

1 **DNA MODIFICATIONS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Ryan D. Wilcox

6

7 **LONG TITLE**

8 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires that any law enforcement agency that books a person for any violent crime
15 shall obtain a DNA specimen if at the time of booking the person's DNA specimen
16 is not already on file;
- 17 ▶ requires the booked person to pay a fee of \$150 for the costs of collecting the DNA
18 specimen if the person is convicted of the charge for which the person was booked;
- 19 ▶ increases the fee for all required DNA specimens from \$100 to \$150;
- 20 ▶ allocates \$20 of the fee to the collecting agency, and the balance of \$130 to the
21 Department of Public Safety for the processing of the DNA specimens; and
- 22 ▶ provides that a DNA specimen taken at time of booking may not be processed until
23 the person is bound over for trial, waives a preliminary hearing, or a grand jury
24 issues an indictment.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 This bill takes effect on January 1, 2011.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-10-403**, as last amended by Laws of Utah 2006, Chapter 306

32 **53-10-403.5**, as enacted by Laws of Utah 2002, Chapter 140

33 **53-10-404**, as last amended by Laws of Utah 2008, Chapter 3

34 **53-10-405**, as last amended by Laws of Utah 2002, Chapter 140

35 **53-10-406**, as last amended by Laws of Utah 2008, Chapter 382

36 **53-10-407**, as last amended by Laws of Utah 2008, Chapter 3

37 **78B-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3

38 ENACTS:

39 **53-10-404.5**, Utah Code Annotated 1953



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

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

43 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

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

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

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

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

55 [~~(c)~~] (d) is a minor under Subsection (3).

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

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

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

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

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

63 (c) any violent felony.

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

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

69 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
70 2002 for an offense under Subsection (2).

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

72 **53-10-403.5. Definitions.**

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

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

75 (2) "Conviction" means:

76 (a) a verdict or conviction;

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

78 (c) a plea of no contest; or

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

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

81 ~~[(2)]~~ (4) "DNA specimen" or "specimen" means a sample of a person's saliva or blood.

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

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

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

86 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

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

89 (2) (a) A person under Section 53-10-403 or any person added to the sex offender

90 register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse
91 the [responsible] agency [~~\$100~~] responsible for obtaining the DNA specimen \$150 for the cost
92 of obtaining the DNA specimen unless;

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

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

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

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

100 (ii) An agency's guidelines and procedures may provide for the assessment of [~~\$100~~]
101 \$150 on the inmate's county trust fund account and may allow a negative balance in the account
102 until the [~~\$100~~] \$150 is paid in full.

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

108 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than
109 \$20, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

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

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

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

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

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

123 (iii) The collection fee is not imposed for a second or subsequent DNA specimen
124 collected under this section.

125 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect
126 any outstanding amount of a fee due under this section from any person who owes any portion
127 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section
128 53-10-407.

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

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

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

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

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

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

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

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

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

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

148 (b) The juvenile court is the responsible agency regarding a minor under Subsection
149 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
150 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
151 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

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

154 (i) have pled guilty to or have been convicted of an offense listed under Subsection
155 53-10-403(2) but who have not been committed to the custody of or are not under the
156 supervision of the Department of Corrections; and

157 (ii) are incarcerated in the county jail:

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

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

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

161 (d) On and after January 1, 2011, each law enforcement agency that books a person for
162 any offense under Subsection 53-10-403(1)(c) shall obtain a DNA specimen from the person
163 being booked in accordance with this section.

164 (e) Each agency required to collect a DNA specimen under this section shall:

165 (i) designate employees to obtain the saliva DNA specimens required under [~~Section~~
166 ~~53-10-403~~] this section; and

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

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

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

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

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

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

- 183 (i) first, persons on probation;
184 (ii) second, persons on parole; and
185 (iii) third, incarcerated persons.

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

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

- 191 (i) "Court" means the juvenile court [~~and~~].
192 (ii) "Division" means the Division of Juvenile Justice Services.

