the petitioning health department must notify the court and also reassess the basis on which the order was issued.⁵⁷ During the review hearing occurring prior to the expiration of the order, the district court may elect to issue an order for indefinite restriction if it determines by clear and convincing evidence that the required conditions authorizing its preceding order will continue for an indeterminate period.⁵⁸

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable in your specific situation and, as such, it should not be used as a substitute for legal advice.*

⁵⁵ UTAH CODE ANN. § 26-6b-6(6) (2018).

⁵⁶ UTAH CODE ANN. § 26-6b-6(8)(a) (2018).

⁵⁷ UTAH CODE ANN. § 26-6b-7(1) (2018).

⁵⁸ UTAH CODE ANN. § 26-6b-6(8)(b) (2018).

Code of Utah

Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.

TITLE 76, UTAH CRIMINAL CODE

UTAH CODE ANN. § 76-10-1309 (2018) **

Enhanced penalties--HIV positive offender

A person who is convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV positive individual, and the person:

- (1) has actual knowledge of the fact; or
- (2) has previously been convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313.

UTAH CODE ANN. § 76-5-102.6 (2018) **

Propelling substance or object at a correctional or peace officer--Penalties

(1) Any prisoner or person detained pursuant to Section 77-7-15 who throws or otherwise propels any substance or object at a peace officer, a correctional officer, or an employee or volunteer, including a health care provider, is guilty of a class A misdemeanor, except as provided under Subsection (2).

(2) A violation of Subsection (1) is a third-degree felony if:

- (a) The object or substance is:
 - (ii) an infectious agent as defined in Section 26-6-2 or a material that carries an infectious agent;
 - (iv) the prisoner's or detained person's saliva, and the prisoner or detained person knows he or she is infected with HIV, hepatitis B, or hepatitis C; and
- (b) The object or substance comes into contact with any portion of the officer's or health care provider's face, including the eyes or mouth, or comes into contact with any open wound on the officer's or health care provider's body.

(3) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

UTAH CODE ANN. § 76-3-203 (2018) **

Felony conviction--Indeterminate term of imprisonment

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.

(2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.

(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

UTAH CODE ANN. § 76-3-203.12 (2018) **

Enhanced penalty for sexual offenses committed by a person with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C

1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C and the person knew of the infection.

(2)

(a) Except as provided in Subsection (2)(b), the enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the root offense for which the person was convicted.

(b) A felony of the first degree is not enhanced under this section.

UTAH CODE ANN. § 76-3-204 (2018) **

Misdemeanor conviction—Term of imprisonment

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding one year;

UTAH CODE ANN. § 76-3-301 (2018) **

Fines of persons

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) \$10,000 for a felony conviction of the first degree or second degree;

(b) \$5,000 for a felony conviction of the third degree;

(c) \$2,500 for a class A misdemeanor conviction;

TITLE 26, UTAH HEALTH CODE

UTAH CODE ANN. § 26-6-5 (2018) **

Willful introduction of communicable disease a misdemeanor

Any person who willfully or knowingly introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

UTAH CODE ANN. § 26-6-2 (2018)

Definitions

(3) "Communicable disease" means illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly, as from an infected individual or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

(13) "Infectious disease" means a disease of man or animals resulting from an infection.

(17) "Sexually transmitted disease" means those diseases transmitted through sexual intercourse or any other sexual contact.

UTAH CODE ANN. § 26-6-16 (2018)

Venereal disease declared to be dangerous to public health

Syphilis, gonorrhea, lymphogranuloma inguinale (venereum) and chancroid are hereby declared to be contagious, infectious, communicable and dangerous to the public health

UTAH CODE ANN. § 26-6-4 (2018)

Involuntary examination, treatment, isolation, and quarantine

(1) The following individuals or groups of individuals are subject to examination, treatment, quarantine, or isolation under a department order of restriction:

(a) an individual who is infected or suspected to be infected with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;

(2) If an individual refuses to take action as required by the department or the local health department to prevent the spread of a communicable disease, infectious agent, or contamination, the department or the local health department may order involuntary examination, treatment, quarantine, or isolation of the individual and may petition the district court to order involuntary examination, treatment, quarantine, or isolation in accordance with Title 26, Chapter 6b, Communicable Diseases -- Treatment, Isolation, and Quarantine Procedures.

UTAH CODE ANN. § 26-6-17 (2018)

Venereal disease—Examination by authorities—Treatment of infected persons

State, county, and municipal health officers within their respective jurisdictions may make examinations of persons reasonably suspected of being infected with venereal disease. Persons infected with venereal disease shall be required to report for treatment to either a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured.

UTAH CODE ANN. § 26-6b-3 (2018)

Order of restriction

(1) The department having jurisdiction over the location where an individual or a group of individuals who are subject to restriction are found may:

(a) issue a written order of restriction for the individual or group of individuals pursuant to Section 26-1-30 or Subsection 26A-1-114(1)(b) upon compliance with the requirements of this chapter; and

(b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).

