

Jordan D. Teuscher proposes the following substitute bill:

Law Enforcement DNA Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill addresses the collection and analysis of DNA by law enforcement.

Highlighted Provisions:

This bill:

- amends when a DNA specimen for an individual taken at the time of booking may be processed to include, among other circumstances, to allow the processing of the individual's DNA 60 days after the day on which any warrant of arrest has been issued for the individual if the warrant is still outstanding;

- clarifies the level of offense that must be charged or convicted before an individual who had the individual's DNA specimen taken may be assessed a fee;

- requires a prosecutor to notify an individual charged with an offense requiring collection of the individual's DNA of the individual's rights regarding the destruction of the individual's DNA specimen in certain circumstances; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-404.5, as last amended by Laws of Utah 2022, Chapter 113

53-10-406, as last amended by Laws of Utah 2024, Chapter 256

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

Section 1. Section **53-10-404.5** is amended to read:

29 **53-10-404.5 . Obtaining DNA specimen at time of booking -- Payment of fee upon**
30 **conviction.**

31 (1)(a) When a sheriff books a person for any offense under Subsections 53-10-403(1)(c)
32 and (d), the sheriff shall:

33 (i) except as provided in Subsection (1)(b), obtain a DNA specimen from the person
34 upon booking of the person at the county jail; and

35 (ii) provide the person, in a manner the bureau specifies, notice of the process
36 described in Subsection 53-10-406(6)(b) to request destruction of the DNA
37 specimen and removal of the person's DNA record from the database described in
38 Subsection 53-10-406(1)(d).

39 (b) If at the time of booking the sheriff is able to obtain information from the bureau
40 stating that the bureau has received a DNA specimen for the person and the sample
41 analysis is either in process or complete, the sheriff is not required to obtain an
42 additional DNA specimen.

43 (c) If at the time of booking the sheriff is able to obtain information from the bureau
44 stating that the bureau has received a DNA specimen for the person and the sample
45 analysis is pending, the sheriff may obtain an additional DNA specimen.

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

48 (a)(i) the charge upon which the booking is based is resolved by a conviction of a
49 class A misdemeanor or felony level offense; or

50 (ii) [-]the person is convicted of any [charge] class A misdemeanor or felony level
51 offense arising out of the same criminal episode regarding which the DNA
52 specimen was obtained; and

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

54 (3)(a) All fees collected under Subsection (2) shall be deposited into the DNA Specimen
55 Restricted Account created in Section 53-10-407, except that the agency collecting
56 the fee may retain not more than \$25 per individual specimen for the costs of
57 obtaining the DNA specimen.

58 (b) The agency collecting the \$150 fee may not retain from each separate fee more than
59 \$25, and no amount of the \$150 fee may be credited to any other fee or agency
60 obligation.

61 (4) Any DNA specimen obtained under this section shall be held and may not be processed
62 until:

- 63 (a) the court has bound the person over for trial for a felony level offense following a
64 preliminary hearing for any charge arising out of the same criminal episode regarding
65 which the person was booked;
- 66 (b) the person has waived the preliminary hearing for any charge for a felony level
67 offense arising out of the same criminal episode regarding which the person was
68 booked;
- 69 (c) a grand jury has returned an indictment for any charge for a felony level offense
70 arising out of the same criminal episode regarding which the person was booked; or
- 71 (d) for a DNA specimen obtained before, on, or after May 7, 2025, sixty days has passed
72 after [the issuance of an arrest warrant for failure to appear, provided] the day on
73 which any warrant of arrest has been issued for the person if the warrant of arrest is
74 still outstanding[- or has not been recalled].

75 Section 2. Section **53-10-406** is amended to read:

76 **53-10-406 . DNA specimen analysis -- Bureau responsibilities.**

- 77 (1) The bureau shall:
- 78 (a) administer and oversee the DNA specimen collection process;
- 79 (b) store each DNA specimen and associated records received;
- 80 (c) analyze each specimen, or contract with a qualified public or private laboratory to
81 analyze the specimen, to establish the genetic profile of the donor or to otherwise
82 determine the identity of the person;
- 83 (d) maintain a criminal identification database containing information derived from
84 DNA analysis;
- 85 (e) ensure that the DNA identification system does not provide information allowing
86 prediction of genetic disease or predisposition to illness;
- 87 (f) ensure that only DNA markers routinely used or accepted in the field of forensic
88 science are used to establish the gender and unique individual identification of the
89 donor;
- 90 (g) utilize only those DNA analysis procedures that are consistent with, and do not
91 exceed, procedures established and used by the Federal Bureau of Investigation for
92 the forensic analysis of DNA;
- 93 (h) destroy a DNA specimen obtained under this part if criminal charges have not been
94 filed within 90 days after booking for an alleged offense under Subsection 53-10-403
95 (2)(c); and
- 96 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

