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**DNA SAMPLE - FELONY AND CERTAIN
MISDEMEANOR ARRESTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kerry W. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the public safety laws regarding collection of DNA specimens to include collection from persons arrested for any felony and specified misdemeanors.

Highlighted Provisions:

This bill:

- ▶ requires that any law enforcement agency that arrests a person for any felony or class A misdemeanor or for assault, a class B misdemeanor, shall obtain a DNA specimen if the arrested person's specimen is not already on file; and
- ▶ requires the arrested person to pay a fee of \$100 for the costs of collecting the DNA specimen if the charge for which the person was arrested is not dismissed or the person is not acquitted.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2009.

Utah Code Sections Affected:

AMENDS:

53-10-403, as last amended by Laws of Utah 2006, Chapter 306

53-10-403.5, as enacted by Laws of Utah 2002, Chapter 140



28 53-10-404, as last amended by Laws of Utah 2006, Chapter 306

29 53-10-405, as last amended by Laws of Utah 2002, Chapter 140

30 53-10-406, as last amended by Laws of Utah 2003, Chapter 120

31 ENACTS:

32 53-10-404.5, Utah Code Annotated 1953



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

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

36 53-10-403. DNA specimen analysis -- Application to offenders, including minors.

37 (1) Sections 53-10-404, 54-10-404.5, 53-10-405, and 53-10-406 apply to any person

38 who:

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

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

46 (c) has been arrested on or after January 1, 2009, for any offense under Subsection (2);

47 or

48 [~~(e)~~] (d) is a minor under Subsection (3).

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

50 (a) any felony or class A misdemeanor under the Utah Code or assault, a class B
51 misdemeanor under Section 76-5-102; or

52 (b) any offense under Subsection (2)(a):

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

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

57 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah
58 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission

59 of any offense described in Subsection (2), and who is:

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

62 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
63 2002 for an offense under Subsection (2).

64 Section 2. Section **53-10-403.5** is amended to read:

65 **53-10-403.5. Definitions.**

66 As used in Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406:

67 (1) "Bureau" means the Bureau of Forensic Services.

68 ~~[(1)]~~ (2) "DNA" means deoxyribonucleic acid.

69 ~~[(2)]~~ (3) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

70 (4) "Final judgment" means a judgment, including any supporting opinion, concerning
71 which all appellate remedies have been exhausted or the time for appeal has expired.

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

73 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

74 (1) As used in this section, "person" refers to any person, including a minor, as
75 described under Section 53-10-403.

76 (2) (a) A person under Section 53-10-403 or any person added to the sex offender
77 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse
78 the ~~[responsible]~~ agency responsible for obtaining the DNA specimen \$100 for the cost of
79 obtaining the DNA specimen unless;

80 (i) the person was arrested under Section 53-10-403 and is not required to reimburse
81 the agency under Section 53-10-404.5; or

82 (ii) the agency determines the person lacks the ability to pay.

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

85 (B) An agency's implementation of Subsection (2)(b)(ii) meets an agency's obligation
86 to determine an inmate's ability to pay.

87 (ii) An agency's guidelines and procedures may provide for the assessment of \$100 on
88 the inmate's county trust fund account and may allow a negative balance in the account until
89 the \$100 is paid in full.

90 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
91 Restricted Account created in Section 53-10-407, except that sheriffs and chiefs of police
92 collecting the fee shall deposit \$80 of the fee in the DNA Specimen Restricted Account and
93 retain the balance of \$20 for the costs of obtaining the saliva DNA specimen.

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

98 (c) The responsible [~~agencies~~] agency may use reasonable force, as established by
99 [~~their individual~~] its guidelines and procedures, to collect the DNA sample if the person refuses
100 to cooperate with the collection.

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

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

106 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
107 possible and transferred to the Department of Public Safety:

108 (i) after conviction, plea, or finding of jurisdiction by the juvenile court[~~, and~~
109 ~~transmitted to the Department of Public Safety.]; and~~

110 (ii) on and after January 1, 2009, after the arrest of a person for any offense under
111 Subsection (2)(a).

