

DNA AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Stuart Adams

This act modifies the Public Safety Code regarding the collection of DNA samples from offenders. This act specifies that offenders incarcerated or on parole in this state for an applicable offense committed outside the state must also provide a DNA specimen. This act further specifies those offenders from whom the county sheriff is to collect a DNA specimen. This act changes DNA specimen records from private to protected information. This act provides that fingerprints of juveniles shall be taken if the juvenile has committed an offense where a DNA specimen is required. This act makes technical amendments regarding the operation of the DNA sample collection process.

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

AMENDS:

53-10-403, as last amended by Chapter 2, Laws of Utah 2002, Fifth Special Session

53-10-404, as last amended by Chapter 2, Laws of Utah 2002, Fifth Special Session

53-10-406, as last amended by Chapter 140, Laws of Utah 2002

78-3a-904, as last amended by Chapter 108, Laws of Utah 1998

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

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

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

(1) Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection (2) and who is on probation, parole, or incarcerated for any offense under Subsection (2) on or after July 1, 2002~~[, or who]~~;

(b) has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2), and who is on probation, parole, or incarcerated in this state for the offense on or after July 1, 2003; or

(c) is a minor under Subsection (3).

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

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

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

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

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

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

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

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

(b) in the legal custody of the Division of Youth Corrections on or after July 1, 2002 for an offense under Subsection (2).

Section 2. Section **53-10-404** is amended to read:

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

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

(2) (a) A person under Section 53-10-403 or any person added to the sex offender register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse the responsible agency \$75 for the cost of obtaining the DNA specimen unless the agency determines the person lacks the ability to pay.

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

(3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen

Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15 for the costs of obtaining the saliva DNA specimen.

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

(c) The responsible agencies may use reasonable force, as established by their individual guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

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

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

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible after conviction, plea, or finding of jurisdiction by the juvenile court, and transmitted to the Department of Public Safety.

(b) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall obtain and transmit an additional DNA specimen.

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

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

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

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

(ii) are incarcerated in the county jail:

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

(B) for a ~~[class A burglary]~~ misdemeanor offense for which collection of a DNA specimen is required.

~~[(ii)]~~ (d) The sheriff under Subsection (5)(c) shall:

(i) designate employees to obtain the saliva DNA specimens required under Section 53-10-403[. The sheriff shall]; and

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

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

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

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

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

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

(i) persons on probation;

(ii) persons on parole; and

(iii) incarcerated persons.

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

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

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

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

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

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

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

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

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

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

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

Section 3. Section **53-10-406** is amended to read:

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

(1) The bureau shall:

(a) store all DNA specimens received and other physical evidence obtained from analysis of those specimens;

(b) analyze the specimens to establish the genetic profile of the donor or to otherwise determine the identity of persons or contract with other qualified public or private laboratories to conduct the analysis;

(c) maintain a criminal identification data base containing information derived from DNA analysis;

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

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

(f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA specimens and for storing and destroying DNA specimens and other physical evidence and criminal identification information obtained from the analysis.

(2) Procedures for DNA analysis may include all techniques which the Department of Public Safety determines are accurate and reliable in establishing identity, including but not limited to, analysis of DNA, antigen antibodies, polymorphic enzymes, or polymorphic proteins.

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

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

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

(5) The department shall adopt procedures governing the inspection of records, DNA specimens, and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

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

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

(7) The department is not required to destroy any item of physical evidence obtained from a DNA specimen if evidence relating to another person subject to the provisions of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

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

(9) If funding is not available for analysis of any of the DNA specimens collected under

this part, the bureau shall store the collected specimens until funding is made available for analysis through state or federal funds.

Section 4. Section **78-3a-904** is amended to read:

78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth Corrections.

(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older; ~~or~~

(ii) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth Corrections~~[-]; or~~

(iii) is required to provide a DNA specimen under Section 53-10-403.

(b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(3) HIV testing may be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a minor victim.

(4) HIV tests, photographs, and fingerprints may not be taken of a minor younger than 14 years of age without the consent of the court.

(5) (a) Photographs may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies only when a minor 14 years of age or older is charged

with an offense which would be a felony if committed by an adult.

(b) Fingerprints may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies.

(6) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.