

DNA MODIFICATIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the public safety laws regarding collection of DNA specimens to include collection from persons booked for any violent felony, increases the fee for the specimen, and changes the management of fees.

Highlighted Provisions:

This bill:

▶ requires that ~~H→~~ [any law enforcement agency] a county sheriff ~~←H~~ that books a person for any violent crime shall obtain a DNA specimen if at the time of booking the person's DNA specimen is not already on file;

▶ requires the booked person to pay a fee of \$150 for the costs of collecting the DNA specimen if the person is convicted of the charge for which the person was booked;

▶ increases the fee for all required DNA specimens from \$100 to \$150;

▶ allocates ~~H→~~ [\$20] \$25 ~~←H~~ of the fee to the collecting agency, and the balance of ~~H→~~ [-\$130] \$125 ~~←H~~ to the Department of Public Safety for the processing of the DNA specimens;

▶ provides that a DNA specimen taken at time of booking may not be processed until the person is bound over for trial, waives a preliminary hearing, or a grand jury issues an indictment ~~S→~~;

▶ clarifies that only DNA markers used for forensic purposes may be included when establishing a donor's gender and unique individual identification by DNA analysis; ~~H→~~ [and] ~~←H~~

▶ requires that the DNA analysis be consistent with and not exceed FBI forensic DNA analysis procedures ~~H→~~ [:] ~~←H~~ ~~←S~~ ~~H→~~;

▶ requires that the department destroy a DNA specimen if criminal charges have not been filed within 90 days after booking; and

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- 24g **▶ provides that when a court issues an order to destroy DNA records pursuant to a**
- 24h **person's motion for destruction based on dismissal or acquittal of the charge against the**
- 24i **person, the court may also provide information advising of state law regarding expungement**
- 24j **of criminal charges;**
- 24k **▶ establishes criminal penalties for possessing or disclosing individually identifiable**
- 24l **DNA analysis information and the failure to destroy a DNA specimen, in violation of state law**
- 24m **regarding management, storage, and destruction of DNA specimens and DNA analysis ; and**
- 24n **▶ allows analysis of the DNA if the person is convicted of any charge arising out of the**
- 24o **same criminal episode regarding which the DNA specimen was obtained. ←Ĥ**

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill takes effect on January 1, 2011.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-10-403**, as last amended by Laws of Utah 2006, Chapter 306

32 **53-10-403.5**, as enacted by Laws of Utah 2002, Chapter 140

33 **53-10-404**, as last amended by Laws of Utah 2008, Chapter 3

34 **53-10-405**, as last amended by Laws of Utah 2002, Chapter 140

35 **53-10-406**, as last amended by Laws of Utah 2008, Chapter 382

36 **53-10-407**, as last amended by Laws of Utah 2008, Chapter 3

37 **78B-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3

38 ENACTS:

39 **53-10-404.5**, Utah Code Annotated 1953



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

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

43 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

44 (1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person
45 who:

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

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

53 (c) has been booked on or after January 1, 2011, for any offense under Subsection
54 (2)(c); or

55 [~~(c)~~] (d) is a minor under Subsection (3).

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

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

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

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

61 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
62 defined in Section 77-2a-1[-]; or

63 (c) any violent felony.

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

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

69 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
70 2002 for an offense under Subsection (2).

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

72 **53-10-403.5. Definitions.**

73 As used in Sections ~~H~~→ **53-10-403**, ←~~H~~ 53-10-404, 53-10-404.5, 53-10-405,
73a and 53-10-406:

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

75 (2) "Conviction" means:

76 (a) a verdict or conviction;

77 (b) a plea of guilty or guilty and mentally ill;

78 (c) a plea of no contest; or

79 (d) the acceptance by the court of a plea in abeyance.

80 ~~(+)~~ (3) "DNA" means deoxyribonucleic acid.

81 ~~(2)~~ (4) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

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

84 (6) "Violent felony" means any offense under Section 76-3-203.5.

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

86 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

87 (1) As used in this section, "person" refers to any person ~~H~~→ [, including a minor,] ←~~H~~ as
88 described under Section 53-10-403.

