

**Representative Glenn L. Way** proposes the following substitute bill:

**EXPANSION OF DNA DATABASE**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Glenn L. Way**

**This act amends the Public Safety Code regarding the collection of DNA specimens and the functions of the Bureau of Forensic Services regarding collection of these specimens. The act expands the number of offenses for which a DNA specimen may be collected for the state criminal identification data base and includes saliva as an acceptable DNA specimen, in addition to blood. The act also requires DNA specimens be obtained from juveniles determined to be serious youth offenders, upon conviction in district court of specified offenses. The act provides that collection of the offender's payment of a fee for collection of the specimen is second in priority to victim restitution. The act creates the DNA Specimen Restricted Account and specifies funding sources and uses of the account. The effective date of this act is July 1, 2002.**

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

AMENDS:

**17-22-2**, as last amended by Chapter 133, Laws of Utah 2000

**17-22-2.5**, as renumbered and amended by Chapter 46, Laws of Utah 2001

**53-10-403**, as last amended by Chapter 302, Laws of Utah 1999

**53-10-404**, as renumbered and amended by Chapter 263, Laws of Utah 1998

**53-10-405**, as renumbered and amended by Chapter 263, Laws of Utah 1998

**53-10-406**, as renumbered and amended by Chapter 263, Laws of Utah 1998

**62A-7-104**, as last amended by Chapter 363, Laws of Utah 1999

**64-13-21**, as last amended by Chapter 282, Laws of Utah 1998

**64-13-23**, as last amended by Chapter 217, Laws of Utah 1992



26           **64-13-30**, as last amended by Chapter 119, Laws of Utah 1998  
27           **77-38a-404**, as enacted by Chapter 137, Laws of Utah 2001  
28           **78-3a-118**, as last amended by Chapters 255 and 293, Laws of Utah 2001

29 ENACTS:

30           **53-10-403.5**, Utah Code Annotated 1953  
31           **53-10-406.5**, Utah Code Annotated 1953

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

33           Section 1. Section **17-22-2** is amended to read:

34           **17-22-2. Sheriff -- General duties.**

35           (1) The sheriff shall:

36           (a) preserve the peace;

37           (b) make all lawful arrests;

38           (c) attend in person or by deputy the Supreme Court and the Court of Appeals when  
39 required or when the court is held within his county, all courts of record, and court commissioner  
40 and referee sessions held within his county, obey their lawful orders and directions, and comply  
41 with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

42           (d) upon request of the juvenile court, aid the court in maintaining order during hearings  
43 and transport a minor to and from youth corrections facilities, other institutions, or other  
44 designated places;

45           (e) attend county justice courts if the judge finds that the matter before the court requires  
46 the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or  
47 for the custody of jurors;

48           (f) command the aid of as many inhabitants of his county as he considers necessary in the  
49 execution of these duties;

50           (g) take charge of and keep the county jail and the jail prisoners;

51           (h) receive and safely keep all persons committed to his custody, file and preserve the  
52 commitments of those persons, and record the name, age, place of birth, and description of each  
53 person committed;

54           (i) release on the record all attachments of real property when the attachment he receives  
55 has been released or discharged;

56           (j) endorse on all process and notices the year, month, day, hour, and minute of reception,

57 and, upon payment of fees, issue a certificate to the person delivering process or notice showing  
58 the names of the parties, title of paper, and the time of receipt;

59 (k) serve all process and notices as prescribed by law;

60 (l) if he makes service of process or notice, certify on the process or notices the manner,  
61 time, and place of service, or, if he fails to make service, certify the reason upon the process or  
62 notice, and return them without delay;

63 (m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public  
64 land within his county;

65 (n) perform as required by any contracts between the county and private contractors for  
66 management, maintenance, operation, and construction of county jails entered into under the  
67 authority of Section 17-53-311;

68 (o) manage search and rescue services in his county; ~~and~~

69 (p) obtain saliva DNA specimens as required under Section 53-10-404; and

70 ~~(p)~~ (q) perform any other duties that are required by law.

