

**DNA MODIFICATIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Ryan D. Wilcox

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**LONG TITLE**

**General Description:**

This bill modifies the public safety laws regarding collection of DNA specimens to include collection from persons booked for any violent felony, increases the fee for the specimen, and changes the management of fees.

**Highlighted Provisions:**

This bill:

- ▶ requires that a county sheriff that books a person for any violent crime shall obtain a DNA specimen if at the time of booking the person's DNA specimen is not already on file;
- ▶ requires the booked person to pay a fee of \$150 for the costs of collecting the DNA specimen if the person is convicted of the charge for which the person was booked;
- ▶ increases the fee for all required DNA specimens from \$100 to \$150;
- ▶ allocates \$25 of the fee to the collecting agency, and the balance of \$125 to the Department of Public Safety for the processing of the DNA specimens; and
- ▶ provides that a DNA specimen taken at time of booking may not be processed until the person is bound over for trial, waives a preliminary hearing, or a grand jury issues an indictment;
- ▶ clarifies that only DNA markers used for forensic purposes may be included when establishing a donor's gender and unique individual identification by DNA analysis;
- ▶ requires that the DNA analysis be consistent with and not exceed FBI forensic DNA analysis procedures;

30           ▶ requires that the department destroy a DNA specimen if criminal charges have not  
31 been filed within 90 days after booking;

32           ▶ provides that when a court issues an order to destroy DNA records pursuant to a  
33 person's motion for destruction based on dismissal or acquittal of the charge against  
34 the person, the court may also provide information advising of state law regarding  
35 expungement of criminal charges;

36           ▶ establishes criminal penalties for possessing or disclosing individually identifiable  
37 DNA analysis information and the failure to destroy a DNA specimen, in violation  
38 of state law regarding management, storage, and destruction of DNA specimens  
39 and DNA analysis; and

40           ▶ allows analysis of the DNA if the person is convicted of any charge arising out of  
41 the same criminal episode regarding which the DNA specimen was obtained.

42 **Monies Appropriated in this Bill:**

43           None

44 **Other Special Clauses:**

45           This bill takes effect on January 1, 2011.

46 **Utah Code Sections Affected:**

47 AMENDS:

48           **53-10-403**, as last amended by Laws of Utah 2006, Chapter 306

49           **53-10-403.5**, as enacted by Laws of Utah 2002, Chapter 140

50           **53-10-404**, as last amended by Laws of Utah 2008, Chapter 3

51           **53-10-405**, as last amended by Laws of Utah 2002, Chapter 140

52           **53-10-406**, as last amended by Laws of Utah 2008, Chapter 382

53           **53-10-407**, as last amended by Laws of Utah 2008, Chapter 3

54           **78B-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3

55 ENACTS:

56           **53-10-404.5**, Utah Code Annotated 1953

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

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

60 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

61 (1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person  
62 who:

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

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

70 (c) has been booked on or after January 1, 2011, for any offense under Subsection  
71 (2)(c); or

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

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

74 (a) any felony or class A misdemeanor under the Utah Code; [~~or~~]

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

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

78 (ii) regarding which the court allows the defendant to enter a plea in abeyance as  
79 defined in Section 77-2a-1[~~;~~]; or

80 (c) any violent felony.

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

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

86 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,  
87 2002 for an offense under Subsection (2).

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

89 **53-10-403.5. Definitions.**

90 As used in Sections 53-10-403, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406:

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

92 (2) "Conviction" means:

93 (a) a verdict or conviction;

94 (b) a plea of guilty or guilty and mentally ill;

95 (c) a plea of no contest; or

96 (d) the acceptance by the court of a plea in abeyance.

97 [(+)] (3) "DNA" means deoxyribonucleic acid.

98 [(2)] (4) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

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

101 (6) "Violent felony" means any offense under Section 76-3-203.5.

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

103 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

104 (1) As used in this section, "person" refers to any person as described under Section  
105 53-10-403.