89 (2) (a) A person under Section 53-10-403 or any person added to the sex offender

90 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse
 91 the [responsible] agency [~~\$100~~] responsible for obtaining the DNA specimen \$150 for the cost
 92 of obtaining the DNA specimen unless:

93 (i) the person was booked under Section 53-10-403 and is not required to reimburse the
 94 agency under Section 53-10-404.5; or

95 (ii) the agency determines the person lacks the ability to pay.

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

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

100 (ii) An agency's guidelines and procedures may provide for the assessment of [~~\$100~~]
 101 \$150 on the inmate's county trust fund account and may allow a negative balance in the account
 102 until the [~~\$100~~] \$150 is paid in full.

103 (3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA
 104 Specimen Restricted Account created in Section 53-10-407, except that [~~sheriffs~~] the agency
 105 collecting the fee [~~shall deposit \$80 of the fee in the DNA Specimen Restricted Account and~~
 106 ~~retain the balance of \$20~~] may retain not more than ~~H→~~ [~~\$20~~] \$25 ~~←H~~ per individual specimen for
 106a the costs
 107 of obtaining the saliva DNA specimen.

108 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than
 109 ~~H→~~ [~~\$20~~] \$25 ~~←H~~ , and no amount of the \$150 fee may be credited to any other fee or agency
 109a obligation.

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

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

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

119 (e) (i) Under this section a person is required to provide one DNA specimen and pay
 120 the collection fee as required under this section.

121 (ii) The person shall provide an additional DNA specimen only if the DNA specimen
 122 previously provided is not adequate for analysis.

123 (iii) The collection fee is not imposed for a second or subsequent DNA specimen
 124 collected under this section.

125 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect
 126 any outstanding amount of a fee due under this section from any person who owes any portion
 127 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section
 128 53-10-407.

129 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
 130 possible and transferred to the Department of Public Safety:

131 (i) after ~~an~~ conviction ~~or~~ ~~plea,~~ or ~~a~~ finding of jurisdiction by
 131a the juvenile court ~~and~~
 132 transmitted to the Department of Public Safety;; and

133 (ii) on and after January 1, 2011, after the booking of a person for any offense under
 134 Subsection 53-10-403(1)(c).

135 (b) If notified by the Department of Public Safety that a DNA specimen is not adequate
 136 for analysis, the agency shall, as soon as possible:

137 (i) obtain and transmit an additional DNA specimen~~;~~ or

138 (ii) request that another agency that has direct access to the person and that is
 139 authorized to collect DNA specimens under this section collect the necessary second DNA
 140 specimen and transmit it to the Department of Public Safety.

141 (c) Each agency that is responsible for collecting DNA specimens under this section
 142 shall establish:

143 (i) a tracking procedure to record the handling and transfer of each DNA specimen it
 144 obtains; and

145 (ii) a procedure to account for the management of all fees it collects under this section.

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

148 (b) The juvenile court is the responsible agency regarding a minor under Subsection
 149 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
 150 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
 151 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

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

154 (i) have pled guilty to or have been convicted of an offense listed under Subsection
 155 53-10-403(2) but who have not been committed to the custody of or are not under the
 156 supervision of the Department of Corrections; ~~H→~~ [and] ~~←H~~

157 (ii) are incarcerated in the county jail:

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

159 (B) for a misdemeanor offense for which collection of a DNA specimen is required ~~H→~~ ;

159a **and**

159b **(iii) on and after January 1, 2011, are booked at the county jail for any offense under**
 159c **Subsection 53-10-403(1)(c) ←H** .