71 (2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other  
72 subsection under Subsection (1) is a class A misdemeanor.

73 Section 2. Section **17-22-2.5** is amended to read:

74 **17-22-2.5. Fees of sheriff.**

75 (1) The sheriff shall receive the following fees:

76 (a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and  
77 complaint, or garnishee execution, or other process by which an action or proceeding is  
78 commenced, on each defendant, including copies when furnished by plaintiff, \$6;

79 (b) for taking or approving a bond or undertaking in any case in which he is authorized to  
80 take or approve a bond or undertaking, including justification, \$2;

81 (c) for a copy of any writ, process or other paper when demanded or required by law, for  
82 each folio, 50 cents;

83 (d) for serving an attachment on property, or levying an execution, or executing an order  
84 of arrest or an order for the delivery of personal property, including copies when furnished by  
85 plaintiff, \$25;

86 (e) for taking and keeping possession of and preserving property under attachment or  
87 execution or other process, the amount the court orders to a maximum of \$5 per day;

88 (f) for advertising property for sale on execution, or any judgment, or order of sale,  
89 exclusive of the cost of publication, \$5;

90 (g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive of  
91 acknowledgment, \$5, to be paid by the grantee;

92 (h) for recording each deed, conveyance, or other instrument affecting real estate,  
93 exclusive of the cost of recording, \$2, to be paid by the grantee;

94 (i) for serving a writ of possession or restitution, and putting any person entitled to  
95 possession into possession of premises, and removing occupant, \$25;

96 (j) for holding each trial of right of property, to include all services in the matter, except  
97 mileage, \$15;

98 (k) for conducting, postponing, or canceling a sale of property, \$5;

99 (l) for taking a prisoner in civil cases from prison before a court or magistrate, for each  
100 mile necessarily traveled, in going only, \$1;

101 (m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a court  
102 or magistrate, for each mile necessarily traveled, in going only, \$1;

103 (n) for receiving and paying over money on execution or other process, as follows:

104 (i) if the amount collected does not exceed \$1,000, 2% of this amount, with a minimum  
105 of \$1; and

106 (ii) if the amount collected exceeds \$1,000, 2% on the first \$1,000 and 1-1/2% on the  
107 balance; and

108 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$5.

109 (2) The fees allowed by Subsection (1)(f) for the levy of execution and for advertising shall  
110 be collected from the judgment debtor as part of the execution in the same manner as the sum  
111 directed to be made.

112 (3) When serving an attachment on property, an order of arrest, or an order for the delivery  
113 of personal property, the sheriff may only collect traveling fees for the distance actually traveled  
114 beyond the distance required to serve the summons if the attachment or those orders:

115 (a) accompany the summons in the action; and

116 (b) may be executed at the time of the service of the summons.

117 (4) (a) (i) When traveling generally to serve notices, orders, process, or other papers, the  
118 sheriff may receive \$1 for each mile necessarily traveled, in going only, computed from the

119 courthouse for each person served.

120 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may  
121 receive \$1 for each mile necessarily traveled, in going only, computed from the post office where  
122 received for each person served.

123 (b) The sheriff may only charge one mileage fee if any two or more papers are required to  
124 be served in the same action or proceeding at the same time and at the same address.

125 (c) If it is necessary to make more than one trip to serve any notice, order, process, or other  
126 paper, the sheriff may not collect more than two additional mileage charges.

127 (5) (a) For delivering an insane person to the Utah State Hospital, when the cost of  
128 delivery is payable by private individuals, the sheriff may collect \$1 per mile for the distance from  
129 the county seat of his county to the Utah State Hospital.

130 (b) If the sheriff requires assistance to deliver the person to the Utah State Hospital, the  
131 sheriff may also charge the actual and necessary cost of that assistance.

132 (6) For obtaining a saliva DNA specimen under Section 53-10-404, the sheriff shall collect  
133 the fee of \$75 in accordance with Section 53-10-404.

