

**DNA COLLECTION AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill would modify the provisions of the Public Safety Code regarding the collection of DNA from offenders.

**Highlighted Provisions:**

This bill:

- ▶ on and after January 1, 2015, requires law enforcement agencies to collect DNA samples at the time of booking for any person arrested for any felony or class A misdemeanor offense.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-403**, as last amended by Laws of Utah 2013, Chapter 344

**53-10-403.5**, as last amended by Laws of Utah 2010, Chapter 405

**53-10-404**, as last amended by Laws of Utah 2012, Chapter 145

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*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, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection

(2)(a) or (b) on or after July 1, 2002;

(b) has pled guilty to or has been convicted by any other state or by the United States

government of an offense which if committed in this state would be punishable as one or more

33 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

34 (c) has been booked on or after January 1, 2011, for any offense under Subsection

35 (2)(c); [~~or~~]

36 (d) has been booked on or after January 1, 2015, for any felony or class A

37 misdemeanor offense; or

38 [~~(d)~~] (e) is a minor under Subsection (3).

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

40 (a) any felony or class A misdemeanor under the Utah Code;

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

42 (i) for which the court enters a judgment for conviction to a lower degree of offense

43 under Section 76-3-402; or

44 (ii) regarding which the court allows the defendant to enter a plea in abeyance as

45 defined in Section 77-2a-1; or

46 (c) (i) any violent felony as defined in Section 53-10-403.5;

47 (ii) sale or use of body parts, Section 26-28-116;

48 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

49 (iv) driving with any amount of a controlled substance in a person's body and causing

50 serious bodily injury or death, Subsection 58-37-8(2)(g);

51 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

52 (vi) a felony violation of propelling a substance or object at a correctional or peace

53 officer, Section 76-5-102.6;

54 (vii) aggravated human trafficking and aggravated human smuggling, Section

55 76-5-310;

56 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

57 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

58 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

59 (xi) sale of a child, Section 76-7-203;

60 (xii) aggravated escape, Subsection 76-8-309(2);

61 (xiii) a felony violation of assault on an elected official, Section 76-8-315;

62 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of

63 Pardons and Parole, Section 76-8-316;

- 64 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;  
65 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;  
66 (xvii) a felony violation of sexual battery, Section 76-9-702.1;  
67 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;  
68 (xix) a felony violation of abuse or desecration of a dead human body, Section  
69 76-9-704;  
70 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section  
71 76-10-402;  
72 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,  
73 Section 76-10-403;  
74 (xxii) possession of a concealed firearm in the commission of a violent felony,  
75 Subsection 76-10-504(4);  
76 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,  
77 Subsection 76-10-1504(3);  
78 (xxiv) commercial obstruction, Subsection 76-10-2402(2);  
79 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section  
80 77-41-107;  
81 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or  
82 (xxvii) violation of condition for release after arrest for domestic violence, Section  
83 77-36-2.5.

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

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

89 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,  
90 2002 for an offense under Subsection (2).

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

92 **53-10-403.5. Definitions.**

93 As used in Sections 53-10-403, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406:

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

95 (2) "Conviction" means:

96 (a) a verdict or conviction;

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

98 (c) a plea of no contest; or

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

100 (3) "DNA" means deoxyribonucleic acid.

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

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

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

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

106 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

107 (1) As used in this section, "person" refers to any person as described under Section  
108 53-10-403.

109 (2) (a) A person under Section 53-10-403 or any person added to the sex offender  
110 register as defined in Section 77-41-102 shall provide a DNA specimen and shall reimburse the  
111 agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA  
112 specimen unless:

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

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

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

118 (B) An agency's implementation of Subsection (2)(b)~~(ii)~~(i) meets an agency's  
119 obligation to determine an inmate's ability to pay.

120 (ii) An agency's guidelines and procedures may provide for the assessment of \$150 on  
121 the inmate's county trust fund account and may allow a negative balance in the account until  
122 the \$150 is paid in full.

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

126 saliva DNA specimen.

127 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than  
128 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

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

133 (c) The responsible agency may use reasonable force, as established by its guidelines  
134 and procedures, to collect the DNA sample if the person refuses to cooperate with the  
135 collection.

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

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

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

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

144 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect  
145 any outstanding amount of a fee due under this section from any person who owes any portion  
146 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section  
147 53-10-407.

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

150 (i) after a conviction or a finding of jurisdiction by the juvenile court; ~~and~~

151 (ii) on and after January 1, 2011, after the booking of a person for any offense under  
152 Subsection 53-10-403(1)(c)[-]; and

153 (iii) on and after January 1, 2015, after the booking of a person for any offense under  
154 Subsection 53-10-403(1)(d).

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

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

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

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

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

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

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

168 (b) The juvenile court is the responsible agency regarding a minor under Subsection  
169 53-10-403(3), but if the minor has been committed to the legal custody of the Division of  
170 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the  
171 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

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

174 (i) have pled guilty to or have been convicted of an offense listed under Subsection  
175 53-10-403(2) but who have not been committed to the custody of or are not under the  
176 supervision of the Department of Corrections;

177 (ii) are incarcerated in the county jail:

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

179 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

180 [and]

181 (iii) on and after January 1, 2011, are booked at the county jail for any offense under  
182 Subsection 53-10-403(1)(c)[-]; and

183 (iv) on and after January 1, 2015, are booked at the county jail for any offense under  
184 Subsection 53-10-403(1)(d).

185 (d) Each agency required to collect a DNA specimen under this section shall:

186 (i) designate employees to obtain the saliva DNA specimens required under this

187 section; and

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

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

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

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

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

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

204 (i) first, persons on probation;

205 (ii) second, persons on parole; and

206 (iii) third, incarcerated persons.

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

211 (7) (a) As used in this Subsection (7):

212 (i) "Court" means the juvenile court.

213 (ii) "Division" means the Division of Juvenile Justice Services.

214 (b) Priority of obtaining DNA specimens by the court from minors under Section  
215 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of  
216 the division shall be:

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

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

223 (c) Priority of obtaining DNA specimens by the division from minors under Section  
224 53-10-403 who are committed to the legal custody of the division shall be:

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

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

232 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile  
233 Justice Services, and all law enforcement agencies in the state shall by policy establish  
234 procedures for obtaining saliva DNA specimens, and shall provide training for employees  
235 designated to collect saliva DNA specimens.

236 (b) (i) The department may designate correctional officers, including those employed  
237 by the adult probation and parole section of the department, to obtain the saliva DNA  
238 specimens required under this section.

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

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

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**Legislative Review Note**  
**as of 10-23-13 1:42 PM**

**Office of Legislative Research and General Counsel**