

1 **DNA SAMPLE FOR CRIMINAL OFFENSES -**
2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Richard A. Greenwood**

6 Senate Sponsor: Jon J. Greiner

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the public safety laws regarding collection of DNA specimens to
11 include collection from persons convicted for specified misdemeanors.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires that a DNA specimen shall be obtained from a person convicted of an
15 assault, which is a class B misdemeanor, in addition to current requirements for
16 felonies and class A misdemeanors;
- 17 ▶ provides that a DNA specimen is not to be taken from a minor who commits an
18 assault;
- 19 ▶ requires a person convicted of an assault to also pay the fee of \$100 for the costs of
20 collecting the DNA specimen; and
- 21 ▶ provides the process for requesting destruction of a specimen.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 53-10-403, as last amended by Laws of Utah 2006, Chapter 306

29 53-10-403.5, as enacted by Laws of Utah 2002, Chapter 140

30 53-10-404, as last amended by Laws of Utah 2008, Chapter 3

31 53-10-406, as last amended by Laws of Utah 2008, Chapter 382



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

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

35 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

36 (1) Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who:

37 (a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)
38 [~~and who is on probation, parole, or incarcerated for any offense under Subsection (2)] on or
39 after July 1, 2002;~~

40 (b) has pled guilty to or has been convicted by any other state or by the United States
41 government of an offense which if committed in this state would be punishable as one or more
42 of the offenses listed in Subsection (2)[~~and who is on probation, parole, or incarcerated in this
43 state for the offense] on or after July 1, 2003; or~~

44 (c) is a minor under Subsection (3).

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

46 (a) (i) any felony or class A misdemeanor under the Utah Code; [~~or~~] and

47 (ii) on and after May 12, 2009, assault, a class B misdemeanor, under Section
48 76-5-102, except that a DNA specimen may not be taken from a minor whom the court has
49 adjudicated to be within the jurisdiction of the juvenile court solely due to the commission of a
50 class B assault offense; or

51 (b) any offense under Subsection (2)(a):

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

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

56 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah
57 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission
58 of any offense described in Subsection (2), and who is:

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

61 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
62 2002 for an offense under Subsection (2).

63 Section 2. Section **53-10-403.5** is amended to read:

64 **53-10-403.5. Definitions.**

65 As used in Sections 53-10-404, 53-10-405, and 53-10-406:

66 (1) "Bureau" means the Bureau of Forensic Services.

67 [~~(1)~~] (2) "DNA" means deoxyribonucleic acid.

68 [~~(2)~~] (3) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

69 (4) "Final judgment" means a judgment, including any supporting opinion, concerning
70 which all appellate remedies have been exhausted or the time for appeal has expired.

71 Section 3. Section **53-10-404** is amended to read:

72 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

73 (1) As used in this section, "person" refers to any person described under Section
74 53-10-403.

75 (2) (a) A person under Section 53-10-403 or any person added to the sex offender
76 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse
77 the [~~responsible~~] agency responsible for obtaining the DNA specimen \$100 for the cost of
78 obtaining the DNA specimen unless the agency determines the person lacks the ability to pay.

79 (b) (i) (A) The responsible agencies shall establish guidelines and procedures for
80 determining if the person is able to pay the fee.

81 (B) An agency's implementation of Subsection (2)(b)(ii) meets an agency's obligation
82 to determine an inmate's ability to pay.

83 (ii) An agency's guidelines and procedures may provide for the assessment of \$100 on
84 the inmate's county trust fund account and may allow a negative balance in the account until
85 the \$100 is paid in full.

86 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
87 Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall
88 deposit \$80 of the fee in the DNA Specimen Restricted Account and retain the balance of \$20
89 for the costs of obtaining the saliva DNA specimen.

90 (b) The responsible agency shall determine the method of collecting the DNA
91 specimen. Unless the responsible agency determines there are substantial reasons for using a
92 different method of collection or the person refuses to cooperate with the collection, the
93 preferred method of collection ~~[shall be]~~ is obtaining a saliva specimen.

94 (c) The responsible ~~[agencies]~~ agency may use reasonable force, as established by
95 ~~[their individual]~~ its guidelines and procedures, to collect the DNA sample if the person refuses
96 to cooperate with the collection.

97 (d) If the judgment places the person on probation, the person shall submit to the
98 obtaining of a DNA specimen as a condition of the probation.

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

102 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
103 possible ~~[after]~~ and transferred to the Department of Public Safety upon conviction, plea, or
104 finding of jurisdiction by the juvenile court~~[, and transmitted to the Department of Public~~
105 ~~Safety]~~.

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

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

110 (b) The juvenile court is the responsible agency regarding a minor under Subsection
111 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
112 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
113 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

114 (c) The sheriff operating a county jail is the responsible agency regarding the collection
115 of DNA specimens from persons who:

116 (i) have pled guilty to or have been convicted of an offense listed under Subsection
117 53-10-403(2) but who have not been committed to the custody of or are not under the
118 supervision of the Department of Corrections; and

119 (ii) are incarcerated in the county jail:

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

121 (B) for a misdemeanor offense for which collection of a DNA specimen is required.

122 (d) The sheriff under Subsection (5)(c) shall:

123 (i) designate employees to obtain the saliva DNA specimens required under Section
124 53-10-403; and

125 (ii) ensure that employees designated to collect the DNA specimens receive appropriate
126 training and that the specimens are obtained in accordance with accepted protocol.

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

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

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

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

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

141 (i) persons on probation;

142 (ii) persons on parole; and

143 (iii) incarcerated persons.