(2)

(b) An order of restriction issued by a department shall:

(i) in the opinion of the public health official, be for the shortest reasonable period of time necessary to protect the public health;

(ii) use the least intrusive method of restriction that, in the opinion of the department, is reasonable based on the totality of circumstances known to the health department issuing the order of restriction.

(iii) be in writing unless the provisions of Subsection (2)(c) apply; and

(iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

(c)

(i) A department may issue a verbal order of restriction, without prior notice to the individual or group of individuals if the delay in imposing a written order of restriction would significantly jeopardize the department's ability to prevent or limit:

(A) the transmission of a communicable or possibly communicable disease that poses a threat to public health.

(D) the exposure or transmission of a condition that poses a threat to public health.

(ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

(A) is valid for 24 hours from the time the order of restriction was issued;

(D) may only be continued beyond the initial 24 hours if a written order of restriction is issued pursuant to the provisions of Section 26-6b-3.3.

UTAH CODE ANN. § 26-6b-3.2 (2018)

Involuntary order of restriction—Notice—Effect of order during judicial review.

(1) If the department cannot obtain consent to the order of restriction from an individual, or if an individual withdraws consent to an order under Subsection 26-6b-3.1(1)(b)(iv)(B), the department shall:

(a) give the individual or group of individuals subject to the order of restriction a written notice of:

(i) the order of restriction and any supporting documentation; and

(ii) the individual's right to a judicial review of the order of restriction; and

(b) file a petition for a judicial review of the order of restriction under Section 26-6b-4 in district court within:

(i) five business days after issuing the written notice of the order of restriction; or

(ii) if consent has been withdrawn under Subsection 26-6b-3.1(1)(b)(iv)(B), within five business days after receiving notice of the individual's withdrawal of consent.

(2)

(a) An order of restriction remains in effect during any judicial proceedings to review the order of restriction if the department files a petition for judicial review of the order of restriction with the district within the period of time required by this section.

(b) Law enforcement officers with jurisdiction in the area where the individual who is subject to the order of restriction can be located shall assist the department with enforcing the order of restriction.

UTAH CODE ANN. § 26-6b-3.3 (2018)

Contents of notice of order of restriction – Rights of individuals

(1) A written order of restriction issued by a department shall include the following information:

(a) the identity of the individual or a description of the group of individuals subject to the order of restriction;

(b) the identity or location of any premises that may be subject to restriction;

(c) the date and time for which the restriction begins and the expected duration of the restriction;

(d) the suspected communicable disease, infectious, chemical or biological agent, or other condition that poses a threat to public health;

(e) the requirements for termination of the order of restriction, such as necessary laboratory reports, the expiration of an incubation period, or the completion of treatment for the communicable disease;

(f) any conditions on the restriction, such as limitation of visitors or requirements for medical monitoring;

(g) the medical or scientific information upon which the restriction is based;

(h) a statement advising of the right to a judicial review of the order of restriction by the district court; and

(i) pursuant to Subsection (2), the rights of each individual subject to restriction.

(2) An individual subject to restriction has the following rights:

(a) the right to be represented by legal counsel in any judicial review of the order of restriction in accordance with Subsection 26-6b-4(3);

(b) the right to be provided with prior notice of the date, time, and location of any hearing concerning the order of restriction;

(c) the right to participate in any hearing, in a manner established by the court based on precautions necessary to prevent additional exposure to communicable or possibly communicable diseases or to protect the public health;

(d) the right to respond and present evidence and arguments on the individual's own behalf in any hearing;

(e) the right to cross examine witnesses; and

(f) the right to review and copy all records in the possession of the department that issued the order of restriction which relate to the subject of the written order of restriction.

(4)

(a) In addition to the rights of an individual described in Subsections (1) and (2), an individual subject to an order of restriction may not be terminated from employment if the reason for termination is based solely on the fact that the individual is or was subject to an order of restriction.

(b) The department issuing the order of restriction shall give the individual subject to the order of restriction notice of the individual's employment rights under Subsection (4)(a).

(c) An employer in the state, including an employer who is the state or a political subdivision of the state, may not violate the provisions of Subsection (4)(a).

UTAH CODE ANN. § 26-6b-5 (2018)

Petition for judicial review of order of restriction – Court-ordered examination period

(1)(a) A department may petition for a judicial review of the department's order of restriction for an individual or group of individuals who are subject to restriction by filing a written petition with the district court of the county in which the individual or group of individuals reside or are located.

(3) The court shall issue an order of restriction requiring the individual or group of individuals to submit to involuntary restriction to protect the public health if the district court finds:

(a) there is a reasonable basis to believe that the individual's or group of individuals' condition requires involuntary examination, quarantine, treatment, or isolation pending examination and hearing; or

(b) the individual or group of individuals have refused to submit to examination by a health professional as directed by the department or to voluntarily submit to examination, treatment, quarantine, or isolation.