193 (b) Priority of obtaining DNA specimens by the court from minors under Section
194 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of
195 the division shall be:

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

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

202 (c) Priority of obtaining DNA specimens by the division from minors under Section
203 53-10-403 who are committed to the legal custody of the division shall be:

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

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

211 (8) (a) The Department of Corrections, the juvenile court, [~~and~~] the Division of
212 Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish
213 procedures for obtaining saliva DNA specimens, and shall provide training for employees

214 designated to collect saliva DNA specimens.

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

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

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

222 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**
223 **conviction.**

224 (1) (a) When any law enforcement agency within the state books a person for any
225 offense under Subsection 53-10-403(1)(c), the law enforcement agency shall obtain a DNA
226 specimen from the person upon booking at the jail or upon admission to a detention facility,
227 except under Subsection (1)(b).

228 (b) If at the time of booking or admission to a detention facility the acting law
229 enforcement agency is able to obtain information from the bureau stating that the bureau has on
230 file a DNA specimen for the person, the law enforcement agency is not required to obtain an
231 additional DNA specimen.

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

234 (a) the charge upon which the booking is based is resolved by a conviction; and

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

236 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
237 Restricted Account created in Section 53-10-407, except that the agency collecting the fee may
238 retain not more than \$20 per individual specimen for the costs of obtaining the DNA specimen.

239 (b) The agency collecting the \$150 fee may not retain from each separate fee more than
240 \$20, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

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

243 (a) regarding the alleged violent offense for which the person was booked;

244 (i) the court has bound the person over for trial following a preliminary hearing;

- 245 (ii) after the person has waived the preliminary hearing; or
- 246 (iii) after a grand jury has returned an indictment; or
- 247 (b) if the person is a minor under Subsection 53-10-403(3), the person is found to be
- 248 within the jurisdiction of the juvenile court due to the commission of the violent offense.

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

250 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency --**
251 **Blood sample to be drawn by professional.**

252 (1) (a) A saliva sample shall be obtained by the responsible agency under Subsection
253 53-10-404(5).

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

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

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

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

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

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

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

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

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

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

275 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

- 276 (1) The bureau shall:
- 277 (a) administer and oversee the DNA specimen collection process;
- 278 ~~[(a)]~~ (b) store all DNA specimens received and other physical evidence obtained from
279 analysis of those specimens;
- 280 ~~[(b)]~~ (c) analyze the specimens to establish the genetic profile of the donor or to
281 otherwise determine the identity of persons or contract with other qualified public or private
282 laboratories to conduct the analysis;
- 283 ~~[(c)]~~ (d) maintain a criminal identification data base containing information derived
284 from DNA analysis;
- 285 ~~[(d)]~~ (e) utilize the specimens to create statistical population frequency data bases,
286 provided that genetic profiles or other information in a population frequency data base may not
287 be identified with specific individuals;
- 288 ~~[(e)]~~ (f) ensure that the DNA identification system does not provide information
289 allowing prediction of genetic disease or predisposition to illness; and
- 290 ~~[(f)]~~ (g) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
291 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA
292 specimens and for storing and destroying DNA specimens and other physical evidence and
293 criminal identification information obtained from the analysis.
- 294 (2) Procedures for DNA analysis may include all techniques which the Department of
295 Public Safety determines are accurate and reliable in establishing identity, including but not
296 limited to, analysis of DNA, antigen antibodies, polymorphic enzymes, or polymorphic
297 proteins.
- 298 (3) (a) In accordance with Section 63G-2-305, all DNA specimens received shall be
299 classified as protected.
- 300 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
301 physical evidence, or criminal identification information obtained, stored, or maintained under
302 this section, except under its provisions.
- 303 (4) Notwithstanding ~~[the provisions of]~~ Subsection 63G-2-202(1), the department may
304 deny inspection if it determines that there is a reasonable likelihood that the inspection would
305 prejudice a pending criminal investigation.
- 306 (5) The department shall adopt procedures governing the inspection of records, DNA

307 specimens, and challenges to the accuracy of records. The procedures shall accommodate the
308 need to preserve the materials from contamination and destruction.

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

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

317 (ii) the booking upon which the obtaining of the DNA specimen has been resolved by a
318 final judgment of dismissal or acquittal; and

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

322 ~~[(b)]~~ (7) Upon receipt of a [written request] court order for destruction pursuant to ~~[this~~
323 ~~section]~~ Subsection (6) and receipt of a certified copy of the court order reversing the
324 conviction, judgment, or order, or a certified copy of the dismissal or acquittal of the charge
325 regarding which the person was arrested, the Department of Public Safety shall destroy any
326 specimen received from the person, any physical evidence obtained from that specimen, and
327 any criminal identification records pertaining to the person, unless ~~[the department determines~~
328 ~~that the person has otherwise become obligated to submit a DNA specimen as a result of a~~
329 ~~separate conviction or juvenile adjudication for an offense listed in Section 53-10-403]~~
330 prohibited under Subsection (6)(b).

331 ~~[(7)]~~ (8) The department is not required to destroy any item of physical evidence
332 obtained from a DNA specimen if evidence relating to another person subject to the provisions
333 of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

334 ~~[(8)]~~ (9) A DNA specimen, physical evidence, or criminal identification record may
335 not be affected by an order to set aside a conviction, except under the provisions of this section.

336 ~~[(9)]~~ (10) If funding is not available for analysis of any of the DNA specimens
337 collected under this part, the bureau shall store the collected specimens until funding is made

338 available for analysis through state or federal funds.

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

340 **53-10-407. DNA Specimen Restricted Account.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

368 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**

369 **Notification of victim.**

370 (1) As used in this part:

371 (a) "DNA" means deoxyribonucleic acid.

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

373 (2) A person convicted of a felony offense may at any time file a petition for
374 postconviction DNA testing in the trial court that entered the judgment of conviction if the
375 person asserts factual innocence under oath and the petition alleges:376 (a) evidence has been obtained regarding the person's case which is still in existence
377 and is in a condition that allows DNA testing to be conducted;378 (b) the chain of custody is sufficient to establish that the evidence has not been altered
379 in any material aspect;380 (c) the person identifies the specific evidence to be tested and states a theory of
381 defense, not inconsistent with theories previously asserted at trial, that the requested DNA
382 testing would support;383 (d) the evidence was not previously subjected to DNA testing, or if the evidence was
384 tested previously, the evidence was not subjected to the testing that is now requested, and the
385 new testing may resolve an issue not resolved by the prior testing;386 (e) the proposed DNA testing is generally accepted as valid in the scientific field or is
387 otherwise admissible under Utah law;388 (f) the evidence that is the subject of the request for testing has the potential to produce
389 new, noncumulative evidence that will establish the person's factual innocence; and

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

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

392 (ii) that the person is waiving any statute of limitations in all jurisdictions as to any
393 felony offense the person has committed which is identified through DNA database
394 comparison.395 (3) The petition under Subsection (2) shall comply with Rule 65C, Utah Rules of Civil
396 Procedure, including providing the underlying criminal case number.397 (4) The court may not order DNA testing in cases in which DNA testing was available
398 at the time of trial and the person did not request DNA testing or present DNA evidence for
399 tactical reasons.

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

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

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

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

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

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

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

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

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

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

429 (iii) the petitioner who has filed for postconviction DNA testing under Section
430 78B-9-201 is serving a sentence of imprisonment and is indigent.

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

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

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

441 Section 9. **Effective date.**

442 This bill takes effect on January 1, 2011.

Legislative Review Note

as of 2-25-10 10:27 AM

Office of Legislative Research and General Counsel

S.B. 277 - DNA Modifications

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will require an appropriation from Restricted Revenue to the Department of Public Safety of \$250,000 in FY 2011 and \$500,000 in FY 2012 and each fiscal year thereafter. The bill will generate Restricted Revenue of \$250,000 in FY 2011 and \$500,000 in FY 2012 and each fiscal year thereafter. The Division of Juvenile Justice Services will require a General Fund appropriation of \$4,300 in FY 2011 and \$3,900 in FY 2012 and each fiscal year thereafter.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$4,300	\$3,900	\$0	\$0	\$0
Restricted Funds	\$0	\$250,000	\$500,000	\$0	\$250,000	\$500,000
Total	\$0	\$254,300	\$503,900	\$0	\$250,000	\$500,000

Individual, Business and/or Local Impact

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