160 [~~(d) The sheriff under Subsection (5)(c) shall:~~]

161 ~~H→~~ [~~(d) On and after January 1, 2011, each law enforcement agency that books a person for~~
 162 ~~any offense under Subsection 53-10-403(1)(c) shall obtain a DNA specimen from the person~~
 163 ~~being booked in accordance with this section.~~

164 ~~—(e)~~ ~~(d) ←H~~ Each agency required to collect a DNA specimen under this section shall:

165 (i) designate employees to obtain the saliva DNA specimens required under [~~Section~~
 166 ~~53-10-403~~] this section; and

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

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

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

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

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

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

183 (i) first, persons on probation;
184 (ii) second, persons on parole; and
185 (iii) third, incarcerated persons.
186 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
187 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
188 specimens from persons in the custody of or under the supervision of the Department of
189 Corrections as of July 1, 2002, prior to their release.

190 (7) (a) As used in this Subsection (7)[;];
191 (i) "Court" means the juvenile court [~~and~~].
192 (ii) "Division" means the Division of Juvenile Justice Services.

193 (b) Priority of obtaining DNA specimens by the court from minors under Section
194 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
195 the division shall be:

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

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

202 (c) Priority of obtaining DNA specimens by the division from minors under Section
203 53-10-403 who are committed to the legal custody of the division shall be:

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

207 (ii) second, to obtain specimens from minors who are placed in the legal custody of the
208 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the
209 division, [~~jurisdiction,~~] if possible, but not later than prior to termination of the court's
210 jurisdiction over the minor.

211 (8) (a) The Department of Corrections, the juvenile court, [~~and~~] the Division of
212 Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish
213 procedures for obtaining saliva DNA specimens, and shall provide training for employees

214 designated to collect saliva DNA specimens.

215 (b) (i) The department may designate correctional officers, including those employed
216 by the adult probation and parole section of the department [~~of Corrections~~], to obtain the
217 saliva DNA specimens required under this section.

218 (ii) The department shall ensure that the designated employees receive appropriate
219 training and that the specimens are obtained in accordance with accepted protocol.

220 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.
221 Section 4. Section ~~53-10-404.5~~ is enacted to read:

222 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**
223 **conviction.**

224 (1) (a) When ~~H→~~ [~~any law enforcement agency within the state~~] a sheriff ~~←H~~ books a
224a person for any
225 offense under Subsection 53-10-403(1)(c), the ~~H→~~ [~~law enforcement agency~~] sheriff ~~←H~~ shall
225a obtain a DNA
226 specimen from the person upon booking ~~H→~~ of the person ~~←H~~ at the ~~H→~~ county ~~←H~~ jail
226a ~~S→~~ [~~or upon admission to a detention facility~~] ~~←S~~ ,
227 except under Subsection (1)(b).

228 (b) If at the time of booking ~~S→~~ [~~or admission to a detention facility~~] ~~←S~~ the
228a ~~H→~~ [~~acting law~~
229 ~~enforcement agency~~] sheriff ~~←H~~ is able to obtain information from the bureau stating that the
229a bureau has on
230 file a DNA specimen for the person, the ~~H→~~ [~~law enforcement agency~~] sheriff ~~←H~~ is not required
230a to obtain an
231 additional DNA specimen.

232 (2) The person booked under Subsection (1) shall pay a fee of \$150 for the cost of
233 obtaining the DNA specimen if:

234 (a) the charge upon which the booking is based is resolved by a conviction ~~H→~~ or the
234a **person is convicted of any charge arising out of the same criminal episode regarding which the**
234b **DNA specimen was obtained** ~~←H~~ ; and

235 (b) the person's DNA sample is not on file under Subsection (1)(b).

236 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
237 Restricted Account created in Section 53-10-407, except that the agency collecting the fee may
238 retain not more than ~~H→~~ [~~\$20~~] \$25 ~~←H~~ per individual specimen for the costs of obtaining the
238a DNA specimen.

239 (b) The agency collecting the \$150 fee may not retain from each separate fee more than
240 ~~H→~~ [~~\$20~~] \$25 ~~←H~~ , and no amount of the \$150 fee may be credited to any other fee or agency
240a obligation.

