

Representative Kerry W. Gibson proposes the following substitute bill:

DNA SAMPLE - FELONY AND CERTAIN

MISDEMEANOR CONVICTIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kerry W. Gibson

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires that a DNA specimen shall be obtained from a person convicted of an assault, which is a class B misdemeanor, in addition to current requirements for felonies and class A misdemeanors;
- ▶ provides that a DNA specimen is not to be taken from a minor who commits an assault; and
- ▶ requires a person convicted of an assault to also pay the fee of \$100 for the costs of collecting the DNA specimen.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **53-10-403**, as last amended by Laws of Utah 2006, Chapter 306

28 **53-10-403.5**, as enacted by Laws of Utah 2002, Chapter 140

29 **53-10-404**, as last amended by Laws of Utah 2006, Chapter 306

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

31

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

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

34 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

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

36 (a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)

37 [~~and who is on probation, parole, or incarcerated for any offense under Subsection (2)] on or~~

38 after July 1, 2002;

39 (b) has pled guilty to or has been convicted by any other state or by the United States

40 government of an offense which if committed in this state would be punishable as one or more

41 of the offenses listed in Subsection (2)[~~and who is on probation, parole, or incarcerated in this~~

42 ~~state for the offense] on or after July 1, 2003; or~~

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

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

45 (a) (i) any felony or class A misdemeanor under the Utah Code; and

46 (ii) on and after May 5, 2008, assault, a class B misdemeanor, under Section 76-5-102,

47 except that a DNA specimen may not be taken from a minor whom the court has adjudicated to

48 be within the jurisdiction of the juvenile court solely due to the commission of a class B assault

49 offense; or

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

51 (i) for which the court enters a judgment for conviction to a lower degree of offense

52 under Section 76-3-402; or

53 (ii) regarding which the court allows the defendant to enter a plea in abeyance as

54 defined in Section 77-2a-1.

55 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah

56 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission

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

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

60 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
61 2002 for an offense under Subsection (2).

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

63 **53-10-403.5. Definitions.**

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

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

66 [~~(1)~~] (2) "DNA" means deoxyribonucleic acid.

67 [~~(2)~~] (3) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

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

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

71 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

72 (1) As used in this section, "person" refers to any person described under Section
73 53-10-403.

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

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

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

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

85 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
86 Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall
87 deposit \$80 of the fee in the DNA Specimen Restricted Account and retain the balance of \$20

88 for the costs of obtaining the saliva DNA specimen.

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

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

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

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

101 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
102 possible ~~[after]~~ and transferred to the Department of Public Safety upon conviction, plea, or
103 finding of jurisdiction by the juvenile court~~[-and transmitted to the Department of Public~~
104 ~~Safety]~~.

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

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

109 (b) The juvenile court is the responsible agency regarding a minor under Subsection
110 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
111 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
112 minor has not previously been obtained by the juvenile court under Section 78-3a-118.

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

115 (i) have pled guilty to or have been convicted of an offense listed under Subsection
116 53-10-403(2) but who have not been committed to the custody of or are not under the
117 supervision of the Department of Corrections; and

118 (ii) are incarcerated in the county jail:

- 119 (A) as a condition of probation for a felony offense; or
120 (B) for a misdemeanor offense for which collection of a DNA specimen is required.
121 (d) The sheriff under Subsection (5)(c) shall:
122 (i) designate employees to obtain the saliva DNA specimens required under Section
123 53-10-403; and
124 (ii) ensure that employees designated to collect the DNA specimens receive appropriate
125 training and that the specimens are obtained in accordance with accepted protocol.
126 (6) (a) As used in this Subsection (6), "department" means the Department of
127 Corrections.
128 (b) Priority of obtaining DNA specimens by the department is:
129 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
130 of or under the supervision of the department before these persons are released from
131 incarceration, parole, or probation, if their release date is prior to that of persons under
132 Subsections (6)(b)(ii), but in no case later than July 1, 2004; and
133 (ii) second, the department shall obtain DNA specimens from persons who are
134 committed to the custody of the department or who are placed under the supervision of the
135 department after July 1, 2002, within 120 days after the commitment, if possible, but not later
136 than prior to release from incarceration if the person is imprisoned, or prior to the termination
137 of probation if the person is placed on probation.
138 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
139 is:
140 (i) persons on probation;
141 (ii) persons on parole; and
142 (iii) incarcerated persons.
143 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
144 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
145 specimens from persons in the custody of or under the supervision of the Department of
146 Corrections as of July 1, 2002, prior to their release.
147 (7) (a) As used in this Subsection (7), "court" means the juvenile court and "division"
148 means the Division of Juvenile Justice Services.
149 (b) Priority of obtaining DNA specimens by the court from minors under Section

150 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
151 the division shall be:

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

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

158 (c) Priority of obtaining DNA specimens by the division from minors under Section
159 53-10-403 who are committed to the legal custody of the division shall be:

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

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

167 (8) (a) The Department of Corrections, the juvenile court, [~~and~~] the Division of
168 Juvenile Justice Services, and county sheriffs shall by policy establish procedures for obtaining
169 saliva DNA specimens, and shall provide training for employees designated to collect saliva
170 DNA specimens.