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

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

116 (b) The juvenile court is the responsible agency regarding a minor under Subsection
117 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
118 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
119 minor has not previously been obtained by the juvenile court under Section 78-3a-118.

120 (c) The sheriff operating a county jail is the responsible agency regarding the collection

121 of DNA specimens from persons who:

122 (i) have pled guilty to or have been convicted of an offense listed under Subsection
123 53-10-403(2) but who have not been committed to the custody of or are not under the
124 supervision of the Department of Corrections; and

125 (ii) are incarcerated in the county jail:

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

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

128 (d) On and after January 1, 2009, each law enforcement agency that arrests a person for
129 any offense under Subsection (2)(a) shall obtain a DNA specimen from the arrested person in
130 accordance with Section 53-10-403.

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

132 (e) Each law enforcement agency shall:

133 (i) designate employees to obtain the saliva DNA specimens required under Section
134 53-10-403; and

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

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

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

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

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

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

151 (i) persons on probation;

- 152 (ii) persons on parole; and
- 153 (iii) incarcerated persons.

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

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

160 (b) Priority of obtaining DNA specimens by the court from minors under Section
161 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
162 the division shall be:

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

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

169 (c) Priority of obtaining DNA specimens by the division from minors under Section
170 53-10-403 who are committed to the legal custody of the division shall be:

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

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

178 (8) (a) The Department of Corrections, the juvenile court, [~~and~~] the Division of
179 Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish
180 procedures for obtaining saliva DNA specimens, and shall provide training for employees
181 designated to collect saliva DNA specimens.

182 (b) The department may designate correctional officers, including those employed by

183 the adult probation and parole section of the Department of Corrections, to obtain the saliva
184 DNA specimens required under this section. The department shall ensure that the designated
185 employees receive appropriate training and that the specimens are obtained in accordance with
186 accepted protocol.

187 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.
188 Section 4. Section **53-10-404.5** is enacted to read:

189 **53-10-404.5. Obtaining DNA specimen at time of arrest - Payment of fee.**

190 (1) (a) When any law enforcement agency within the state arrests a person for any
191 offense under Subsection 53-10-404(2)(a), the law enforcement agency shall obtain a DNA
192 specimen from the person at the time of arrest or upon booking at the jail, or upon admission to
193 a detention facility, except under Subsection (1)(b).

194 (b) If at the time of arrest, booking, or admission to a detention facility the arresting
195 law enforcement agency is able to obtain information from the bureau stating that the bureau
196 has on file a DNA specimen for the person arrested, the arresting law enforcement agency is
197 not required to obtain an additional DNA specimen.

198 (2) The person arrested under Subsection (1) shall pay a fee of \$100 for the cost of
199 obtaining the DNA specimen if the charge upon which the arrest is based is not resolved by a
200 final judgment of dismissal or acquittal.

201 (3) The law enforcement agency that arrested the person shall collect the fee of \$100
202 and shall:

203 (a) deposit \$80 of the fee in the DNA Specimen Restricted Account; and

204 (b) retain the balance of \$20 for the law enforcement agency's costs of obtaining the
205 saliva DNA specimen.

206 Section 5. Section **53-10-405** is amended to read:

207 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency --**
208 **Blood sample to be drawn by professional.**

209 (1) (a) A blood sample shall be drawn in a medically acceptable manner by a licensed
210 professional nurse, a licensed practical nurse, a paramedic, a qualified medical technician, a
211 licensed physician, or other person licensed by the state for this purpose.

212 (b) A person authorized by this section to draw a blood sample may not be held civilly
213 liable for drawing a sample in a medically acceptable manner.

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

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

218 (3) A test result or opinion based upon a test result regarding a DNA specimen may not
219 be rendered inadmissible as evidence solely because of deviations from procedures adopted by
220 the department that do not affect the reliability of the opinion or test result.