241 (4) Any DNA specimen obtained under this section shall be held and may not be
242 processed until ~~H→~~ ~~S→~~ [f] : [f]

243 ~~[(a)],~~ ~~←S~~ [~~regarding the alleged violent offense for which the person was booked:~~] ~~←H~~
244 ~~S→~~ [(f)] (a) ~~←S~~ the court has bound the person over for trial following a preliminary
244a hearing ~~H→~~ for any charge arising out of the same criminal episode regarding which the
244b person was booked ~~←H~~ ;

245 ~~§~~ ~~(ii)~~ (b) ~~§~~ ~~→~~ ~~after~~ ~~→~~ ~~the person has waived the preliminary hearing~~ ~~→~~ ~~for~~
 245a ~~any charge arising out of the same criminal episode regarding which the person was~~
 245b ~~booked~~ ~~→~~ ; or

246 ~~§~~ ~~(iii)~~ (c) ~~§~~ ~~→~~ ~~after~~ ~~→~~ ~~a grand jury has returned an indictment~~ ~~→~~ ~~for any~~
 246a ~~charge arising out of the same criminal episode regarding which the person was booked~~ ~~→~~
 246b ~~§~~ ~~→~~ ; or

247 ~~— (b) if the person is a minor under Subsection 53-10-403(3), the person is found to be~~
 248 ~~within the jurisdiction of the juvenile court due to the commission of the violent offense]~~ ~~§~~
 248a ~~→~~ ~~for any charge arising out of the same criminal episode regarding which the person was~~
 248b ~~booked~~ ~~→~~ .

249 Section 5. Section 53-10-405 is amended to read:

250 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency --**
 251 **Blood sample to be drawn by professional.**

252 (1) (a) A saliva sample shall be obtained by the responsible agency under Subsection
 253 53-10-404(5).

254 (b) The sample shall be obtained in a professionally acceptable manner, using
 255 appropriate procedures to ensure the sample is adequate for DNA analysis.

256 ~~(+)~~ (2) (a) A blood sample shall be drawn in a medically acceptable manner by a
 257 licensed professional nurse, a licensed practical nurse, a paramedic, a qualified medical
 258 technician, a licensed physician, or other person licensed by the state for this purpose.

259 (b) A person authorized by this section to draw a blood sample may not be held civilly
 260 liable for drawing a sample in a medically acceptable manner.

261 ~~[(2) (a) A saliva sample shall be obtained by the responsible agency, as provided under~~
 262 ~~Subsection 53-10-404(5).]~~

263 ~~[(b) The sample shall be obtained in a professionally acceptable manner, using~~
 264 ~~appropriate procedures to ensure the sample is adequate for DNA analysis.]~~

265 (3) A test result or opinion based upon a test result regarding a DNA specimen may not
 266 be rendered inadmissible as evidence solely because of deviations from procedures adopted by
 267 the department that do not affect the reliability of the opinion or test result.

268 (4) A DNA specimen is not required to be obtained if:

269 (a) ~~[the department notifies]~~ the court or the responsible agency confirms with the
 270 department that ~~[it]~~ the department has previously received an adequate DNA specimen
 271 obtained from the ~~[convicted]~~ person in accordance with this section; or

272 (b) the court determines that obtaining a DNA specimen would create a substantial and
 273 unreasonable risk to the health of the ~~[convicted]~~ person.

274 Section 6. Section 53-10-406 is amended to read:

275 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

276 (1) The bureau shall:

277 (a) administer and oversee the DNA specimen collection process;

278 ~~[(a)]~~ (b) store all DNA specimens received and other physical evidence obtained from
279 analysis of those specimens;

280 ~~[(b)]~~ (c) analyze the specimens to establish the genetic profile of the donor or to
281 otherwise determine the identity of persons or contract with other qualified public or private
282 laboratories to conduct the analysis;

283 ~~[(c)]~~ (d) maintain a criminal identification data base containing information derived
284 from DNA analysis;

285 ~~[(d)]~~ (e) utilize the specimens to create statistical population frequency data bases,
286 provided that genetic profiles or other information in a population frequency data base may not
287 be identified with specific individuals;

288 ~~[(e)]~~ (f) ensure that the DNA identification system does not provide information
289 allowing prediction of genetic disease or predisposition to illness;