106 (2) (a) A person under Section 53-10-403 or any person added to the sex offender  
107 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse  
108 the ~~[responsible]~~ agency ~~[\$100]~~ responsible for obtaining the DNA specimen \$150 for the cost  
109 of obtaining the DNA specimen unless;

110 (i) the person was booked under Section 53-10-403 and is not required to reimburse  
111 the agency under Section 53-10-404.5; or

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

113 (b) (i) (A) The responsible agencies shall establish guidelines and procedures for

114 determining if the person is able to pay the fee.

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

117 (ii) An agency's guidelines and procedures may provide for the assessment of [~~\$100~~]  
118 \$150 on the inmate's county trust fund account and may allow a negative balance in the  
119 account until the [~~\$100~~] \$150 is paid in full.

120 (3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA  
121 Specimen Restricted Account created in Section 53-10-407, except that [~~sheriffs~~] the agency  
122 collecting the fee [~~shall deposit \$80 of the fee in the DNA Specimen Restricted Account and~~  
123 ~~retain the balance of \$20~~] may retain not more than \$25 per individual specimen for the costs  
124 of obtaining the saliva DNA specimen.

125 (ii) The agency collecting the \$150 fee may not retain from each separate fee more  
126 than \$25, and no amount of the \$150 fee may be credited to any other fee or agency  
127 obligation.

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

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

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

137 (e) (i) Under this section a person is required to provide one DNA specimen and pay  
138 the collection fee as required under this section.

139 (ii) The person shall provide an additional DNA specimen only if the DNA specimen  
140 previously provided is not adequate for analysis.

141 (iii) The collection fee is not imposed for a second or subsequent DNA specimen

142 collected under this section.

143 (f) Any agency that is authorized to obtain a DNA specimen under this part may  
144 collect any outstanding amount of a fee due under this section from any person who owes any  
145 portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in  
146 Section 53-10-407.

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

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

151 (ii) on and after January 1, 2011, after the booking of a person for any offense under  
152 Subsection 53-10-403(1)(c).

153 (b) If notified by the Department of Public Safety that a DNA specimen is not  
154 adequate for analysis, the agency shall, as soon as possible:

155 (i) obtain and transmit an additional DNA specimen[~~;~~]; or

156 (ii) request that another agency that has direct access to the person and that is  
157 authorized to collect DNA specimens under this section collect the necessary second DNA  
158 specimen and transmit it to the Department of Public Safety.

159 (c) Each agency that is responsible for collecting DNA specimens under this section  
160 shall establish:

161 (i) a tracking procedure to record the handling and transfer of each DNA specimen it  
162 obtains; and

163 (ii) a procedure to account for the management of all fees it collects under this section.

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

166 (b) The juvenile court is the responsible agency regarding a minor under Subsection  
167 53-10-403(3), but if the minor has been committed to the legal custody of the Division of  
168 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the  
169 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

170 (c) The sheriff operating a county jail is the responsible agency regarding the  
171 collection of DNA specimens from persons who:  
172 (i) have pled guilty to or have been convicted of an offense listed under Subsection  
173 53-10-403(2) but who have not been committed to the custody of or are not under the  
174 supervision of the Department of Corrections; [~~and~~]  
175 (ii) are incarcerated in the county jail:  
176 (A) as a condition of probation for a felony offense; or  
177 (B) for a misdemeanor offense for which collection of a DNA specimen is required[-];  
178 and  
179 (iii) on and after January 1, 2011, are booked at the county jail for any offense under  
180 Subsection 53-10-403(1)(c).  
181 [~~(d) The sheriff under Subsection (5)(c) shall:~~]  
182 (d) Each agency required to collect a DNA specimen under this section shall:  
183 (i) designate employees to obtain the saliva DNA specimens required under [~~Section~~  
184 ~~53-10-403~~] this section; and  
185 (ii) ensure that employees designated to collect the DNA specimens receive  
186 appropriate training and that the specimens are obtained in accordance with generally accepted  
187 protocol.  
188 (6) (a) As used in this Subsection (6), "department" means the Department of  
189 Corrections.  
190 (b) Priority of obtaining DNA specimens by the department is:  
191 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the  
192 custody of or under the supervision of the department before these persons are released from  
193 incarceration, parole, or probation, if their release date is prior to that of persons under  
194 Subsections (6)(b)(ii), but in no case later than July 1, 2004; and  
195 (ii) second, the department shall obtain DNA specimens from persons who are  
196 committed to the custody of the department or who are placed under the supervision of the  
197 department after July 1, 2002, within 120 days after the commitment, if possible, but not later

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

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

202 (i) first, persons on probation;

203 (ii) second, persons on parole; and

204 (iii) third, incarcerated persons.