134 Section 3. Section **53-10-403** is amended to read:

135 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

136 (1) Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who has pled guilty  
137 to or has been convicted of any of the [following] offenses[:] under Subsection (2) or is a minor  
138 under Subsection (3).

139 [~~(1) unlawful sexual activity with minor, sexual abuse of a minor, unlawful sexual conduct~~  
140 ~~with a 16 or 17 year old, rape, rape of a child, object rape, object rape of a child, forcible sodomy,~~  
141 ~~sodomy of a child, forcible sexual abuse, sexual abuse of a child or aggravated sexual abuse of a~~  
142 ~~child, aggravated sexual assault, sexual abuse without consent of the victim, incest, sexual~~  
143 ~~exploitation of a minor; or]~~

144 [~~(2) murder or aggravated murder.]~~

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

146 (a) any felony under Title 76, Utah Criminal Code, and any violation of Section  
147 76-5-401.1, sexual abuse of a minor;

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

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

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

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

154 (3) A minor under Subsection (1) is a minor 14 years of age or older, whom the court has  
155 adjudicated to be within the jurisdiction of the juvenile court due to the commission of any offense  
156 described in Subsection (2).

157 Section 4. Section **53-10-403.5** is enacted to read:

158 **53-10-403.5. Definitions.**

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

160 (1) "DNA" means deoxyribonucleic acid.

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

162 Section 5. Section **53-10-404** is amended to read:

163 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

164 (1) As used in this section, "person" refers to any person described under Section  
165 53-10-403.

166 ~~[(1)]~~ (2) A person [convicted of an offense listed in] under Section 53-10-403 or any  
167 person added to the sex offender register as defined in Section 77-27-21.5 shall provide a [blood  
168 sample at the request of the appropriate agency designated in Subsection (4)] DNA specimen.

169 ~~[(2)]~~ (3) (a) The court shall include in the judgment of conviction an order stating that a  
170 [blood sample] DNA specimen shall be [drawn at the request of the appropriate agency] obtained  
171 and, unless the [convicted] person lacks the ability to pay, he shall reimburse the [appropriate]  
172 responsible agency \$75 for the cost of [drawing and transmitting the blood sample] obtaining the  
173 DNA specimen.

174 (b) All fees collected under Subsection (3)(a) shall be deposited in the DNA Specimen  
175 Restricted Account created in Section 53-10-406.5, except that sheriffs collecting the fee shall  
176 deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15 for  
177 the costs of obtaining the saliva DNA specimen.

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

181           ~~[(b)]~~ (d) If the judgment places the ~~[convicted]~~ person on probation, the court shall order  
182 him to submit to the ~~[drawing of a blood sample]~~ obtaining of a DNA specimen as a condition of  
183 the probation.

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

187           ~~[(3)]~~ (4) (a) The ~~[appropriate]~~ responsible agency shall cause a ~~[blood sample]~~ DNA  
188 specimen to be ~~[drawn]~~ obtained as soon as possible after conviction, plea, or finding of  
189 jurisdiction by the juvenile court, and transmitted to the Department of Public Safety.

190           (b) If notified by the Department of Public Safety that a ~~[sample]~~ DNA specimen is not  
191 adequate for analysis, the agency shall ~~[draw]~~ obtain and transmit an additional ~~[sample]~~ DNA  
192 specimen.

193           ~~[(4)]~~ (5) (a) The Department of Corrections is the ~~[appropriate]~~ responsible agency  
194 whenever the ~~[convicted]~~ person is committed to the custody of or is under the supervision of the  
195 Department of Corrections. ~~[In all other cases, the appropriate agency is the law enforcement~~  
196 ~~agency attending upon the court.]~~

197           (b) The juvenile court is the responsible agency regarding a minor under Subsection  
198 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Youth  
199 Corrections, that division is the responsible agency if a DNA specimen of the minor has not  
200 previously been obtained by the juvenile court under Section 78-3a-118.

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

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

204           (B) for a class A burglary offense.

205           (ii) The sheriff shall designate employees to obtain the saliva DNA specimens required  
206 under Section 53-10-403. The sheriff shall ensure that employees designated to collect the DNA  
207 specimens receive appropriate training and that the specimens are obtained in accordance with  
208 accepted protocol.

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

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

211           (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody

212 of or under the supervision of the department before these persons are released from incarceration,  
213 parole, or probation, if their release date is prior to that of persons under Subsections (6)(b)(ii), but  
214 in no case later than July 1, 2004; and

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

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

222 (i) persons on probation;

223 (ii) persons on parole; and

224 (iii) incarcerated persons.

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

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

231 (b) Priority of obtaining DNA specimens by the court from minors under Section  
232 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the  
233 division shall be:

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

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

240 (c) Priority of obtaining DNA specimens by the division from minors under Section  
241 53-10-403 who are committed to the legal custody of the division shall be:

242 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's



243 legal custody and who have not previously provided a DNA specimen under this section, prior to  
244 termination of the division's legal custody of these minors; and

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

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

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

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

258 Section 6. Section **53-10-405** is amended to read:

259 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency -- Blood**  
260 **sample to be drawn by professional.**

261 (1) (a) A blood sample shall be drawn in a medically acceptable manner by a licensed  
262 professional nurse, a licensed practical nurse, a paramedic, a qualified medical technician, a  
263 licensed physician, or other person licensed by the state [~~of Utah~~] for this purpose.

264 [~~(2)~~] (b) A person authorized by this section to draw a blood sample [~~shall~~] may not be  
265 held civilly liable for drawing a sample in a medically acceptable manner.

266 (2) (a) A saliva sample shall be obtained by the responsible agency, as provided under  
267 Subsection 53-10-404(5).

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

270 (3) [~~No~~] (a) A test result or opinion based upon a test result [~~shall~~] regarding a DNA specimen  
271 may not be rendered inadmissible as evidence solely because of deviations from procedures  
272 adopted by the department that do not affect the reliability of the opinion or test result.

273 (4) [~~No sample~~] A DNA specimen is not required to be [~~drawn~~] obtained if:

274 (a) the department notifies the court or the [~~appropriate~~] responsible agency that it has  
275 previously received an adequate [~~blood sample drawn~~] DNA specimen obtained from the  
276 convicted person in accordance with this section; or

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

279 Section 7. Section **53-10-406** is amended to read:

280 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

281 (1) The bureau shall:

282 (a) store all [~~blood samples~~] DNA specimens received and [~~autoradiographs and~~] other  
283 physical evidence obtained from analysis of those [~~samples~~] specimens;

284 (b) analyze the [~~samples~~] specimens to establish the genetic profile of the donor or to  
285 otherwise determine the identity of persons or contract with other qualified public or private  
286 laboratories to conduct the analysis;

287 (c) maintain a criminal identification data base containing information derived from  
288 [~~blood~~] DNA analysis;

289 (d) utilize the [~~samples~~] specimens to create statistical population frequency data bases,  
290 provided that genetic profiles or other information in a population frequency data base may not be  
291 identified with specific individuals; [~~and~~]

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

294 [~~(e)~~] (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative  
295 Rulemaking Act, establishing procedures for [~~drawing~~] obtaining, transmitting, and analyzing  
296 [~~blood samples~~] DNA specimens and for storing and destroying [~~blood samples, autoradiographs~~]  
297 DNA specimens and other physical evidence and criminal identification information obtained from  
298 [~~such~~] the analysis.

299 (2) Procedures for [~~blood~~] DNA analysis may include all techniques which the Department  
300 of Public Safety determines are accurate and reliable in establishing identity, including but not  
301 limited to, analysis of DNA [~~(deoxyribonucleic acid)~~], antigen antibodies, polymorphic enzymes,  
302 or polymorphic proteins.

303 (3) (a) In accordance with Subsection 63-2-302(1), all [~~samples~~] DNA specimens received  
304 shall be classified as private [~~and the~~].

305           (b) The Department of Public Safety may not transfer or disclose any [~~sample,~~  
306 ~~autoradiograph~~] DNA specimen, physical evidence, or criminal identification information  
307 obtained, stored, or maintained under this section, except under its provisions.

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

311           (5) The department shall adopt procedures governing the inspection of records, [~~samples,~~  
312 ~~and autoradiographs~~] DNA specimens, and challenges to the accuracy of records. The procedures  
313 shall accommodate the need to preserve the materials from contamination and destruction.

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

318           (b) Upon receipt of a written request for destruction pursuant to this section and a certified  
319 copy of the court order reversing the conviction, judgment, or order, the Department of Public  
320 Safety shall destroy any [~~sample~~] specimen received from the person, any physical evidence  
321 obtained from that [~~sample~~] specimen, and any criminal identification records pertaining to the  
322 person, unless the department determines that the person has otherwise become obligated to submit  
323 a [~~blood sample~~] DNA specimen as a result of a separate conviction or juvenile adjudication for  
324 an offense listed in Section 53-10-403.

325           (7) The department is not required to destroy [~~an autoradiograph or other~~] any item of  
326 physical evidence obtained from a [~~blood sample~~] DNA specimen if evidence relating to another  
327 person subject to the provisions of Sections 53-10-404 and 53-10-405 would [~~thereby~~] as a result  
328 be destroyed.

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

332           (9) If funding is not available for analysis of any of the DNA specimens collected under  
333 this part, the bureau shall store the collected specimens until funding is made available for analysis  
334 through state or federal funds.

335           Section 8. Section **53-10-406.5** is enacted to read:

336 **53-10-406.5. DNA Specimen Restricted Account.**

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

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

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

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

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

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

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

347 (a) to the Department of Corrections for the costs of collecting DNA specimens as required  
348 under Section 53-10-403;

349 (b) to the juvenile court for the costs of collecting DNA specimens as required under  
350 Sections 53-10-403 and 78-3a-118;

351 (c) to the Division of Youth Corrections for the costs of collecting DNA specimens as  
352 required under Sections 53-10-403 and 62A-7-104; and

353 (d) to the Department of Public Safety for the costs of storing and analyzing DNA  
354 specimens in accordance with the requirements of this part.

355 (5) Appropriations from the account to the Department of Corrections, the juvenile court,  
356 the Division of Youth Corrections, and to the Department of Public Safety are nonlapsing.

357 Section 9. Section **62A-7-104** is amended to read:

358 **62A-7-104. Division responsibilities.**

359 (1) The division is responsible for all youth offenders committed to it by juvenile courts  
360 for secure confinement or supervision and treatment in the community.

361 (2) The division shall establish and maintain all detention and secure facilities and set  
362 minimum standards for those facilities.

363 (3) (a) The division shall, in accordance with Title 63, Chapter 46a, Utah Administrative  
364 Rulemaking Act, promulgate written statewide rules as guidelines for admission to secure  
365 detention and home detention.

366 (b) The division shall implement those rules as guidelines and provide training regarding

367 the implementation of those guidelines to law enforcement agencies, division employees, juvenile  
368 court employees, and to other affected agencies and individuals upon their request.

369 (4) The division shall establish and administer a continuum of community, secure, and  
370 nonsecure programs for all youth offenders committed to the division.

371 (5) The division shall establish and administer Juvenile Receiving Centers, Juvenile  
372 Assessment Programs, and other programs to provide temporary custody, care, risk-needs  
373 assessments, evaluations, and control for nonadjudicated youth placed with the division.

374 (6) The division shall place youth offenders committed to it in the most appropriate  
375 program for supervision and treatment.

376 (7) The division shall establish and maintain all secure residential facilities.

377 (8) In any order committing a youth offender to the division, the juvenile court shall  
378 specify whether the youth offender is being committed for secure confinement or placement in a  
379 community-based program. The division shall place the youth offender in the most appropriate  
380 program within the category specified by the court.