289a **Ŝ→ (g) ensure that only DNA**

289b **markers routinely used or accepted in the field of forensic science are used to establish the** ~~[-profile]~~

289c **gender and unique individual identification of the donor;**

289d **(h) utilize only those DNA analysis procedures that are consistent with, and do not exceed, procedures**

289e **established and used by the Federal Bureau of Investigation for the forensic analysis of DNA;** ~~←Ŝ~~

289f **Ĥ→ (i) destroy a DNA specimen obtained under this part if criminal charges have not been**

289g **filed within 90 days after booking for an alleged offense under Subsection 53-10-403(2)(c);** ~~←Ĥ~~

289h and

290 ~~[(f)]~~ **Ŝ→ [(g)] Ĥ→ [(h)] (j) ←Ĥ ←Ŝ** make rules in accordance with Title 63G, Chapter 3, Utah
290a Administrative

291 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA
292 specimens and for storing and destroying DNA specimens and other physical evidence and
293 criminal identification information obtained from the analysis.

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

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

300 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
301 physical evidence, or criminal identification information obtained, stored, or maintained under
302 this section, except under its provisions.

303 (4) Notwithstanding ~~[the provisions of]~~ Subsection 63G-2-202(1), the department may
304 deny inspection if it determines that there is a reasonable likelihood that the inspection would
305 prejudice a pending criminal investigation.

306 (5) The department shall adopt procedures governing the inspection of records, DNA

307 specimens, and challenges to the accuracy of records. The procedures shall accommodate the
308 need to preserve the materials from contamination and destruction.

309 (6) A person whose DNA specimen has been obtained under this part may, personally
310 or through a legal representative, submit to the court a motion for a court order requiring the
311 destruction of the person's DNA specimen and any criminal identification record created in
312 connection with that specimen if:

313 [~~(6)(a) Whenever a court~~] (a) (i) a final judgment reverses the conviction, judgment,
314 or order that created an obligation to provide a DNA specimen[-~~the person who provided the~~
315 ~~specimen may request destruction of the specimen and any criminal identification record~~
316 ~~created in connection with that specimen.~~]; or

317 (ii) ~~H→~~ **H→** [the booking upon which the obtaining of the] all charges arising from the same
317a criminal episode for which the ←H DNA specimen H→ was obtained under
317b Subsection 53-10-404.5(1)(a) have [has] ←H been resolved by a
318 final judgment of dismissal or acquittal; and

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

321a ~~H→~~ **H→** (7) A court order issued under Subsection (6) may be accompanied by a written notice
321b to the person advising that state law provides for expungement of criminal charges if the
321c charge is resolved by a final judgment of dismissal or acquittal. ←H

322 [~~(b)~~] ~~H→~~ **H→** [~~(7)~~ (8) ←H Upon receipt of a [written request] court order for destruction
322a pursuant to [this
323 section] Subsection (6) and receipt of a certified copy of the court order reversing the
324 conviction, judgment, or order, ~~S→~~ a certified copy of a court order to set aside the conviction, ←S or
324a a certified copy of the dismissal or acquittal of the charge
325 regarding which the person was arrested, the Department of Public Safety shall destroy any
326 specimen received from the person, any physical evidence obtained from that specimen, and
327 any criminal identification records pertaining to the person, unless [the department determines
328 that the person has otherwise become obligated to submit a DNA specimen as a result of a
329 separate conviction or juvenile adjudication for an offense listed in Section 53-10-403]
330 prohibited under Subsection (6)(b).

331 [~~(7)~~] ~~H→~~ **H→** [~~(8)~~ (9) ←H The department is not required to destroy any item of physical
331a evidence
332 obtained from a DNA specimen if evidence relating to another person subject to the provisions
333 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

334 [~~(8)~~] ~~H→~~ **H→** [~~(9)~~ (10) ←H A DNA specimen, physical evidence, or criminal identification
334a record may
335 not be affected by an order to set aside a conviction, except under the provisions of this section.

