

DNA DATABASE AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies the Public Safety Code regarding collection of DNA specimens from persons convicted of class A misdemeanors. This bill also modifies code provisions regarding fees for the costs of processing DNA specimens.

Highlighted Provisions:

This bill:

- ▶ requires that all persons convicted of a class A misdemeanor provide a DNA specimen, rather than only those persons convicted of class A misdemeanor attempted burglary or sexual abuse of a minor;
- ▶ increases from \$75 to ~~H~~→ [\$85] \$100 ←~~H~~ the fee charged to an offender for the collection and processing of felony and class A misdemeanor offenders' saliva DNA specimens;
- and
- ▶ changes the portion of the fee allocated to county sheriffs from \$15 to \$20 of the total fee amount, to reflect the fee increase.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **17-22-2.5**, as last amended by Chapter 255, Laws of Utah 2003
29 **53-10-403**, as last amended by Chapter 171, Laws of Utah 2003
30 **53-10-404**, as last amended by Chapter 200, Laws of Utah 2004



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

33 Section 1. Section **17-22-2.5** is amended to read:

34 **17-22-2.5. Fees of sheriff.**

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

36 (a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and
37 complaint, or garnishee execution, or other process by which an action or proceeding is
38 commenced, on each defendant, including copies when furnished by plaintiff, \$15;

39 (b) for taking or approving a bond or undertaking in any case in which he is authorized
40 to take or approve a bond or undertaking, including justification, \$5;

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

43 (d) for serving an attachment on property, or levying an execution, or executing an
44 order of arrest or an order for the delivery of personal property, including copies when
45 furnished by plaintiff, \$50;

46 (e) for taking and keeping possession of and preserving property under attachment or
47 execution or other process, the amount the court orders to a maximum of \$15 per day;

48 (f) for advertising property for sale on execution, or any judgment, or order of sale,
49 exclusive of the cost of publication, \$15;

50 (g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive
51 of acknowledgment, \$15, to be paid by the grantee;

52 (h) for recording each deed, conveyance, or other instrument affecting real estate,
53 exclusive of the cost of recording, \$10, to be paid by the grantee;

54 (i) for serving a writ of possession or restitution, and putting any person entitled to
55 possession into possession of premises, and removing occupant, \$50;

56 (j) for holding each trial of right of property, to include all services in the matter,
57 except mileage, \$35;

58 (k) for conducting, postponing, or canceling a sale of property, \$15;

59 (l) for taking a prisoner in civil cases from prison before a court or magistrate, for each
60 mile necessarily traveled, in going only, to a maximum of 100 miles, \$1.50;

61 (m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a
62 court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100
63 miles, \$1.50;

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

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

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

69 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$10.

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

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

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

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

79 (4) (a) (i) When traveling generally to serve notices, orders, process, or other papers,
80 the sheriff may receive \$1.50 for each mile necessarily traveled, in going only, computed from
81 the courthouse for each person served, to a maximum of 100 miles.

82 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may
83 receive \$1.50 for each mile necessarily traveled, in going only, computed from the post office
84 where received for each person served, to a maximum of 100 miles.

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

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

89 (5) (a) For delivering an insane person to the Utah State Hospital, when the cost of

90 delivery is payable by private individuals, the sheriff may collect \$1.50 per mile for the
 91 distance from the county seat of his county to the Utah State Hospital, to a maximum of 100
 92 miles.

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

95 (6) For obtaining a saliva DNA specimen under Section 53-10-404, the sheriff shall
 96 collect the fee of [\$75] ~~H~~→ [\$85] **\$100** ←~~H~~ in accordance with Section 53-10-404.

97 Section 2. Section **53-10-403** is amended to read:

98 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

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

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

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

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

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

109 (a) any felony or class A misdemeanor under the Utah Code~~[, and any violation of~~
 110 ~~Section 76-5-401.1, sexual abuse of a minor]; or~~

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

112 ~~[(c)]~~ (b) any offense under Subsection (2)(a) ~~[or (b)]~~:

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

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

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

120 (a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense

121 under Subsection (2); or

122 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
123 2002 for an offense under Subsection (2).

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

125 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

126 (1) As used in this section, "person" refers to any person described under Section
127 53-10-403.

128 (2) (a) A person under Section 53-10-403 or any person added to the sex offender
129 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse
130 the responsible agency [~~\$75~~ ~~H→~~ ~~[\$85]~~ \$100 ~~←H~~] for the cost of obtaining the DNA specimen
130a unless the agency
131 determines the person lacks the ability to pay.

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

135 (ii) An agency's guidelines and procedures may provide for the assessment of [~~\$75~~
136 ~~H→~~ ~~[\$85]~~ \$100 ~~←H~~] on the inmate's county trust fund account and may allow a negative balance in
136a the account
137 until the [~~\$75~~ ~~H→~~ ~~[\$85]~~ \$100 ~~←H~~] is paid in full.

138 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
139 Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall
140 deposit [~~\$60~~ ~~H→~~ ~~[\$65]~~ \$80 ~~←H~~] of the fee in the DNA Specimen Restricted Account and retain the
140a balance of
141 [~~\$15~~] \$20 for the costs of obtaining the saliva DNA specimen.

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

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

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

151 (e) Under this section a person is required to provide one DNA specimen. The person

152 shall provide an additional DNA specimen only if the DNA specimen previously provided is
153 not adequate for analysis.

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

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

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

161 (b) The juvenile court is the responsible agency regarding a minor under Subsection
162 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
163 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
164 minor has not previously been obtained by the juvenile court under Section 78-3a-118.

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

167 (i) have pled guilty to or have been convicted of an offense listed under Subsection
168 53-10-403(2) but who have not been committed to the custody of or are not under the
169 supervision of the Department of Corrections; and

170 (ii) are incarcerated in the county jail:

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

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

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

174 (i) designate employees to obtain the saliva DNA specimens required under Section
175 53-10-403; and

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

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

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

181 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
182 of or under the supervision of the department before these persons are released from

183 incarceration, parole, or probation, if their release date is prior to that of persons under
184 Subsections (6)(b)(ii), but in no case later than July 1, 2004; and

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

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

192 (i) persons on probation;

193 (ii) persons on parole; and

194 (iii) incarcerated persons.

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

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

201 (b) Priority of obtaining DNA specimens by the court from minors under Section
202 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
203 the division shall be:

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

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

210 (c) Priority of obtaining DNA specimens by the division from minors under Section
211 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

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

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

Legislative Review Note
as of 12-1-05 2:24 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

It is estimated that annual ongoing revenues to the state will increase by \$399,800 beginning FY 2007. The proceeds will be deposited in the DNA Specimen Restricted Account according to statute. Beginning FY 2007, the Administrative Office of the Courts will require \$32,800 in ongoing funds and the Department of Public Safety will require \$263,000 in ongoing funds from the DNA Specimen Restricted Account.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
Restricted Funds	\$295,800	\$295,800	\$399,800	\$399,800
TOTAL	\$295,800	\$295,800	\$399,800	\$399,800

Individual and Business Impact

All persons convicted of a class A misdemeanor will be required to provide a DNA specimen and pay the \$85 fee.