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

209 (7) (a) As used in this Subsection (7)[;]:

210 (i) "Court" means the juvenile court [~~and~~].

211 (ii) "Division" means the Division of Juvenile Justice Services.

212 (b) Priority of obtaining DNA specimens by the court from minors under Section  
213 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of  
214 the division shall be:

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

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

221 (c) Priority of obtaining DNA specimens by the division from minors under Section  
222 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

234 (b) (i) The department may designate correctional officers, including those employed  
235 by the adult probation and parole section of the department [~~of Corrections~~], to obtain the  
236 saliva DNA specimens required under this section.

237 (ii) The department shall ensure that the designated employees receive appropriate  
238 training and that the specimens are obtained in accordance with accepted protocol.

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

241 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**  
242 **conviction.**

243 (1) (a) When a sheriff books a person for any offense under Subsection  
244 53-10-403(1)(c), the sheriff shall obtain a DNA specimen from the person upon booking of the  
245 person at the county jail, except under Subsection (1)(b).

246 (b) If at the time of booking the sheriff is able to obtain information from the bureau  
247 stating that the bureau has on file a DNA specimen for the person, the sheriff is not required to  
248 obtain an additional DNA specimen.

249 (2) The person booked under Subsection (1) shall pay a fee of \$150 for the cost of  
250 obtaining the DNA specimen if:

251 (a) the charge upon which the booking is based is resolved by a conviction or the  
252 person is convicted of any charge arising out of the same criminal episode regarding which the  
253 DNA specimen was obtained; and

254 (b) the person's DNA sample is not on file under Subsection (1)(b).

255 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA  
256 Specimen Restricted Account created in Section 53-10-407, except that the agency collecting  
257 the fee may retain not more than \$25 per individual specimen for the costs of obtaining the  
258 DNA specimen.

259 (b) The agency collecting the \$150 fee may not retain from each separate fee more  
260 than \$25, and no amount of the \$150 fee may be credited to any other fee or agency  
261 obligation.

262 (4) Any DNA specimen obtained under this section shall be held and may not be  
263 processed until:

264 (a) the court has bound the person over for trial following a preliminary hearing for  
265 any charge arising out of the same criminal episode regarding which the person was booked;

266 (b) the person has waived the preliminary hearing for any charge arising out of the  
267 same criminal episode regarding which the person was booked; or

268 (c) a grand jury has returned an indictment for any charge arising out of the same  
269 criminal episode regarding which the person was booked.

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

271 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency --**  
272 **Blood sample to be drawn by professional.**

273 (1) (a) A saliva sample shall be obtained by the responsible agency under Subsection  
274 53-10-404(5).

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

277 ~~[(+)]~~ (2) (a) A blood sample shall be drawn in a medically acceptable manner by a  
278 licensed professional nurse, a licensed practical nurse, a paramedic, a qualified medical  
279 technician, a licensed physician, or other person licensed by the state for this purpose.

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

282           ~~[(2) (a) A saliva sample shall be obtained by the responsible agency, as provided under~~  
283 ~~Subsection 53-10-404(5);]~~

284           ~~[(b) The sample shall be obtained in a professionally acceptable manner, using~~  
285 ~~appropriate procedures to ensure the sample is adequate for DNA analysis.]~~

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

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

290           (a) ~~[the department notifies]~~ the court or the responsible agency confirms with the  
291 department that ~~[it]~~ the department has previously received an adequate DNA specimen  
292 obtained from the ~~[convicted]~~ person in accordance with this section; or

293           (b) the court determines that obtaining a DNA specimen would create a substantial  
294 and unreasonable risk to the health of the ~~[convicted]~~ person.

