

DNA REIMBURSEMENT COSTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill provides an agency the option of recovering the cost for obtaining a DNA specimen from an offender by assessing the inmate's trust fund account for \$75.

Highlighted Provisions:

This bill:

- ▶ allows agencies to recover the cost of obtaining a DNA specimen from an offender by collecting the funds from the inmate's **H COUNTY h** trust fund account; and
- ▶ allows the collecting agency to use a negative account balance to collect the funds.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

53-10-404 (Superseded 07/01/04), as last amended by Chapter 120, Laws of Utah 2003

53-10-404 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

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

Section 1. Section **53-10-404 (Superseded 07/01/04)** is amended to read:

53-10-404 (Superseded 07/01/04). DNA specimen analysis -- Requirement to obtain the specimen.



28 (1) As used in this section, "person" refers to any person described under Section
29 53-10-403.

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

34 (b) (i) The responsible agencies shall establish guidelines and procedures for
35 determining if the person is able to pay the fee. An agency's implementation of Subsection
36 (2)(b)(ii) meets an agency's obligation to determine an inmate's ability to pay.

37 (ii) An agency's guidelines and procedures may provide for the assessment of \$75 on
38 the inmate's H COUNTY h trust fund account and may allow a negative balance in the
38a account until the \$75 is
39 paid in full.

40 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
41 Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall
42 deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15
43 for the costs of obtaining the saliva DNA specimen.

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

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

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

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

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

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

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

63 (b) The juvenile court is the responsible agency regarding a minor under Subsection
64 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
65 Youth Corrections, that division is the responsible agency if a DNA specimen of the minor has
66 not previously been obtained by the juvenile court under Section 78-3a-118.

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

69 (i) have pled guilty to or have been convicted of an offense listed under Subsection
70 53-10-403(2) but who have not been committed to the custody of or are not under the
71 supervision of the Department of Corrections; and

72 (ii) are incarcerated in the county jail:

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

74 (B) for a misdemeanor offense for which collection of a DNA specimen is required.

75 (d) The sheriff under Subsection (5)(c) shall:

76 (i) designate employees to obtain the saliva DNA specimens required under Section
77 53-10-403; and

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

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

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

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

87 (ii) second, the department shall obtain DNA specimens from persons who are
88 committed to the custody of the department or who are placed under the supervision of the
89 department after July 1, 2002, within 120 days after the commitment, if possible, but not later

90 than prior to release from incarceration if the person is imprisoned, or prior to the termination
91 of probation if the person is placed on probation.

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

- 94 (i) persons on probation;
- 95 (ii) persons on parole; and
- 96 (iii) incarcerated persons.

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

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

103 (b) Priority of obtaining DNA specimens by the court from minors under Section
104 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
105 the division shall be:

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

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

112 (c) Priority of obtaining DNA specimens by the division from minors under Section
113 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

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

129 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.
130 Section 2. Section **53-10-404 (Effective 07/01/04)** is amended to read:

131 **53-10-404 (Effective 07/01/04). DNA specimen analysis -- Requirement to obtain**
132 **the specimen.**

133 (1) As used in this section, "person" refers to any person described under Section
134 53-10-403.

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

139 (b) (i) The responsible agencies shall establish guidelines and procedures for
140 determining if the person is able to pay the fee. An agency's implementation of Subsection
141 (2)(b)(ii) meets an agency's obligation to determine an inmate's ability to pay.

142 (ii) An agency's guidelines and procedures may provide for the assessment of \$75 on
143 the inmate's **H COUNTY h** trust fund account and may allow a negative balance in the
143a account until the \$75 is
144 paid in full.

145 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
146 Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall
147 deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15
148 for the costs of obtaining the saliva DNA specimen.

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150 specimen. Unless the responsible agency determines there are substantial reasons for using a
151 different method of collection or the person refuses to cooperate with the collection, the

152 preferred method of collection shall be obtaining a saliva specimen.

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

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

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

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

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

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

168 (b) The juvenile court is the responsible agency regarding a minor under Subsection
169 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
170 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
171 minor has not previously been obtained by the juvenile court under Section 78-3a-118.

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

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

177 (ii) are incarcerated in the county jail:

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

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

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181 (i) designate employees to obtain the saliva DNA specimens required under Section
182 53-10-403; and

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

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

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

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

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

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

199 (i) persons on probation;

200 (ii) persons on parole; and

201 (iii) incarcerated persons.

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

206 (7) (a) As used in this Subsection (7), "court" means the juvenile court and "division"
207 means the Division of Juvenile Justice Services.

208 (b) Priority of obtaining DNA specimens by the court from minors under Section
209 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
210 the division shall be:

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

213 (ii) second, to obtain specimens from minors who are found to be within the court's

214 jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the
215 court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction
216 over the minor.

217 (c) Priority of obtaining DNA specimens by the division from minors under Section
218 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

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

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

235 Section 3. **Effective date.**

236 If approved by two-thirds of all the members elected to each house, this bill takes effect
237 upon approval by the governor, or the day following the constitutional time limit of Utah
238 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
239 the date of veto override, except that the amendments to Section 53-10-404 (Effective
240 07/01/04) take effect on July 1, 2004.

Legislative Review Note

as of 1-12-04 3:43 PM

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

Office of Legislative Research and General Counsel

State Impact

It is estimated that provisions of this bill may have a small positive fiscal impact, but it is not possible to quantify.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst