

**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 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:

**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

**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

**64-13-30**, as last amended by Chapter 119, Laws of Utah 1998

**77-38a-404**, as enacted by Chapter 137, Laws of Utah 2001

ENACTS:

**53-10-403.5**, Utah Code Annotated 1953

**53-10-406.5**, Utah Code Annotated 1953

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

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



28           **53-10-403. DNA specimen analysis -- Application to offenders.**

29           Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who has pled guilty to  
30 or has been convicted of any of the following offenses:

31           ~~[(1) unlawful sexual activity with minor, sexual abuse of a minor, unlawful sexual conduct~~  
32 ~~with a 16 or 17 year old, rape, rape of a child, object rape, object rape of a child, forcible sodomy,~~  
33 ~~sodomy of a child, forcible sexual abuse, sexual abuse of a child or aggravated sexual abuse of a~~  
34 ~~child, aggravated sexual assault, sexual abuse without consent of the victim, incest, sexual~~  
35 ~~exploitation of a minor; or]~~

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

37           (1) any felony under Title 76, Utah Criminal Code, and any violation of Section  
38 76-5-401.1, sexual abuse of a minor;

39           (2) an attempt to commit a burglary, or any class A burglary offense; or

40           (3) any offense under Subsection (1) or (2):

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

43           (b) regarding which the court allows the defendant to enter a plea in abeyance as defined  
44 in Section 77-2a-1.

45           Section 2. Section **53-10-403.5** is enacted to read:

46           **53-10-403.5. Definitions.**

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

48           (1) "DNA" means deoxyribonucleic acid.

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

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

51           **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

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

55           (2) (a) The court shall include in the judgment of conviction an order stating that a ~~[blood~~  
56 ~~sample] DNA specimen shall be ~~[drawn at the request of the appropriate agency] obtained and,~~  
57 unless the convicted person lacks the ability to pay, he shall reimburse the appropriate agency \$25  
58 for the cost of ~~[drawing and transmitting the blood sample] obtaining the DNA specimen.~~~~

59 (b) All fees collected under Subsection (2)(a) shall be deposited in the DNA Specimen  
60 Restricted Account created in Section 53-10-406.5.

61 (c) Obtaining a saliva DNA specimen complies with the court order under Subsection  
62 (2)(a) unless the court specifies in the order that the DNA specimen is to be blood.

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

66 (3) (a) The appropriate agency shall cause a ~~[blood sample]~~ DNA specimen to be ~~[drawn]~~  
67 obtained as soon as possible after conviction and transmitted to the Department of Public Safety.

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

71 (4) (a) The Department of Corrections is the appropriate agency whenever the convicted  
72 person is committed to the custody of or is under the supervision of the Department of Corrections.

73 (b) In all other cases, the appropriate agency is the law enforcement agency attending upon  
74 the court.

75 (5) (a) As used in this Subsection (5), "department" means the Department of Corrections.

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

77 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody  
78 of or under the supervision of the department before these persons are released from incarceration,  
79 parole, or probation, if their release date is prior to that of persons under Subsections (5)(b)(ii), but  
80 in no case later than October 1, 2002; and

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

86 (c) The priority for obtaining DNA specimens from persons under Subsection (5)(b)(ii)  
87 is:

88 (i) persons on probation;

89 (ii) persons on parole; and

90 (iii) incarcerated persons.

91 (d) Implementation of the schedule of priority under Subsection (5)(c) is subject to the  
92 priority of Subsection (5)(b)(i), to ensure that the Department of Corrections obtains DNA  
93 specimens from persons in the custody of or under the supervision of the Department of  
94 Corrections as of July 1, 2002, prior to their release.

95 (6) (a) The Department of Corrections shall by rule establish procedures for obtaining  
96 saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA  
97 specimens.

98 (b) Correctional officers, including those employed by the adult probation and parole  
99 section of the Department of Corrections, may be designated by the department to obtain the saliva  
100 DNA specimens required under this section in accordance with accepted protocol and after  
101 receiving appropriate training.

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

103 Section 4. Section **53-10-405** is amended to read:

104 **53-10-405. DNA specimen analysis -- Blood sample to be drawn by professional.**

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

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

110 (2) A saliva sample shall be obtained by the appropriate agency, as provided under  
111 Subsection 53-10-404(4). The sample shall be obtained in a professionally acceptable manner,  
112 using appropriate procedures to ensure the sample is adequate for DNA analysis.

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

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

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

120 (b) the court determines that ~~[drawing a sample]~~ obtaining a DNA specimen would create

121 a substantial and unreasonable risk to the health of the convicted person.

122 Section 5. Section **53-10-406** is amended to read:

123 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

124 (1) The bureau shall:

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

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

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

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

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

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

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

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

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

151 (4) Notwithstanding the provisions of Subsection 63-2-202(1), the department may deny

152 inspection if it determines that there is a reasonable likelihood that [~~such~~] the inspection would  
153 prejudice a pending criminal investigation.

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

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

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

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

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

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

178 Section 6. Section **53-10-406.5** is enacted to read:

179 **53-10-406.5. DNA Specimen Restricted Account.**

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

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

- 183 (a) DNA collection fees paid under Section 53-10-404;  
184 (b) any appropriations made to the account by the Legislature; and  
185 (c) all federal monies provided to the state for the purpose of funding the collection or  
186 analysis of DNA specimens collected under Section 53-10-403.  
187 (3) The account shall earn interest, and this interest shall be deposited in the account.  
188 (4) The Legislature may appropriate monies from the account solely for the following  
189 purposes:  
190 (a) to the Department of Corrections for the costs of collecting DNA specimens as required  
191 under Section 53-10-403; and  
192 (b) to the Department of Public Safety for the costs of storing and analyzing DNA  
193 specimens in accordance with the requirements of this part.  
194 (5) Appropriations from the account to the Department of Corrections and to the  
195 Department of Public Safety are nonlapsing.

196 Section 7. Section **64-13-21** is amended to read:

197 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
198 **-- POST certified parole or probation officers and peace officers -- Duties -- DNA collection**  
199 **fee -- Supervision fee.**

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

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

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

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

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

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

216 (d) supervising any offender during transportation; ~~or~~

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

218 (3) (a) If the offender is required under Section 53-10-404 to reimburse the department for  
219 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
220 restitution the offender owes to a victim. However, the reimbursement under this Subsection (3)(a)  
221 has priority over the supervision fee in Subsection (3)(b).

222 ~~[(3)(a)]~~ (b) A monthly supervision fee of \$30 shall be collected from each offender on  
223 probation or parole. The fee may be suspended or waived by the department upon a showing by  
224 the offender that imposition would create a substantial hardship or if the offender owes restitution  
225 to a victim.

226 ~~[(b)]~~ (c) (i) The department shall make rules in accordance with Title 63, Chapter 46a,  
227 Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the DNA  
228 specimen fee or the supervision fee and the circumstances under which an offender may request  
229 a hearing.

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

233 Section 8. Section **64-13-23** is amended to read:

234 **64-13-23. Offender's income and finances.**

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

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

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

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

244 (b) the department may require that the signatures of both the offender and a departmental



245 representative be submitted to the financial institution to withdraw funds from the account.

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

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

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

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

254 (c) obtaining the offender's DNA specimen, if the offender is required under Section  
255 53-10-404 to provide a specimen;

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

257 (e) any other debt to the state.

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

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

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

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

269 Section 9. Section **64-13-30** is amended to read:

270 **64-13-30. Expenses incurred by offenders -- Payment to department or county jail.**

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

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

275 (c) If the offender is required under Section 53-10-404 to reimburse the department for the

276 cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
277 Subsection (1)(b).

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

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

283 Section 10. Section **77-38a-404** is amended to read:

284 **77-38a-404. Priority.**

285 (1) If restitution to more than one person, agency, or entity is set at the same time, the  
286 department shall establish the following priorities of payment, except as provided in Subsection  
287 (2):

288 (a) the crime victim;

289 (b) the Office of Crime Victim Reparations;

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

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

294 (2) If the offender is required under Section 53-10-404 to reimburse the department for the  
295 cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
296 restitution to the crime victim under Subsection (1)(a).

297 [~~(2)~~] (3) All money collected for court-ordered obligations from offenders by the  
298 department will be applied;

299 (a) first, to victim restitution[~~, absent~~];

300 (b) second, if applicable, to the cost of obtaining a DNA sample under Subsection (2); and

301 (c) after the requirements of Subsections (3)(a) and (b), to the \$30 per month required to  
302 be collected by the department under Section 64-13-21.

303 Section 11. **Effective date.**

304 This act takes effect on July 1, 2002.

**Legislative Review Note**  
**as of 2-6-02 8:40 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**