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

176 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.
177 Section 4. Section **53-10-406** is amended to read:

178 **53-10-406. DNA specimen analysis -- Bureau responsibilities -- Destruction of**
179 **DNA specimen.**

180 (1) The bureau shall:

- 181 (a) store all DNA specimens received and other physical evidence obtained from
182 analysis of those specimens;
- 183 (b) analyze the specimens to establish the genetic profile of the donor or to otherwise
184 determine the identity of persons or contract with other qualified public or private laboratories
185 to conduct the analysis;
- 186 (c) maintain a criminal identification data base containing information derived from
187 DNA analysis;
- 188 (d) utilize the specimens to create statistical population frequency data bases, provided
189 that genetic profiles or other information in a population frequency data base may not be
190 identified with specific individuals;
- 191 (e) ensure that the DNA identification system does not provide information allowing
192 prediction of genetic disease or predisposition to illness; and
- 193 (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
194 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA
195 specimens and for storing and destroying DNA specimens and other physical evidence and
196 criminal identification information obtained from the analysis.
- 197 (2) Procedures for DNA analysis may include all techniques which the Department of
198 Public Safety determines are accurate and reliable in establishing identity, including but not
199 limited to, analysis of DNA, antigen antibodies, polymorphic enzymes, or polymorphic
200 proteins.
- 201 (3) (a) In accordance with Section 63-2-304, all DNA specimens received shall be
202 classified as protected.
- 203 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
204 physical evidence, or criminal identification information obtained, stored, or maintained under
205 this section, except under its provisions, including responding to requests from law
206 enforcement agencies regarding if the bureau has a person's DNA specimen on file.
- 207 (4) Notwithstanding the provisions of Subsection 63-2-202(1), the department may
208 deny inspection if it determines that there is a reasonable likelihood that the inspection would
209 prejudice a pending criminal investigation.
- 210 (5) The department shall adopt procedures governing the inspection of records, DNA
211 specimens, and challenges to the accuracy of records. The procedures shall accommodate the

212 need to preserve the materials from contamination and destruction.

213 (6) ~~[(a) Whenever]~~ A person whose DNA specimen has been obtained under this
214 section may personally, or through a legal representative, request in writing the destruction of
215 the person's DNA specimen and any criminal identification record created in connection with
216 that specimen if:

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

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

224 ~~[(b)]~~ ~~(7)~~ Upon receipt of a person's written request for destruction pursuant to ~~[this]~~
225 ~~[section]~~ Subsection (6) and receipt of a certified copy of the court order reversing the
226 conviction, judgment, or order, the Department of Public Safety shall destroy any specimen
227 received from the person, any physical evidence obtained from that specimen, and any criminal
228 identification records pertaining to the person, unless ~~[the department determines that the~~
229 ~~person has otherwise become obligated to submit a DNA specimen as a result of a separate~~
230 ~~conviction or juvenile adjudication for an offense listed in Section 53-10-403]~~ prohibited under
231 Subsection (6)(b).

232 ~~[(7)]~~ ~~(8)~~ The department is not required to destroy any item of physical evidence
233 obtained from a DNA specimen if evidence relating to another person subject to the provisions
234 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

235 ~~[(8)]~~ ~~(9)~~ A DNA specimen, physical evidence, or criminal identification record may
236 not be affected by an order to set aside a conviction, except under the provisions of this section.

237 ~~[(9)]~~ ~~(10)~~ If funding is not available for analysis of any of the DNA specimens
238 collected under this part, the bureau shall store the collected specimens until funding is made
239 available for analysis through state or federal funds.

Fiscal Note**H.B. 156 1st Sub. (Buff) - Dna Sample - Felony and Certain Misdemeanor
Convictions**

2008 General Session

State of Utah

State Impact

The Department of Public Safety will require appropriations of \$40,200 in FY 2008, \$396,800 in FY 2009 and \$241,000 in FY 2010 and each fiscal year thereafter. The bill will generate additional revenue of \$19,200 in FY 2008 and \$128,000 in FY 2009 and each fiscal 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	\$113,000	\$113,000	\$0	\$0	\$0
General Fund, One-Time	\$21,000	\$155,800	\$0	\$0	\$0	\$0
Restricted Funds	\$19,200	\$128,000	\$128,000	\$19,200	\$128,000	\$128,000
Total	\$40,200	\$396,800	\$241,000	\$19,200	\$128,000	\$128,000

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.