

CORRECTIONS - PROCEDURES AND FEES

2002 FIFTH SPECIAL SESSION

STATE OF UTAH

Sponsor: Glenn L. Way

This act modifies the Public Safety Code by amending provisions regarding the collection of DNA specimens from offenders. The act clarifies statutory authority for agencies to collect the specimens, and that the \$75 fee is not to be collected from the offender if the collecting agency determines the offender is unable to pay. This act requires that the agency establish procedures for determining ability to pay. This act requires that DNA specimens are to be collected from all persons convicted of a felony under state law, not only those felonies under the Criminal Code. This act authorizes use of reasonable force if necessary to collect the specimen, and requires the agencies to establish guidelines and procedures.

This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53-10-403, as last amended by Chapter 140, Laws of Utah 2002

53-10-404, as last amended by Chapter 140, Laws of Utah 2002

78-3a-118, as last amended by Chapters 22 and 140, Laws of Utah 2002

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

Section 1. Section **53-10-403** is amended to read:

53-10-403. DNA specimen analysis -- Application to offenders, including minors.

(1) Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who has pled guilty to or has been convicted of any of the offenses under Subsection (2) and who is on probation, parole, or incarcerated for any offense under Subsection (2) on or after July 1, 2002, or who is a minor under Subsection (3).

(2) Offenses referred to in Subsection (1) are:

(a) any felony under [~~Title 76;~~] the Utah [~~Criminal~~] Code, and any violation of Section



28 76-5-401.1, sexual abuse of a minor;

29 (b) an attempt to commit a burglary, or any class A burglary offense; or

30 (c) any offense under Subsection (2)(a) or (b):

31 (i) for which the court enters a judgment for conviction to a lower degree of offense under
32 Section 76-3-402; or

33 (ii) regarding which the court allows the defendant to enter a plea in abeyance as defined
34 in Section 77-2a-1.

35 (3) A minor under Subsection (1) is a minor 14 years of age or older[;] whom the court
36 has adjudicated to be within the jurisdiction of the juvenile court due to the commission of any
37 offense described in Subsection (2), and who is:

38 (a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense
39 under Subsection (2); or

40 (b) in the legal custody of the Division of Youth Corrections on or after July 1, 2002 for
41 an offense under Subsection (2).

42 Section 2. Section **53-10-404** is amended to read:

43 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

44 (1) As used in this section, "person" refers to any person described under Section
45 53-10-403.

46 (2) (a) A person under Section 53-10-403 or any person added to the sex offender register
47 as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse the
48 responsible agency \$75 for the cost of obtaining the DNA specimen unless the agency determines
49 the person lacks the ability to pay.

50 (b) The responsible agencies shall establish guidelines and procedures for determining if
51 the person is able to pay the fee.

52 [~~(3) (a) The court shall include in the judgment of conviction an order stating that a DNA~~
53 ~~specimen shall be obtained and, unless the person lacks the ability to pay, he shall reimburse the~~
54 ~~responsible agency \$75 for the cost of obtaining the DNA specimen.]~~

55 [~~(b)~~] (3) (a) All fees collected under Subsection [~~(3)~~](a) (2) shall be deposited in the DNA
56 Specimen Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee
57 shall deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15
58 for the costs of obtaining the saliva DNA specimen.

59 ~~[(c) Obtaining a saliva DNA specimen complies with the court order under Subsection~~
60 ~~(3)(a), or Subsection 17-22-2(1)(p), 62A-7-104(18), or 78-3a-118(4) unless the court specifies in~~
61 ~~the order that the DNA specimen is to be blood.]~~

62 (b) The responsible agency shall determine the method of collecting the DNA specimen.
63 Unless the responsible agency determines there are substantial reasons for using a different method
64 of collection or the person refuses to cooperate with the collection, the preferred method of
65 collection shall be obtaining a saliva specimen.

66 (c) The responsible agencies may use reasonable force, as established by their individual
67 guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the
68 collection.

69 (d) If the judgment places the person on probation, the [court] person shall [order him to]
70 submit to the obtaining of a DNA specimen as a condition of the probation.

71 (e) Under this section a person is required to provide one DNA specimen. The person
72 shall provide an additional DNA specimen only if the DNA specimen previously provided is not
73 adequate for analysis.