221 (4) A DNA specimen is not required to be obtained if:

222 (a) the department notifies the court or the responsible agency that it has previously
223 received an adequate DNA specimen obtained from the [convicted] person in accordance with
224 this section; or

225 (b) the court determines that obtaining a DNA specimen would create a substantial and
226 unreasonable risk to the health of the convicted person.

227 Section 6. Section **53-10-406** is amended to read:

228 **53-10-406. DNA specimen analysis -- Bureau responsibilities -- Destruction of**
229 **DNA specimen.**

230 (1) The bureau shall:

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

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

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

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

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

243 (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
244 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA

245 specimens and for storing and destroying DNA specimens and other physical evidence and
246 criminal identification information obtained from the analysis.

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

251 (3) (a) In accordance with Section 63-2-304, all DNA specimens received shall be
252 classified as protected.

253 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
254 physical evidence, or criminal identification information obtained, stored, or maintained under
255 this section, except under its provisions, including responding to requests from law
256 enforcement agencies regarding if the bureau has a person's DNA specimen on file.

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

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

263 (6) (a) ~~[Whenever]~~ A person may request the destruction of the person's DNA
264 specimen and any criminal identification record created in connection with that specimen if:

265 (i) a ~~[court]~~ final judgment reverses the conviction, judgment, or order that created an
266 obligation to provide a DNA specimen~~[- the person who provided the specimen may request~~
267 ~~destruction of the specimen and any criminal identification record created in connection with~~
268 ~~that specimen.]; or~~

269 (ii) the arrest upon which the obtaining of the DNA specimen has been resolved by a
270 final judgment of dismissal or acquittal; and

271 (b) the department determines that the person has not otherwise become obligated to
272 submit a DNA specimen as a result of any separate conviction or juvenile adjudication for any
273 offense listed in Subsection 53-10-403(2).

274 ~~[(b)]~~ (7) Upon receipt of a person's written request for destruction pursuant to ~~[this]~~
275 ~~[section]~~ Subsection (6) and receipt of a certified copy of the court order reversing the

276 conviction, judgment, or order, or a certified copy of the dismissal or acquittal of the charge
277 regarding which the person was arrested, the Department of Public Safety shall destroy any
278 specimen received from the person, any physical evidence obtained from that specimen, and
279 any criminal identification records pertaining to the person, unless [~~the department determines~~
280 ~~that the person has otherwise become obligated to submit a DNA specimen as a result of a~~
281 ~~separate conviction or juvenile adjudication for an offense listed in Section 53-10-403]~~
282 prohibited under Subsection (6)(b).

283 [~~(7)~~] (8) The department is not required to destroy any item of physical evidence
284 obtained from a DNA specimen if evidence relating to another person subject to the provisions
285 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

286 [~~(8)~~] (9) A DNA specimen, physical evidence, or criminal identification record may
287 not be affected by an order to set aside a conviction, except under the provisions of this section.

288 [~~(9)~~] (10) If funding is not available for analysis of any of the DNA specimens
289 collected under this part, the bureau shall store the collected specimens until funding is made
290 available for analysis through state or federal funds.

291 Section 7. **Effective date.**

292 This bill takes effect on January 1, 2009.

Legislative Review Note
as of 1-24-08 6:49 AM

Office of Legislative Research and General Counsel

H.B. 156 - Dna Sample - Felony and Certain Misdemeanor Arrests

Fiscal Note

2008 General Session

State of Utah

State Impact

The Courts will require appropriations of \$18,900 in FY 2009 and \$37,800 in FY 2010 and each year thereafter. The Department of Public Safety will require appropriations of \$315,600 in FY 2009 and \$319,500 in FY 2010 and each year thereafter. The bill will generate additional revenue of \$144,000 in FY 2009 and \$288,000 in FY 2010 and each year thereafter.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$69,300	\$69,300	\$0	\$0	\$0
General Fund, One-Time	\$0	\$121,200	\$0	\$0	\$0	\$0
Restricted Funds	\$0	\$144,000	\$288,000	\$0	\$144,000	\$288,000
Total	\$0	\$334,500	\$357,300	\$0	\$144,000	\$288,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments may benefit.