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

148 (7) (a) As used in this Subsection (7), "court" means the juvenile court and "division"
149 means the Division of Juvenile Justice Services.

150 (b) Priority of obtaining DNA specimens by the court from minors under Section
151 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of

152 the division shall be:

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

155 (ii) second, to obtain specimens from minors who are found to be within the court's
156 jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the
157 court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction
158 over the minor.

159 (c) Priority of obtaining DNA specimens by the division from minors under Section
160 53-10-403 who are committed to the legal custody of the division shall be:

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

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

168 (8) (a) The Department of Corrections, the juvenile court, [~~and~~] the Division of
169 Juvenile Justice Services, and county sheriffs shall by policy establish procedures for obtaining
170 saliva DNA specimens, and shall provide training for employees designated to collect saliva
171 DNA specimens.

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

177 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

178 Section 4. Section **53-10-406** is amended to read:

179 **53-10-406. DNA specimen analysis -- Bureau responsibilities -- Destruction of**
180 **DNA specimen.**

181 (1) The bureau shall:

182 (a) store all DNA specimens received and other physical evidence obtained from

183 analysis of those specimens;

184 (b) analyze the specimens to establish the genetic profile of the donor or to otherwise
185 determine the identity of persons or contract with other qualified public or private laboratories
186 to conduct the analysis;

187 (c) maintain a criminal identification data base containing information derived from
188 DNA analysis;

189 (d) utilize the specimens to create statistical population frequency data bases, provided
190 that genetic profiles or other information in a population frequency data base may not be
191 identified with specific individuals;

192 (e) ensure that the DNA identification system does not provide information allowing
193 prediction of genetic disease or predisposition to illness; and

194 (f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
195 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA
196 specimens and for storing and destroying DNA specimens and other physical evidence and
197 criminal identification information obtained from the analysis.

198 (2) Procedures for DNA analysis may include all techniques which the Department of
199 Public Safety determines are accurate and reliable in establishing identity, including but not
200 limited to, analysis of DNA, antigen antibodies, polymorphic enzymes, or polymorphic
201 proteins.

202 (3) (a) In accordance with Section 63G-2-305, all DNA specimens received shall be
203 classified as protected.

204 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
205 physical evidence, or criminal identification information obtained, stored, or maintained under
206 this section, except under its provisions, including responding to requests from law
207 enforcement agencies regarding if the bureau has a person's DNA specimen on file.

208 (4) Notwithstanding the provisions of Subsection 63G-2-202(1), the department may
209 deny inspection if it determines that there is a reasonable likelihood that the inspection would
210 prejudice a pending criminal investigation.

211 (5) The department shall adopt procedures governing the inspection of records, DNA
212 specimens, and challenges to the accuracy of records. The procedures shall accommodate the
213 need to preserve the materials from contamination and destruction.

214 ~~[(6) (a) Whenever a court]~~

215 (6) A person whose DNA specimen has been obtained under this section may
216 personally, or through a legal representative, request in writing the destruction of the person's
217 DNA specimen and any criminal identification record created in connection with that specimen
218 if:

219 (a) a final judgment reverses the conviction, judgment, or order that created an
220 obligation to provide a DNA specimen~~]; the person who provided the specimen may request~~
221 ~~destruction of the specimen and any criminal identification record created in connection with~~
222 ~~that specimen.]; and~~

223 (b) the department determines that the person has not otherwise become obligated to
224 submit a DNA specimen as a result of any separate conviction or juvenile adjudication for any
225 offense listed in Subsection 53-10-403(2).

226 ~~[(b)]~~ (7) Upon receipt of a written request for destruction pursuant to ~~[this section]~~
227 Subsection (6) and receipt of a certified copy of the court order reversing the conviction,
228 judgment, or order, the Department of Public Safety shall destroy any specimen received from
229 the person, any physical evidence obtained from that specimen, and any criminal identification
230 records pertaining to the person, unless ~~[the department determines that the person has~~
231 ~~otherwise become obligated to submit a DNA specimen as a result of a separate conviction or~~
232 ~~juvenile adjudication for an offense listed in Section 53-10-403]~~ prohibited under Subsection
233 (6)(b).

234 ~~[(7)]~~ (8) The department is not required to destroy any item of physical evidence
235 obtained from a DNA specimen if evidence relating to another person subject to the provisions
236 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

237 ~~[(8)]~~ (9) A DNA specimen, physical evidence, or criminal identification record may
238 not be affected by an order to set aside a conviction, except under the provisions of this section.

239 ~~[(9)]~~ (10) If funding is not available for analysis of any of the DNA specimens
240 collected under this part, the bureau shall store the collected specimens until funding is made
241 available for analysis through state or federal funds.

Legislative Review Note
as of 1-13-09 10:07 AM

Office of Legislative Research and General Counsel

H.B. 314 - Dna Sample for Criminal Offenses - Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will require the Department of Public Safety to spend \$11,500 in FY 2009 and \$69,000 in FY 2010 and each fiscal year thereafter. The Department believes it can handle these expenditures within existing resources. The Courts will require \$800 in FY 2009 and \$4,800 from the General Fund in FY 2010 and each fiscal year thereafter. The bill will also generate \$16,700 in Restricted Revenue beginning in FY 2009 and \$100,000 in FY 2010 and each year thereafter.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$73,800	\$73,800	\$73,800	\$0	\$0	\$0
General Fund, One-Time	(\$61,500)	\$0	\$0	\$0	\$0	\$0
Restricted Funds	\$0	\$0	\$0	\$16,700	\$100,000	\$100,000
Total	\$12,300	\$73,800	\$73,800	\$16,700	\$100,000	\$100,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments may benefit.