74 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
75 possible after conviction, plea, or finding of jurisdiction by the juvenile court, and transmitted to
76 the Department of Public Safety.

77 (b) If notified by the Department of Public Safety that a DNA specimen is not adequate
78 for analysis, the agency shall obtain and transmit an additional DNA specimen.

79 (5) (a) The Department of Corrections is the responsible agency whenever the person is
80 committed to the custody of or is under the supervision of the Department of Corrections.

81 (b) The juvenile court is the responsible agency regarding a minor under Subsection
82 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Youth
83 Corrections, that division is the responsible agency if a DNA specimen of the minor has not
84 previously been obtained by the juvenile court under Section 78-3a-118.

85 (c) (i) The sheriff operating a county jail is the responsible agency regarding the collection
86 of DNA specimens from persons incarcerated in the county jail:

87 (A) as a condition of probation for a felony offense; or

88 (B) for a class A burglary offense.

89 (ii) The sheriff shall designate employees to obtain the saliva DNA specimens required

90 under Section 53-10-403. The sheriff shall ensure that employees designated to collect the DNA
91 specimens receive appropriate training and that the specimens are obtained in accordance with
92 accepted protocol.

93 (6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

94 (b) Priority of obtaining DNA specimens by the department is:

95 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
96 of or under the supervision of the department before these persons are released from incarceration,
97 parole, or probation, if their release date is prior to that of persons under Subsections (6)(b)(ii), but
98 in no case later than July 1, 2004; and

99 (ii) second, the department shall obtain DNA specimens from persons who are committed
100 to the custody of the department or who are placed under the supervision of the department after
101 July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release
102 from incarceration if the person is imprisoned, or prior to the termination of probation if the person
103 is placed on probation.

104 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
105 is:

106 (i) persons on probation;

107 (ii) persons on parole; and

108 (iii) incarcerated persons.

109 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
110 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
111 specimens from persons in the custody of or under the supervision of the Department of
112 Corrections as of July 1, 2002, prior to their release.

113 (7) (a) As used in this Subsection (7), "court" means the juvenile court and "division"
114 means the Division of Youth Corrections.

115 (b) Priority of obtaining DNA specimens by the court from minors under Section
116 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the
117 division shall be:

118 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the court's
119 jurisdiction, prior to termination of the court's jurisdiction over these minors; and

120 (ii) second, to obtain specimens from minors who are found to be within the court's

121 jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the court's
122 jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction over the
123 minor.

124 (c) Priority of obtaining DNA specimens by the division from minors under Section
125 53-10-403 who are committed to the legal custody of the division shall be:

126 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's
127 legal custody and who have not previously provided a DNA specimen under this section, prior to
128 termination of the division's legal custody of these minors; and

129 (ii) second, to obtain specimens from minors who are placed in the legal custody of the
130 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the
131 division, jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction
132 over the minor.

133 (8) (a) The Department of Corrections, the juvenile court, and the Division of Youth
134 Corrections shall by ~~rule~~ policy establish procedures for obtaining saliva DNA specimens, and
135 shall provide training for employees designated to collect saliva DNA specimens.

136 (b) The department may designate correctional officers, including those employed by the
137 adult probation and parole section of the Department of Corrections, to obtain the saliva DNA
138 specimens required under this section. The department shall ensure that the designated employees
139 receive appropriate training and that the specimens are obtained in accordance with accepted
140 protocol.

141 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.
142 Section 3. Section **78-3a-118** is amended to read:

143 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
144 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

145 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
146 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
147 jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1),
148 findings of fact are not necessary.

149 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
150 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to
151 the school superintendent of the district in which the minor resides or attends school. Notice shall

152 be made to the district superintendent within three days of the adjudication and shall include the
153 specific offenses for which the minor was adjudicated.

154 (2) Upon adjudication the court may make the following dispositions by court order:

155 (a) (i) The court may place the minor on probation or under protective supervision in the
156 minor's own home and upon conditions determined by the court, including compensatory service
157 as provided in Section 78-11-20.7.