(5) At least 24 hours prior to the hearing required by Section 26-6b-6, the department which is the petitioner, shall report to the court, in writing, the opinion of qualified health care providers:

(a) regarding whether the individual or group of individuals are infected by or contaminated with:

- (i) a communicable or possible communicable disease that poses a threat to public health;
 - (ii) an infectious agent or possibly infectious agent that poses a threat to public health;
 - (iii) a chemical or biological agent that poses a threat to public health; or
 - (iv) a condition that poses a threat to public health;
- (b) that despite the exercise of reasonable diligence, the diagnostic studies have not been completed;
- (c) whether the individual or group of individuals have agreed to voluntarily comply with necessary examination, treatment, quarantine, or isolation; and
- (d) whether the petitioner believes the individual or group of individuals will comply without court proceedings.

UTAH CODE ANN. § 26-6b-6 (2018)

Court determination for an order of restriction after examination period

(1) The district court shall set a hearing regarding the involuntary order of restriction of an individual or group of individuals, to be held within 10 business days of the issuance of its order of restriction issued pursuant to Section 26-6b-5, unless the petitioner informs the district court prior to this hearing that the individual or group of individuals:

- (a) are not subject to restriction; or
- (b) have stipulated to the issuance of an order of restriction.

(3)

(b) The court may, after a hearing at which the individual or group of individuals are present in person or by telephonic or other electronic means and have had the opportunity to be represented by counsel, extend its order of restriction for a reasonable period, not to exceed 90 days, if the court has reason to believe the individual or group of individuals are infected by or contaminated with:

- (i) a communicable or possibly communicable disease that poses a threat to public health;
- (ii) an infectious agent or possibly infectious agent that poses a threat to public health;
- (iii) a condition that poses a threat to public health, but, despite the exercise of reasonable diligence the diagnostic studies have not been completed.

(6)

(a) The district court shall order the individual and each individual in a group of individuals to submit to the order of restriction if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:

- (i) the individual or group of individuals are infected with a communicable disease or infectious agent, are contaminated with a chemical or biological agent, or are in a condition that poses a threat to public health;
- (ii) there is no appropriate and less restrictive alternative to a court order of examination, quarantine, isolation, and treatment, or any of them;
- (iii) the petitioner can provide the individual or group of individuals with treatment that is adequate and appropriate to the individual's or group of individuals' conditions and needs; and
- (iv) it is in the public interest to order the individual or group of individuals to submit to involuntary examination, quarantine, isolation, and treatment, or any of them after weighing the following factors:
 - (A) the personal or religious beliefs, if any, of the individual that are opposed to medical examination or treatment;
 - (B) the ability of the department to control the public health threat with treatment alternatives that are requested by the individual;
 - (C) the economic impact for the department if the individual is permitted to use an alternative to the treatment recommended by the department; and
 - (D) other relevant factors as determined by the court

(8)

- (a) The order of restriction may not exceed six months without benefit of a district court review hearing.
- (b) The district court review hearing shall be held prior to the expiration of the order of restriction issued under Subsection (7). At the review hearing the court may issue an order of restriction for up to an indeterminate period, if the district court enters a written finding in the record determining by clear and convincing evidence that the required conditions in Subsection (6) will continue for an indeterminate period.

UTAH CODE ANN. § 26-6b-7 (2018)

Periodic review of individuals under court order

(1) At least two weeks prior to the expiration of the designated period of any court order still in effect, the petitioner shall inform the court that issued the order that the order is about to expire. The petitioner shall immediately reexamine the reasons upon which the court's order was based. If the petitioner determines that the conditions justifying that order no longer exist, it shall discharge the individual from involuntary quarantine, isolation, or treatment and report its action to the court for a termination of the order. Otherwise, the court shall schedule a hearing prior to the expiration of its order and proceed under Sections 26-6b-4 through 26-6b-6.

(2) The petitioner responsible for the care of an individual under a court order of involuntary quarantine, isolation, or treatment for an indeterminate period shall at six-month intervals reexamine the reasons upon which the order of indeterminate duration was based. If the petitioner determines that the

conditions justifying that the court's order no longer exist, the petitioner shall discharge the individual from involuntary quarantine, isolation, or treatment and immediately report its action to the court for a termination of the order. If the petitioner determines that the conditions justifying the involuntary quarantine, isolation, or treatment continue to exist, the petitioner shall send a written report of those findings to the court. The petitioner shall notify the individual and his counsel of record in writing that the involuntary quarantine, isolation, or treatment will be continued, the reasons for that decision, and that the individual has the right to a review hearing by making a request to the court. Upon receiving the request for a review, the court shall immediately set a hearing date and proceed under Sections 26-6b-4 through 26-6b-6.