- 97 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing
98 DNA specimens and for storing and destroying DNA specimens and associated
99 records, and criminal identification information obtained from the analysis.
- 100 (2) Procedures for DNA analysis may include all techniques which the department
101 determines are accurate and reliable in establishing identity.
- 102 (3)(a) In accordance with Section 63G-2-305, each DNA specimen and associated
103 record is classified as protected.
- 104 (b) The department may not transfer or disclose any DNA specimen, associated record,
105 or criminal identification information obtained, stored, or maintained under this
106 section, except under the provisions of this section.
- 107 (4) Notwithstanding Subsection 63G-2-202(1), the department may deny inspection if the
108 department determines that there is a reasonable likelihood that the inspection would
109 prejudice a pending criminal investigation.
- 110 (5) The department shall adopt procedures governing the inspection of records, DNA
111 specimens, and challenges to the accuracy of records. The procedures shall
112 accommodate the need to preserve the materials from contamination and destruction.
- 113 (6) A person whose DNA specimen is obtained under this part may, personally or through a
114 legal representative, submit:
- 115 (a) to the court a motion for a court order requiring the destruction of the person's DNA
116 specimen, associated record, and any criminal identification record created in
117 connection with that specimen, and removal of the person's DNA record from the
118 database described in Subsection (1)(d) if:
- 119 (i) a final judgment reverses the conviction, judgment, or order that created an
120 obligation to provide a DNA specimen; or
- 121 (ii) all charges arising from the same criminal episode for which the DNA specimen
122 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final
123 judgment of dismissal with prejudice or acquittal; or
- 124 (b) to the department a request for the destruction of the person's DNA specimen, and
125 associated record, and removal of the person's DNA record from the database
126 described in Subsection (1)(d) if:
- 127 (i) no charge arising from the same criminal episode for which the DNA specimen
128 was obtained under Subsection 53-10-404.5(1)(a) is filed against the person
129 within one year after the day on which the person is booked; or
- 130 (ii) all charges arising from the same criminal episode for which the DNA specimen

131 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final
132 judgment of dismissal with prejudice or acquittal.

133 (7) If charges have been filed against a person whose DNA specimen is obtained under this
134 part and the charges have later been resolved by a final judgment of dismissal with
135 prejudice or acquittal, or a final judgment is issued reversing a conviction, judgment, or
136 other order arising from the charges that created an obligation to provide a DNA
137 specimen, the prosecutor who filed the charges against the person shall notify the person
138 of the process described in Subsection (6) to request destruction of the DNA specimen
139 and removal of the person's DNA record from the database described in Subsection
140 (1)(d).

141 [~~7~~] (8) A court order issued under Subsection (6)(a) may be accompanied by a written
142 notice to the person advising that state law provides for expungement of criminal
143 charges if the charge is resolved by a final judgment of dismissal or acquittal.

144 [~~8~~] (9) The department shall destroy the person's DNA specimen, and associated record,
145 and remove the person's DNA record from the database described in Subsection (1)(d),
146 if:

147 (a) the person provides the department with:

148 (i) a court order for destruction described in Subsection (6)(a), and a certified copy of:

149 (A) the court order reversing the conviction, judgment, or order;

150 (B) a court order to set aside the conviction; or

151 (C) the dismissal or acquittal of the charge regarding which the person was
152 arrested; or

153 (ii) a written request for destruction of the DNA specimen, and associated record, and
154 removal of the DNA record from the database described in Subsection (6)(b), and
155 a certified copy of:

156 (A) a declination to prosecute from the prosecutor; or

157 (B) a court document that indicates all charges have been resolved by a final
158 judgment of dismissal with prejudice or acquittal; and

159 (b) the department determines that the person is not obligated to submit a DNA
160 specimen as a result of a separate conviction or adjudication for an offense listed in
161 Subsection 53-10-403(2).

162 [~~9~~] (10) The department may not destroy a person's DNA specimen or remove a person's
163 DNA record from the database described in Subsection (1)(d) if the person has a prior
164 conviction or a pending charge for which collection of a sample is authorized in

165 accordance with Section 53-10-404.

166 ~~[(10)]~~ (11) A DNA specimen, associated record, or criminal identification record created in
167 connection with that specimen may not be affected by an order to set aside a conviction,
168 except under the provisions of this section.

169 ~~[(11)]~~ (12) If funding is not available for analysis of any of the DNA specimens collected
170 under this part, the bureau shall store the collected specimens until funding is made
171 available for analysis through state or federal funds.

172 ~~[(12)]~~ (13)(a)(i) A person who, due to the person's employment or authority, has
173 possession of or access to individually identifiable DNA information contained in
174 the state criminal identification database or the state DNA specimen repository
175 may not willfully disclose the information in any manner to any individual,
176 agency, or entity that is not entitled under this part to receive the information.

177 (ii) A person may not willfully obtain individually identifiable DNA information
178 from the state criminal identification database or the state DNA repository other
179 than as authorized by this part.

180 (iii) A person may not willfully analyze a DNA specimen for any purpose, or to
181 obtain any information other than as required under this part.

182 (iv) A person may not willfully fail to destroy or fail to ensure the destruction of a
183 DNA specimen when destruction is required by this part or by court order.

184 (b)(i) A person who violates Subsection ~~[(12)(a)(i)-]~~ (13)(a)(i), (ii), or (iii) is guilty
185 of a third degree felony.

186 (ii) A person who violates Subsection ~~[(12)(a)(iv)]~~ (13)(a)(iv) is guilty of a class B
187 misdemeanor.

188 Section 3. **Effective Date.**

189 This bill takes effect on May 7, 2025.