158 (ii) The court may place the minor in state supervision with the probation department of
159 the court, under the legal custody of:

160 (A) his parent or guardian;

161 (B) the Division of Youth Corrections; or

162 (C) the Division of Child and Family Services.

163 (iii) If the court orders probation or state supervision, the court shall direct that notice of
164 its order be provided to designated persons in the local law enforcement agency and the school or
165 transferee school, if applicable, which the minor attends. The designated persons may receive the
166 information for purposes of the minor's supervision and student safety.

167 (iv) Any employee of the local law enforcement agency and the school which the minor
168 attends who discloses the court's order of probation is not:

169 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
170 Section 63-30-4; and

171 (B) civilly or criminally liable except when the disclosure constitutes a knowing violation
172 of Section 63-2-801.

173 (b) The court may place the minor in the legal custody of a relative or other suitable
174 person, with or without probation or protective supervision, but the juvenile court may not assume
175 the function of developing foster home services.

176 (c) (i) The court may:

177 (A) vest legal custody of the minor in the Division of Child and Family Services, Division
178 of Youth Corrections, or the Division of Mental Health; and

179 (B) order the Department of Human Services to provide dispositional recommendations
180 and services.

181 (ii) For minors who may qualify for services from two or more divisions within the
182 Department of Human Services, the court may vest legal custody with the department.

183 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
184 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter
185 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter
186 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

187 (B) Prior to the court entering an order to place a minor in the custody of the Division of
188 Child and Family Services on grounds other than abuse or neglect, the court shall provide the
189 division with notice of the hearing no later than five days before the time specified for the hearing
190 so the division may attend the hearing.

191 (C) Prior to committing a minor to the custody of the Division of Child and Family
192 Services, the court shall make a finding as to what reasonable efforts have been attempted to
193 prevent the minor's removal from his home.

194 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
195 confinement.

196 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or
197 dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth
198 Corrections.

199 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction
200 over him, to the temporary custody of the Division of Youth Corrections for observation and
201 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the
202 request of the director of the Division of Youth Corrections.

203 (f) (i) The court may commit the minor to a place of detention or an alternative to
204 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
205 over the minor. This commitment may be stayed or suspended upon conditions ordered by the
206 court.

207 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

208 (A) an act which if committed by an adult would be a criminal offense; or

209 (B) contempt of court under Section 78-3a-901.

210 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the
211 Division of Child and Family Services or any other appropriate person in accordance with the
212 requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
213 Proceedings.

214 (h) The court may place the minor on a ranch or forestry camp, or similar facility for care
215 and also for work, if possible, if the person, agency, or association operating the facility has been
216 approved or has otherwise complied with all applicable state and local laws. A minor placed in
217 a forestry camp or similar facility may be required to work on fire prevention, forestation and
218 reforestation, recreational works, forest roads, and on other works on or off the grounds of the
219 facility and may be paid wages, subject to the approval of and under conditions set by the court.

220 (i) The court may order the minor to repair, replace, or otherwise make restitution for
221 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section
222 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under
223 the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs
224 expended by any governmental entity for the return.

225 (j) The court may issue orders necessary for the collection of restitution and fines ordered
226 by the court, including garnishments, wage withholdings, and executions.

227 (k) (i) The court may through its probation department encourage the development of
228 employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i)
229 and for other purposes considered desirable by the court.

230 (ii) Consistent with the order of the court, the probation officer may permit the minor
231 found to be within the jurisdiction of the court to participate in a program of work restitution or
232 compensatory service in lieu of paying part or all of the fine imposed by the court.

233 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition
234 to any other disposition authorized by this section:

235 (A) restrain the minor from driving for periods of time the court considers necessary; and

236 (B) take possession of the minor's driver license.

237 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
238 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
239 Section 78-3a-506.

240 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
241 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
242 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
243 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
244 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance

245 abuse prevention or treatment program may be credited by the court as compensatory service
246 hours.

247 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
248 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
249 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
250 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in
251 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
252 abuse prevention or treatment program may be credited by the court as compensatory service
253 hours.

254 (n) The court may order that the minor be examined or treated by a physician, surgeon,
255 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
256 place the minor in a hospital or other suitable facility.