336 [~~(9)~~] ~~H→~~ **H→** [~~(10)~~ (11) ←H If funding is not available for analysis of any of the DNA
336a specimens
337 collected under this part, the bureau shall store the collected specimens until funding is made

338 available for analysis through state or federal funds.

338a ~~H~~→ **(11)(a)(i) A person who, due to the person's employment or authority, has possession of**
 338b **or access to individually identifiable DNA information contained in the state criminal**
 338c **identification database or the state DNA specimen repository may not wilfully disclose the**
 338d **information in any manner to any individual, agency, or entity that is not entitled under this**
 338e **part to receive the information.**

338f **(ii) A person may not wilfully obtain individually identifiable DNA information from**
 338g **the state criminal identification data base or the state DNA repository other than as authorized**
 338h **by this part.**

338i **(iii) A person may not wilfully analyze a DNA specimen for any purpose, or to obtain**
 338j **any information other than as required under this part.**

338k **(iv) A person may not wilfully fail to destroy or fail to ensure the destruction of a DNA**
 338l **specimen when destruction is required by this part or by court order.**

338m **(b)(i) A person who violates Subsection (11)(a)(i), (ii), or (iii) is guilty of a third degree**
 338n **felony.**

338o **(ii) A person who violates Subsection (11)(a)(iv) is guilty of a class B misdemeanor.** ←~~H~~

339 Section 7. Section 53-10-407 is amended to read:

340 **53-10-407. DNA Specimen Restricted Account.**

341 (1) There is created the DNA Specimen Restricted Account, which is referred to in this
 342 section as "the account."

343 (2) The sources of monies for the account are:

344 (a) DNA collection fees paid under Section 53-10-404;

345 (b) any appropriations made to the account by the Legislature; and

346 (c) all federal monies provided to the state for the purpose of funding the collection or
 347 analysis of DNA specimens collected under Section 53-10-403.

348 (3) The account shall earn interest, and this interest shall be deposited in the account.

349 (4) The Legislature may appropriate monies from the account solely for the following
 350 purposes:

351 (a) to the Department of Corrections for the costs of~~[-(i)]~~ collecting DNA specimens
 352 as required under Section 53-10-403; ~~[and]~~

353 ~~[(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided~~
 354 ~~in Subsection 78B-9-301(8);]~~

355 (b) to the juvenile court for the costs of collecting DNA specimens as required under
 356 Sections 53-10-403 and 78A-6-117;

357 (c) to the Division of Juvenile Justice Services for the costs of collecting DNA
 358 specimens as required under Sections 53-10-403 and 62A-7-104; and

359 (d) to the Department of Public Safety for the costs of:

360 (i) storing and analyzing DNA specimens in accordance with the requirements of this
 361 part~~[-]; and~~

362 ~~[(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided~~
 363 ~~in Subsection 78B-9-301(8).]~~

364 (5) Appropriations from the account to the Department of Corrections, the juvenile
 365 court, the Division of Juvenile Justice Services, and to the Department of Public Safety are
 366 nonlapsing.

367 Section 8. Section 78B-9-301 is amended to read:

368 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**

369 **Notification of victim.**

370 (1) As used in this part:

371 (a) "DNA" means deoxyribonucleic acid.

372 (b) "Factually innocent" has the same definition as in Section 78B-9-402.

373 (2) A person convicted of a felony offense may at any time file a petition for
374 postconviction DNA testing in the trial court that entered the judgment of conviction if the
375 person asserts factual innocence under oath and the petition alleges:

376 (a) evidence has been obtained regarding the person's case which is still in existence
377 and is in a condition that allows DNA testing to be conducted;

378 (b) the chain of custody is sufficient to establish that the evidence has not been altered
379 in any material aspect;

380 (c) the person identifies the specific evidence to be tested and states a theory of
381 defense, not inconsistent with theories previously asserted at trial, that the requested DNA
382 testing would support;

383 (d) the evidence was not previously subjected to DNA testing, or if the evidence was
384 tested previously, the evidence was not subjected to the testing that is now requested, and the
385 new testing may resolve an issue not resolved by the prior testing;