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

296           **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

297           (1) The bureau shall:

298           (a) administer and oversee the DNA specimen collection process;

299           ~~[(a)]~~ (b) store all DNA specimens received and other physical evidence obtained from  
300 analysis of those specimens;

301           ~~[(b)]~~ (c) analyze the specimens to establish the genetic profile of the donor or to  
302 otherwise determine the identity of persons or contract with other qualified public or private  
303 laboratories to conduct the analysis;

304           ~~[(c)]~~ (d) maintain a criminal identification data base containing information derived  
305 from DNA analysis;

306           ~~[(d)]~~ (e) utilize the specimens to create statistical population frequency data bases,  
307 provided that genetic profiles or other information in a population frequency data base may  
308 not be identified with specific individuals;

309           ~~[(e)]~~ (f) ensure that the DNA identification system does not provide information

310 allowing prediction of genetic disease or predisposition to illness; ~~and~~

311 (g) ensure that only DNA markers routinely used or accepted in the field of forensic  
312 science are used to establish the gender and unique individual identification of the donor;

313 (h) utilize only those DNA analysis procedures that are consistent with, and do not  
314 exceed, procedures established and used by the Federal Bureau of Investigation for the  
315 forensic analysis of DNA;

316 (i) destroy a DNA specimen obtained under this part if criminal charges have not been  
317 filed within 90 days after booking for an alleged offense under Subsection 53-10-403(2)(c);

318 and

319 ~~(f)~~ (j) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
320 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA  
321 specimens and for storing and destroying DNA specimens and other physical evidence and  
322 criminal identification information obtained from the analysis.

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

327 (3) (a) In accordance with Section 63G-2-305, all DNA specimens received shall be  
328 classified as protected.

329 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,  
330 physical evidence, or criminal identification information obtained, stored, or maintained under  
331 this section, except under its provisions.

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

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

338 (6) A person whose DNA specimen has been obtained under this part may, personally  
339 or through a legal representative, submit to the court a motion for a court order requiring the  
340 destruction of the person's DNA specimen and any criminal identification record created in  
341 connection with that specimen if:

342 ~~[(6)(a) Whenever a court]~~ (a) (i) a final judgment reverses the conviction, judgment,  
343 or order that created an obligation to provide a DNA specimen~~]; the person who provided the~~  
344 ~~specimen may request destruction of the specimen and any criminal identification record~~  
345 ~~created in connection with that specimen.]; or~~

346 (ii) all charges arising from the same criminal episode for which the DNA specimen  
347 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of  
348 dismissal or acquittal; and

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

352 (7) A court order issued under Subsection (6) may be accompanied by a written notice  
353 to the person advising that state law provides for expungement of criminal charges if the  
354 charge is resolved by a final judgment of dismissal or acquittal.

355 ~~[(b)]~~ (8) Upon receipt of a [written request] court order for destruction pursuant to  
356 ~~[this section]~~ Subsection (6) and receipt of a certified copy of the court order reversing the  
357 conviction, judgment, or order, a certified copy of a court order to set aside the conviction, or  
358 a certified copy of the dismissal or acquittal of the charge regarding which the person was  
359 arrested, the Department of Public Safety shall destroy any specimen received from the person,  
360 any physical evidence obtained from that specimen, and any criminal identification records  
361 pertaining to the person, unless [the department determines that the person has otherwise  
362 become obligated to submit a DNA specimen as a result of a separate conviction or juvenile  
363 adjudication for an offense listed in Section 53-10-403] prohibited under Subsection (6)(b).

364 ~~[(7)]~~ (9) The department is not required to destroy any item of physical evidence  
365 obtained from a DNA specimen if evidence relating to another person subject to the provisions

366 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

367           ~~[(8)]~~ (10) A DNA specimen, physical evidence, or criminal identification record may  
368 not be affected by an order to set aside a conviction, except under the provisions of this  
369 section.

370           ~~[(9)]~~ (11) If funding is not available for analysis of any of the DNA specimens  
371 collected under this part, the bureau shall store the collected specimens until funding is made  
372 available for analysis through state or federal funds.

373           (12) (a) (i) A person who, due to the person's employment or authority, has possession  
374 of or access to individually identifiable DNA information contained in the state criminal  
375 identification database or the state DNA specimen repository may not willfully disclose the  
376 information in any manner to any individual, agency, or entity that is not entitled under this  
377 part to receive the information.

