

**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 referred to in Subsection (1) is:

155 (a) a minor whom the juvenile court has bound over under Section 78-3a-602 and who is  
156 convicted of any offense as described in Subsection (2); or

157 (b) a minor:

158 (i) against whom a criminal information is filed under Subsection 78-3a-602(1)(a) or (b);

159 (ii) who is held for trial in the juvenile court under Subsection 78-3a-602(3)(d), or under  
160 Subsection 78-3a-602(4); and

161 (iii) whom, based on the criminal information, the juvenile court adjudicates to be within  
162 the jurisdiction of the juvenile court due to the commission of any offense described in Subsection  
163 (2).

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

165 **53-10-403.5. Definitions.**

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

167 (1) "DNA" means deoxyribonucleic acid.

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

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

170 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

171 (1) As used in this section, "person" refers to any person described under Section  
172 53-10-403.

173 ~~[(1)]~~ (2) A person ~~[convicted of an offense listed in]~~ under Section 53-10-403 or any  
174 person added to the sex offender register as defined in Section 77-27-21.5 shall provide a ~~[blood~~  
175 ~~sample at the request of the appropriate agency designated in Subsection (4)]~~ DNA specimen.

176 ~~[(2)]~~ (3) (a) The court shall include in the judgment of conviction an order stating that a  
177 ~~[blood sample]~~ DNA specimen shall be ~~[drawn at the request of the appropriate agency]~~ obtained  
178 and, unless the ~~[convicted]~~ person lacks the ability to pay, he shall reimburse the ~~[appropriate]~~  
179 responsible agency \$75 for the cost of ~~[drawing and transmitting the blood sample]~~ obtaining the  
180 DNA specimen.

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

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

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

191 ~~[(3)]~~ (4) (a) The ~~[appropriate]~~ responsible agency shall cause a ~~[blood sample]~~ DNA  
192 specimen to be ~~[drawn]~~ obtained as soon as possible after conviction, plea, or finding of  
193 jurisdiction by the juvenile court, and transmitted to the Department of Public Safety.

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

197 ~~[(4)]~~ (5) (a) The Department of Corrections is the ~~[appropriate]~~ responsible agency  
198 whenever the ~~[convicted]~~ person is committed to the custody of or is under the supervision of the  
199 Department of Corrections. ~~[In all other cases, the appropriate agency is the law enforcement~~  
200 ~~agency attending upon the court.]~~

201 (b) The juvenile court is the responsible agency regarding a minor under Subsection  
202 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Youth  
203 Corrections, that division is the responsible agency if a DNA specimen of the minor has not  
204 previously been obtained by the juvenile court under Section 78-3a-118.

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

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

208 (B) for a class A burglary offense.

209 (ii) The sheriff shall designate employees to obtain the saliva DNA specimens required  
210 under Section 53-10-403. The sheriff shall ensure that employees designated to collect the DNA  
211 specimens receive appropriate training and that the specimens are obtained in accordance with

212 accepted protocol.

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

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

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

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

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

226 (i) persons on probation;

227 (ii) persons on parole; and

228 (iii) incarcerated persons.

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

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

235 (b) Priority of obtaining DNA specimens by the court from minors under Section  
236 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the  
237 division shall be:

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

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



243 minor.

244 (c) Priority of obtaining DNA specimens by the division from minors under Section  
245 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

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

261 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.  
262 Section 6. Section 53-10-405 is amended to read:

263 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency -- Blood**  
264 **sample to be drawn by professional.**

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

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

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

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

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

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

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

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

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

284 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

285 (1) The bureau shall:

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

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

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

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

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

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

303 (2) Procedures for ~~[blood]~~ DNA analysis may include all techniques which the Department  
304 of Public Safety determines are accurate and reliable in establishing identity, including but not

305 limited to, analysis of DNA [~~(deoxyribonucleic acid)~~], antigen antibodies, polymorphic enzymes,  
306 or polymorphic proteins.

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

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

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

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

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

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

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

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

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

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

340 **53-10-406.5. DNA Specimen Restricted Account.**

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

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

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

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

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

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

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

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

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

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

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

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

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

362 **62A-7-104. Division responsibilities.**

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

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

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

370 (b) The division shall implement those rules as guidelines and provide training regarding  
371 the implementation of those guidelines to law enforcement agencies, division employees, juvenile  
372 court employees, and to other affected agencies and individuals upon their request.

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

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

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

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

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

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

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

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

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

391 (10) The division shall establish observation and assessment programs necessary to serve  
392 youth offenders committed by the juvenile court for short-term observation under Subsection  
393 78-3a-118(2)(e). Whenever possible, those programs shall be conducted in settings separate and  
394 distinct from secure facilities for youth offenders.