381 (9) The division shall employ staff necessary to:

382 (a) supervise and control youth offenders in secure facilities or in the community;

383 (b) supervise and coordinate treatment of youth offenders committed to the division for  
384 placement in community-based programs; and

385 (c) control and supervise nonadjudicated youth placed with the division for temporary  
386 services in receiving centers and other programs established by the division.

387 (10) The division shall establish observation and assessment programs necessary to serve  
388 youth offenders committed by the juvenile court for short-term observation under Subsection  
389 78-3a-118(2)(e). Whenever possible, those programs shall be conducted in settings separate and  
390 distinct from secure facilities for youth offenders.

391 (11) Youth in the custody or temporary custody of the division are controlled or detained  
392 in a manner consistent with public safety and rules promulgated by the division. In the event of  
393 an unauthorized leave from a secure facility, detention center, community-based program,  
394 receiving center, home, or any other designated placement, division employees have the authority  
395 and duty to locate and apprehend the youth, or to initiate action with local law enforcement  
396 agencies for assistance.

397 (12) The director of the division shall appoint regional directors within the various juvenile

398 court districts. Regional directors shall administer community-based programs, secure facilities,  
399 other division programs, and shall have experience in corrections, behavioral sciences, law,  
400 criminology, or related fields, and in administration.

401 (13) The division shall establish and operate compensatory-service work programs  
402 designed to place youth offenders in public or private service work projects for the purpose of  
403 rehabilitation, education, and restitution to victims.

404 (14) The division may establish and operate compensatory-service work programs for  
405 youth offenders committed to the division by the juvenile court. The compensatory-service work  
406 program shall:

407 (a) provide labor to help in the operation, repair, and maintenance of public facilities,  
408 parks, highways, and other programs designated by the division;

409 (b) provide educational and prevocational programs in cooperation with the State Board  
410 of Education for youth offenders placed in the program; and

411 (c) provide counseling to youth offenders.

412 (15) The division shall establish minimum standards for the operation of all private  
413 residential and nonresidential rehabilitation facilities which provide services to juveniles who have  
414 committed a delinquent act, in this state or in any other state.

415 (16) In accordance with policies established by the board, the division shall provide regular  
416 training for staff of secure facilities, detention staff, case management staff, and staff of the  
417 community-based programs.

418 (17) The division is authorized to employ special function officers, as defined in Section  
419 53-13-105, to locate and apprehend absconders from division custody, transport minors taken into  
420 custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the  
421 division. Special function officers may be employed through contract with the Department of  
422 Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

423 (18) The division shall designate employees to obtain the saliva DNA specimens required  
424 under Section 53-10-403. The division shall ensure that the designated employees receive  
425 appropriate training and that the specimens are obtained in accordance with accepted protocol.

426 Section 10. Section **64-13-21** is amended to read:

427 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
428 **-- POST certified parole or probation officers and peace officers -- Duties -- DNA collection**

429 **fee -- Supervision fee.**

430 (1) (a) The department, except as otherwise provided by law, shall supervise sentenced  
431 offenders placed in the community on probation by the courts, on parole by the Board of Pardons  
432 and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the  
433 Supervision of Parolees and Probationers.

434 (b) Standards for the supervision of offenders shall be established by the department in  
435 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, giving priority,  
436 based on available resources, to felony offenders.

437 (2) Employees of the department who are POST certified as law enforcement officers or  
438 correctional officers and who are designated as parole and probation officers by the executive  
439 director have the following duties:

440 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance with  
441 the conditions of the parole or probation agreement;

442 (b) investigating or apprehending any offender who has escaped from the custody of the  
443 department or absconded from supervision;

444 (c) providing investigative services for the courts, the department, or the Board of Pardons  
445 and Parole; [or]

446 (d) supervising any offender during transportation; or

447 (e) collecting DNA specimens when the specimens are required under Section 53-10-404.

448 (3) (a) A monthly supervision fee of \$30 shall be collected from each offender on  
449 probation or parole. The fee may be suspended or waived by the department upon a showing by  
450 the offender that imposition would create a substantial hardship or if the offender owes restitution  
451 to a victim.

452 (b) (i) The department shall make rules in accordance with Title 63, Chapter 46a, Utah  
453 Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision  
454 fee and the circumstances under which an offender may request a hearing.

455 (ii) In determining whether the imposition of the supervision fee would constitute a  
456 substantial hardship, the department shall consider the financial resources of the offender and the  
457 burden that the fee would impose, with regard to the offender's other obligations.

458 Section 11. Section **64-13-23** is amended to read:

459 **64-13-23. Offender's income and finances.**

460           The department may require each offender, while in the custody of the department or while  
461 on probation or parole, to place funds received or earned by him from any source into an account  
462 administered by the department or into a joint account with the department at a federally insured  
463 financial institution.

464           (1) The department may require each offender to maintain a minimum balance in either  
465 or both accounts for the particular offender's use upon discharge from the custody of the  
466 department or upon completion of parole or probation.

467           (2) If the funds are placed in a joint account at a federally insured financial institution:

468           (a) any interest accrues to the benefit of the offender account; and

469           (b) the department may require that the signatures of both the offender and a departmental  
470 representative be submitted to the financial institution to withdraw funds from the account.

471           (3) If the funds are placed in an account administered by the department, the department  
472 may by rule designate a certain portion of the offender's funds as interest-bearing savings, and  
473 another portion as noninterest-bearing to be used for day-to-day expenses.

474           (4) The department may withhold part of the offender's funds in either account for  
475 expenses of:

476           (a) incarceration, supervision, or treatment; [~~for~~]

477           (b) court-ordered restitution, reparation, fines, alimony, support payments, or similar  
478 court-ordered payments; [~~for~~]

479           (c) obtaining the offender's DNA specimen, if the offender is required under Section  
480 53-10-404 to provide a specimen;

481           (d) department-ordered restitution; and [~~for~~]

482           (e) any other debt to the state.

483           (5) (a) Offenders [~~shall~~] may not be granted free process in civil actions, including  
484 petitions for a writ of habeas corpus, if, at any time from the date the cause of action arose through  
485 the date the cause of action remains pending, there are any funds in either account which have not  
486 been withheld or are not subject to withholding under Subsection (3) or (4).

487           (b) The amount assessed for the filing fee, service of process and other fees and costs shall  
488 not exceed the total amount of funds the offender has in excess of the indigence threshold  
489 established by the department but not less than \$25 including the withholdings under Subsection  
490 (3) or (4) during the identified period of time.



491 (c) The amounts assessed shall not exceed the regular fees and costs provided by law.

492 (6) The department may disclose information on offender accounts to the Office of  
493 Recovery Services and other appropriate state agencies.

494 Section 12. Section **64-13-30** is amended to read:

495 **64-13-30. Expenses incurred by offenders -- Payment to department or county jail.**

496 (1) (a) The department shall establish and collect from offenders on work release programs  
497 reasonable costs of maintenance, transportation, and incidental expenses incurred by the  
498 department on behalf of the offenders.

499 (b) Priority shall be given to restitution and family support obligations.

500 (c) The offender's reimbursement to the department for the cost of obtaining the offender's  
501 DNA specimen, under Section 53-10-404 is the next priority after Subsection (1)(b).

502 (2) The department, under its rules, may advance funds to any offender as necessary to  
503 establish the offender in a work release program.

504 (3) The department or county jail may require an inmate to make a reasonable copayment  
505 for medical services provided by the department or county jail. An inmate may not be denied  
506 medical treatment if he is unable to pay the copayment because of inadequate financial resources.

507 Section 13. Section **77-38a-404** is amended to read:

508 **77-38a-404. Priority.**

509 (1) If restitution to more than one person, agency, or entity is set at the same time, the  
510 department shall establish the following priorities of payment, except as provided in Subsection

511 (2):

512 (a) the crime victim;

513 (b) the Office of Crime Victim Reparations;

514 (c) any other government agency which has provided reimbursement to the victim as a  
515 result of the offender's criminal conduct; and

516 (d) any insurance company which has provided reimbursement to the victim as a result of  
517 the offender's criminal conduct.

518 (2) If the offender is required under Section 53-10-404 to reimburse the department for the  
519 cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
520 restitution to the crime victim under ~~h~~ **[Subsections]** **SUBSECTION h** (1)(a) ~~h~~ **[and (b)] h** .

521 ~~[(2)]~~ (3) All money collected for court-ordered obligations from offenders by the

522 department will be applied;

523 (a) first, to victim restitution[~~, absent~~], except the \$30 per month required to be collected  
524 by the department under Section 64-13-21, if applicable; and

525 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (2).

526 Section 14. Section **78-3a-118** is amended to read:

527 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**

528 **Enumeration of possible court orders -- Considerations of court.**

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

533 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
534 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to  
535 the school superintendent of the district in which the minor resides or attends school. Notice shall  
536 be made to the district superintendent within three days of the adjudication and shall include the  
537 specific offenses for which the minor was adjudicated.

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

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

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

544 (A) his parent or guardian;

545 (B) the Division of Youth Corrections; or

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

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

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

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

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

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

560 (c) (i) The court may:

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

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

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

567 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
568 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter  
569 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter  
570 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

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

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

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

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

583 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction

584 over him, to the temporary custody of the Division of Youth Corrections for observation and  
585 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the  
586 request of the director of the Division of Youth Corrections.

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

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

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

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

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

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

604 (i) The court may:

605 (i) order the minor to repair, replace, or otherwise make restitution for damage or loss  
606 caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318;  
607 and

608 (ii) impose fines in limited amounts.

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

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

614 (ii) Consistent with the order of the court, the probation officer may permit the minor

615 found to be within the jurisdiction of the court to participate in a program of work restitution or  
616 compensatory service in lieu of paying part or all of the fine imposed by the court.

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

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

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

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

624 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section  
625 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia  
626 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to  
627 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no  
628 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance  
629 abuse prevention or treatment program may be credited by the court as compensatory service  
630 hours.

631 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
632 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,  
633 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the  
634 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in  
635 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance  
636 abuse prevention or treatment program may be credited by the court as compensatory service  
637 hours.

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

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

644 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
645 private agency or institution, the court shall give primary consideration to the welfare of the minor.

646 When practicable, the court may take into consideration the religious preferences of the minor and  
647 of the minor's parents.

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

651 (A) parent-time by the parents or one parent;

652 (B) restrictions on the minor's associates;

653 (C) restrictions on the minor's occupation and other activities; and

654 (D) requirements to be observed by the parents or custodian.

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

657 (q) The court may order the minor to be placed in the legal custody of the Division of  
658 Mental Health or committed to the physical custody of a local mental health authority, in  
659 accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment  
660 of Persons Under Age 18 to Division of Mental Health.

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

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

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

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

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

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

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

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

682 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with  
683 a relative or individual of a minor where the court has previously acquired jurisdiction as a result  
684 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection  
685 78-3a-105(4).

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

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

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

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

690 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
691 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of  
692 the juvenile court.

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

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

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

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

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

701 (iii) was committed with a weapon; and

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

704 (4) (a) The court shall order that a DNA specimen shall be obtained from a minor who is  
705 under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall  
706 be obtained by designated employees of the court or, if the minor is in the legal custody of the  
707 Division of Youth Corrections, then by designated employees of the division under Subsection

708 53-10-404(5)(b).

709 (b) The court shall ensure that employees designated to collect the saliva DNA specimens  
710 receive appropriate training and that the specimens are obtained in accordance with accepted  
711 protocol.

712 (c) The court shall order the minor to reimburse the agency obtaining the DNA specimen  
713 for \$75 toward the costs of obtaining the specimen, unless the court finds the minor is unable to  
714 pay the reimbursement. Reimbursements shall be placed in the DNA Specimen Restricted  
715 Account created in Section 53-10-406.5.

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

718 **Section 15. Effective date.**

719 This act takes effect on July 1, 2002.