378           (ii) A person may not willfully obtain individually identifiable DNA information from  
379 the state criminal identification database or the state DNA repository other than as authorized  
380 by this part.

381           (iii) A person may not willfully analyze a DNA specimen for any purpose, or to obtain  
382 any information other than as required under this part.

383           (iv) A person may not willfully fail to destroy or fail to ensure the destruction of a  
384 DNA specimen when destruction is required by this part or by court order.

385           (b) (i) A person who violates Subsection (12)(a)(i), (ii), or (iii) is guilty of a third  
386 degree felony.

387           (ii) A person who violates Subsection (12)(a)(iv) is guilty of a class B misdemeanor.

388           Section 7. Section **53-10-407** is amended to read:

389           **53-10-407. DNA Specimen Restricted Account.**

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

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

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

394 (b) any appropriations made to the account by the Legislature; and  
395 (c) all federal monies provided to the state for the purpose of funding the collection or  
396 analysis of DNA specimens collected under Section 53-10-403.

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

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

400 (a) to the Department of Corrections for the costs of~~[-(i)]~~ collecting DNA specimens  
401 as required under Section 53-10-403; ~~[and]~~

402 ~~[(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as~~  
403 ~~provided in Subsection 78B-9-301(8);]~~

404 (b) to the juvenile court for the costs of collecting DNA specimens as required under  
405 Sections 53-10-403 and 78A-6-117;

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

408 (d) to the Department of Public Safety for the costs of:

409 (i) storing and analyzing DNA specimens in accordance with the requirements of this  
410 part~~[-]; and~~

411 (ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided  
412 in Subsection 78B-9-301(8).

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

416 Section 8. Section **78B-9-301** is amended to read:

417 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**  
418 **Notification of victim.**

419 (1) As used in this part:

420 (a) "DNA" means deoxyribonucleic acid.

421 (b) "Factually innocent" has the same definition as in Section 78B-9-402.

422 (2) A person convicted of a felony offense may at any time file a petition for  
423 postconviction DNA testing in the trial court that entered the judgment of conviction if the  
424 person asserts factual innocence under oath and the petition alleges:

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

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

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

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

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

437 (f) the evidence that is the subject of the request for testing has the potential to  
438 produce new, noncumulative evidence that will establish the person's factual innocence; and

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

440 (i) those specified in Sections 78B-9-302 and 78B-9-304; and

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

444 (3) The petition under Subsection (2) shall comply with Rule 65C, Utah Rules of Civil  
445 Procedure, including providing the underlying criminal case number.

446 (4) The court may not order DNA testing in cases in which DNA testing was available  
447 at the time of trial and the person did not request DNA testing or present DNA evidence for  
448 tactical reasons.

449 (5) After a petition is filed under this section, prosecutors, law enforcement officers,

450 and crime laboratory personnel have a duty to cooperate in preserving evidence and in  
451 determining the sufficiency of the chain of custody of the evidence which may be subject to  
452 DNA testing.

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

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

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

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

468 (i) under reasonable conditions designed to protect the state's interests in the integrity  
469 of the evidence; and

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

471 (8) (a) DNA testing under this section shall be paid for from funds appropriated to the  
472 Department of [~~Corrections~~] Public Safety under Subsection 53-10-407(4)(~~a~~)(d)(ii) from the  
473 DNA Specimen Restricted Account created in Section 53-10-407 if:

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

475 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical  
476 Services Division has a conflict of interest or does not have the capability to perform the  
477 necessary testing; and

478 (iii) the petitioner who has filed for postconviction DNA testing under Section  
479 78B-9-201 is serving a sentence of imprisonment and is indigent.

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

483 (9) If the person is serving a sentence of imprisonment and is indigent, the state shall  
484 pay for the costs of the testing under this part, but if the result is not favorable to the person  
485 the court may order the person to reimburse the state for the costs of the testing, pursuant to  
486 the provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

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

490 Section 9. **Effective date.**

491 This bill takes effect on January 1, 2011.