386 (e) the proposed DNA testing is generally accepted as valid in the scientific field or is
387 otherwise admissible under Utah law;

388 (f) the evidence that is the subject of the request for testing has the potential to produce
389 new, noncumulative evidence that will establish the person's factual innocence; and

390 (g) the person is aware of the consequences of filing the petition, including:

391 (i) those specified in Sections 78B-9-302 and 78B-9-304; and

392 (ii) that the person is waiving any statute of limitations in all jurisdictions as to any
393 felony offense the person has committed which is identified through DNA database
394 comparison.

395 (3) The petition under Subsection (2) shall comply with Rule 65C, Utah Rules of Civil
396 Procedure, including providing the underlying criminal case number.

397 (4) The court may not order DNA testing in cases in which DNA testing was available
398 at the time of trial and the person did not request DNA testing or present DNA evidence for
399 tactical reasons.

400 (5) After a petition is filed under this section, prosecutors, law enforcement officers,
401 and crime laboratory personnel have a duty to cooperate in preserving evidence and in
402 determining the sufficiency of the chain of custody of the evidence which may be subject to
403 DNA testing.

404 (6) (a) A person who files a petition under this section shall serve notice upon the
405 office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The
406 attorney general shall, within 30 days after receipt of service of a copy of the petition, or within
407 any additional period of time the court allows, answer or otherwise respond to all proceedings
408 initiated under this part.

409 (b) After the attorney general is given an opportunity to respond to a petition for
410 postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of
411 the evidence that all criteria of Subsection (2) have been met.

412 (7) (a) If the court grants the petition for testing, the DNA test shall be performed by
413 the Utah State Crime Laboratory within the Criminal Investigations and Technical Services
414 Division created in Section 53-10-103, unless the person establishes that the state crime
415 laboratory has a conflict of interest or does not have the capability to perform the necessary
416 testing.

417 (b) If the court orders that the testing be conducted by any laboratory other than the
418 state crime laboratory, the court shall require that the testing be performed:

419 (i) under reasonable conditions designed to protect the state's interests in the integrity
420 of the evidence; and

421 (ii) according to accepted scientific standards and procedures.

422 (8) (a) DNA testing under this section shall be paid for from funds appropriated to the
423 Department of [~~Corrections~~] Public Safety under Subsection 53-10-407(4)(~~a~~)(d)(ii) from the
424 DNA Specimen Restricted Account created in Section 53-10-407 if:

425 (i) the court ordered the DNA testing under this section;

426 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical
427 Services Division has a conflict of interest or does not have the capability to perform the
428 necessary testing; and

429 (iii) the petitioner who has filed for postconviction DNA testing under Section
430 78B-9-201 is serving a sentence of imprisonment and is indigent.

431 (b) Under this Subsection (8), costs of DNA testing include those necessary to
432 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
433 of findings.

434 (9) If the person is serving a sentence of imprisonment and is indigent, the state shall
435 pay for the costs of the testing under this part, but if the result is not favorable to the person the
436 court may order the person to reimburse the state for the costs of the testing, pursuant to the
437 provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

438 (10) Any victim of the crime regarding which the person petitions for DNA testing,
439 who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney
440 of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.

441 **Section 9. Effective date.**

442 This bill takes effect on January 1, 2011.

Legislative Review Note

as of 2-25-10 10:27 AM

Office of Legislative Research and General Counsel

S.B. 277 - DNA Modifications - As Amended

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will require an appropriation from Restricted Revenue to the Department of Public Safety of \$250,000 in FY 2011 and \$500,000 in FY 2012 and each fiscal year thereafter. The bill will generate Restricted Revenue of \$250,000 in FY 2011 and \$500,000 in FY 2012 and each fiscal year thereafter.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
Restricted Funds	\$0	\$250,000	\$500,000	\$0	\$250,000	\$500,000
Total	\$0	\$250,000	\$500,000	\$0	\$250,000	\$500,000

Individual, Business and/or Local Impact

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