

DNA EXONERATION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Litvack

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies the Public Safety Code regarding procedures and funding for convicted persons' requests for DNA testing.

Highlighted Provisions:

This bill:

► provides that when a convicted person requests a DNA analysis in order to prove innocence, the test:

- must be made using a scientifically accepted procedure; and
- will be paid for from monies appropriated to the DNA Specimen Restricted Account for use of the Department of Corrections, if:
 - the court has ordered the DNA test upon petition from the defendant;
 - the state crime laboratory does not have the resources to conduct the ordered DNA test; and
 - the defendant is incarcerated and indigent.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-407, as last amended by Chapter 171, Laws of Utah 2003

78-35a-301, as enacted by Chapter 261, Laws of Utah 2001

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

Section 1. Section **53-10-407** is amended to read:

53-10-407. DNA Specimen Restricted Account.

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

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

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

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

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

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

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

(a) to the Department of Corrections for the costs of:

(i) collecting DNA specimens as required under Section 53-10-403; and

(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided in Subsection 78-35a-301(8);

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

(c) to the Division of Juvenile Justice Services for the costs of collecting DNA specimens as required under Sections 53-10-403 and 62A-7-104; and

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

(5) Appropriations from the account to the Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and to the Department of Public Safety are nonlapsing.

Section 2. Section **78-35a-301** is amended to read:

58 **78-35a-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
59 **Notification of victim.**

60 (1) As used in this part, "DNA" means deoxyribonucleic acid.

61 (2) A person convicted of a felony offense may at any time file a petition for
62 postconviction DNA testing in the trial court that entered the judgment of conviction against
63 him if the person asserts his actual innocence under oath and the petition alleges:

64 (a) evidence has been obtained regarding the person's case which is still in existence
65 and is in a condition that allows DNA testing to be conducted;

66 (b) the chain of custody is sufficient to establish that the evidence has not been altered
67 in any material aspect;

68 (c) the person identifies the specific evidence to be tested and states a theory of
69 defense, not inconsistent with theories previously asserted at trial, that the requested DNA
70 testing would support;

71 (d) the evidence was not previously subjected to DNA testing, or if the evidence was
72 tested previously, the evidence was not subjected to the testing that is now requested, and the
73 new testing may resolve an issue not resolved by the prior testing;

74 (e) the proposed DNA testing is generally accepted as valid in the scientific field or is
75 otherwise admissible under Utah law;

76 ~~(f)~~ (f) the evidence that is the subject of the request for testing has the potential to
77 produce new, noncumulative evidence that will establish the person's actual innocence; and

78 ~~(g)~~ (g) the person is aware of the consequences of filing the petition, including:

79 (i) those specified in Sections 78-35a-302 and 78-35a-304[;]; and

80 (ii) that the person is waiving any statute of limitations in all jurisdictions as to any
81 felony offense he has committed which is identified through DNA database comparison.

82 (3) The petition under Subsection (2) shall be in compliance with Rule 65C, Utah
83 Rules of Civil Procedure, including providing the underlying criminal case number.

84 (4) The court may not order DNA testing in cases in which DNA testing was available
85 at the time of trial and the person did not request DNA testing or present DNA evidence for

86 tactical reasons.

87 (5) After a petition is filed under this section, prosecutors, law enforcement officers,
88 and crime laboratory personnel have a duty to cooperate in preserving evidence and in
89 determining the sufficiency of the chain of custody of the evidence which may be subject to
90 DNA testing.

91 (6) (a) A person who files a petition under this section shall serve notice upon the
92 office of the prosecutor who obtained the conviction, and upon the state attorney general. The
93 attorney general shall, within 30 days after receipt of service of a copy of the petition, or within
94 any additional period of time the court allows, answer or otherwise respond to all proceedings
95 initiated under this part.

96 (b) After the attorney general is given an opportunity to respond to a petition for
97 postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of
98 the evidence that all criteria of Subsection (2) have been met.

99 (7) (a) If the court grants the petition for testing, the DNA test shall be performed by
100 the Utah State Crime Laboratory within the Criminal Investigations and Technical Services
101 Division created in Section 53-10-103, unless the person establishes that the state crime
102 laboratory has a conflict of interest or does not have the capability to perform the necessary
103 testing.

104 (b) If the court orders that the testing be conducted by any laboratory other than the
105 state crime laboratory, the court shall require that the testing be performed:

106 (i) under reasonable conditions designed to protect the state's interests in the integrity
107 of the evidence[;]; and [~~that the testing be performed~~]

108 (ii) according to accepted scientific standards and procedures.

109 (8) (a) DNA testing under this section shall be paid for from funds appropriated to the
110 Department of Corrections under Subsection 53-10-407(4)(a) from the DNA Specimen
111 Restricted Account created in Section 53-10-407 if:

112 (i) the court ordered the DNA testing under this section;

113 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical

114 Services Division has a conflict of interest or does not have the capability to perform the
115 necessary testing; and

116 (iii) the petitioner who has filed for postconviction DNA testing under Section
117 78-35a-201 is serving a sentence of imprisonment and is indigent.

118 (b) Under this Subsection (8), costs of DNA testing include those necessary to
119 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
120 of findings.

121 [~~8~~] (9) If the person is serving a sentence of imprisonment and is indigent, the state
122 shall pay for the costs of the testing under this part, but if the result is not favorable to the
123 person the court may order the person to reimburse the state for the costs of the testing,
124 pursuant to the provisions of Subsections 78-35a-302(4) and 78-35a-304(1)(b).

125 [~~9~~] (10) Any victim of the crime regarding which the person petitions for DNA
126 testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's
127 attorney of any hearing regarding the petition and testing, even though the hearing is a civil
128 proceeding.