395 (11) Youth in the custody or temporary custody of the division are controlled or detained  
396 in a manner consistent with public safety and rules promulgated by the division. In the event of  
397 an unauthorized leave from a secure facility, detention center, community-based program,

398 receiving center, home, or any other designated placement, division employees have the authority  
399 and duty to locate and apprehend the youth, or to initiate action with local law enforcement  
400 agencies for assistance.

401 (12) The director of the division shall appoint regional directors within the various juvenile  
402 court districts. Regional directors shall administer community-based programs, secure facilities,  
403 other division programs, and shall have experience in corrections, behavioral sciences, law,  
404 criminology, or related fields, and in administration.

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

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

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

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

415 (c) provide counseling to youth offenders.

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

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

422 (17) The division is authorized to employ special function officers, as defined in Section  
423 53-13-105, to locate and apprehend absconders from division custody, transport minors taken into  
424 custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the  
425 division. Special function officers may be employed through contract with the Department of  
426 Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

427 (18) The division shall designate employees to obtain the saliva DNA specimens required  
428 under Section 53-10-403. The division shall ensure that the designated employees receive

429 appropriate training and that the specimens are obtained in accordance with accepted protocol.

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

431 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
432 **-- POST certified parole or probation officers and peace officers -- Duties -- DNA collection**  
433 **fee -- Supervision fee.**

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

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

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

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

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

448 (c) providing investigative services for the courts, the department, or the Board of Pardons  
449 and Parole; ~~or~~

450 (d) supervising any offender during transportation; or

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

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

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

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

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

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

468           **64-13-23. Offender's income and finances.**

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

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

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

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

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

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

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

485           (a) incarceration, supervision, or treatment; ~~for~~

486           (b) court-ordered restitution, reparation, fines, alimony, support payments, or similar  
487 court-ordered payments; ~~for~~

488           (c) obtaining the offender's DNA specimen, if the offender is required under Section  
489 53-10-404 to provide a specimen;

490           (d) department-ordered restitution; and ~~for~~



491 (e) any other debt to the state.

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

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

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

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

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

504 **64-13-30. Expenses incurred by offenders -- Payment to department or county jail.**

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

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

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

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

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

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

517 **77-38a-404. Priority.**

518 (1) If restitution to more than one person, agency, or entity is set at the same time, the  
519 department shall establish the following priorities of payment, except as provided in Subsection  
520 (2):

521 (a) the crime victim;

522 (b) the Office of Crime Victim Reparations;

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

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

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

530 [~~(2)~~] (3) All money collected for court-ordered obligations from offenders by the  
531 department will be applied;

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

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

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

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

537 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**

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

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

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

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

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

552 (ii) The court may place the minor in state supervision with the probation department of

553 the court, under the legal custody of:

554 (A) his parent or guardian;

555 (B) the Division of Youth Corrections; or

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

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

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

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

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

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

570 (c) (i) The court may:

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

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

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

577 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
578 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter  
579 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter  
580 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

581 (B) Prior to the court entering an order to place a minor in the custody of the Division of  
582 Child and Family Services on grounds other than abuse or neglect, the court shall provide the  
583 division with notice of the hearing no later than five days before the time specified for the hearing

584 so the division may attend the hearing.

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

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

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

593 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction  
594 over him, to the temporary custody of the Division of Youth Corrections for observation and  
595 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the  
596 request of the director of the Division of Youth Corrections.

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

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

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

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

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

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

614 (i) The court may:

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

618 (ii) impose fines in limited amounts.

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

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

624 (ii) Consistent with the order of the court, the probation officer may permit the minor  
625 found to be within the jurisdiction of the court to participate in a program of work restitution or  
626 compensatory service in lieu of paying part or all of the fine imposed by the court.

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

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

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

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

634 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section  
635 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia  
636 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to  
637 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no  
638 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance  
639 abuse prevention or treatment program may be credited by the court as compensatory service  
640 hours.

641 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
642 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,  
643 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the  
644 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in  
645 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance

646 abuse prevention or treatment program may be credited by the court as compensatory service  
647 hours.

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

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

654 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
655 private agency or institution, the court shall give primary consideration to the welfare of the minor.  
656 When practicable, the court may take into consideration the religious preferences of the minor and  
657 of the minor's parents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

692 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with  
693 a relative or individual of a minor where the court has previously acquired jurisdiction as a result  
694 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection  
695 78-3a-105(4).

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

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

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

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

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

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

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

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

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

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

711 (iii) was committed with a weapon; and

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

714 (4) (a) The court shall order that a DNA specimen shall be obtained from a minor who is  
715 under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall  
716 be obtained by designated employees of the court or, if the minor is in the legal custody of the  
717 Division of Youth Corrections, then by designated employees of the division under Subsection  
718 53-10-404(5)(b).

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

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

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

727 Section 15. **Effective date.**

728 This act takes effect on July 1, 2002.