257 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest
258 of the minor, and may appoint as guardian a public or private institution or agency in which legal
259 custody of the minor is vested.

260 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
261 private agency or institution, the court shall give primary consideration to the welfare of the minor.
262 When practicable, the court may take into consideration the religious preferences of the minor and
263 of the minor's parents.

264 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
265 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any
266 other person who has been made a party to the proceedings. Conditions may include:

- 267 (A) parent-time by the parents or one parent;
- 268 (B) restrictions on the minor's associates;
- 269 (C) restrictions on the minor's occupation and other activities; and
- 270 (D) requirements to be observed by the parents or custodian.

271 (ii) A minor whose parents or guardians successfully complete a family or other counseling
272 program may be credited by the court for detention, confinement, or probation time.

273 (q) The court may order the minor to be placed in the legal custody of the Division of
274 Mental Health or committed to the physical custody of a local mental health authority, in
275 accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment

276 of Persons Under Age 18 to Division of Mental Health.

277 (r) (i) The court may make an order committing a minor within its jurisdiction to the Utah
278 State Developmental Center if the minor has mental retardation in accordance with the provisions
279 of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

280 (ii) The court shall follow the procedure applicable in the district courts with respect to
281 judicial commitments to the Utah State Developmental Center when ordering a commitment under
282 Subsection (2)(r)(i).

283 (s) The court may terminate all parental rights upon a finding of compliance with the
284 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

285 (t) The court may make any other reasonable orders for the best interest of the minor or
286 as required for the protection of the public, except that a person younger than 18 years of age may
287 not be committed to jail or prison.

288 (u) The court may combine the dispositions listed in this section if they are compatible.

289 (v) Before depriving any parent of custody, the court shall give due consideration to the
290 rights of parents concerning their minor. The court may transfer custody of a minor to another
291 person, agency, or institution in accordance with the requirements and procedures of Title 78,
292 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

293 (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation
294 or placement of a minor with an individual or an agency shall include a date certain for a review
295 of the case by the court. A new date shall be set upon each review.

296 (x) In reviewing foster home placements, special attention shall be given to making
297 adoptable minors available for adoption without delay.

298 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
299 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
300 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
301 78-3a-105(4).

302 (ii) Orders under Subsection (2)(y)(i):

303 (A) shall remain in effect until the minor reaches majority;

304 (B) are not subject to review under Section 78-3a-119; and

305 (C) may be modified by petition or motion as provided in Section 78-3a-903.

306 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and

307 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of
308 the juvenile court.

309 (3) In addition to the dispositions described in Subsection (2), when a minor comes within
310 the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu
311 of other sanctions, provided:

312 (a) the minor meets the current entrance qualifications for service in the National Guard
313 as determined by a recruiter, whose determination is final;

314 (b) the minor is not under the jurisdiction of the court for any act that:

315 (i) would be a felony if committed by an adult;

316 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

317 (iii) was committed with a weapon; and

318 (c) the court retains jurisdiction over the minor under conditions set by the court and
319 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

320 (4) (a) ~~[The court shall order that a]~~ A DNA specimen shall be obtained from a minor who
321 is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall
322 be obtained by designated employees of the court or, if the minor is in the legal custody of the
323 Division of Youth Corrections, then by designated employees of the division under Subsection
324 53-10-404(5)(b).

325 (b) The ~~[court]~~ responsible agency shall ensure that employees designated to collect the
326 saliva DNA specimens receive appropriate training and that the specimens are obtained in
327 accordance with accepted protocol.

328 (c) ~~[The court shall order the minor to reimburse the agency obtaining the DNA specimen
329 for \$75 toward the costs of obtaining the specimen, unless the court finds the minor is unable to
330 pay the reimbursement.]~~ Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed
331 in the DNA Specimen Restricted Account created in Section 53-10-407.

332 (d) Payment of the reimbursement is second in priority to payments the minor is ordered
333 to make for restitution under this section and treatment under Section 78-3a-318.

334 **Section 4. Effective date.**

335 If approved by two-thirds of all the members elected to each house, this act takes effect
336 upon approval by the governor, or the day following the constitutional time limit of Utah
337 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the

338 date of veto override.

Legislative Review Note
as of 7-9-02 3:45 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel