

**OFFENDER DNA FEES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad R. Wilson**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Public Safety Code regarding the fees for DNA testing.

**Highlighted Provisions:**

This bill:

- ▶ increases the fee from \$150 to \$235 for DNA testing of those booked into a county jail or added to the sex offender registry.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-404**, as last amended by Laws of Utah 2010, Chapter 405

**53-10-404.5**, as enacted by Laws of Utah 2010, Chapter 405

---

---

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

Section 1. Section **53-10-404** is amended to read:

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

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



28 (2) (a) A person under Section 53-10-403 or any person added to the sex offender  
29 [~~register~~] registry as defined in Section 77-27-21.5 shall provide a DNA specimen and shall  
30 reimburse the agency responsible for obtaining the DNA specimen [~~\$150~~] \$235 for the cost of  
31 obtaining the DNA specimen unless:

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

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

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

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

39 (ii) An agency's guidelines and procedures may provide for the assessment of [~~\$150~~]  
40 \$235 on the inmate's county trust fund account and may allow a negative balance in the account  
41 until the [~~\$150~~] \$235 is paid in full.

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

46 (ii) The agency collecting the [~~\$150~~] \$235 fee may not retain from each separate fee  
47 more than \$25, and no amount of the [~~\$150~~] \$235 fee may be credited to any other fee or  
48 agency obligation.

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

53 (c) The responsible agency may use reasonable force, as established by its guidelines  
54 and procedures, to collect the DNA sample if the person refuses to cooperate with the  
55 collection.

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

58 (e) (i) Under this section a person is required to provide one DNA specimen and pay

59 the collection fee as required under this section.

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

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

64 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect  
65 any outstanding amount of a fee due under this section from any person who owes any portion  
66 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section  
67 53-10-407.

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

70 (i) after a conviction or a finding of jurisdiction by the juvenile court; and

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

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

75 (i) obtain and transmit an additional DNA specimen; or

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

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

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

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

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

86 (b) The juvenile court is the responsible agency regarding a minor under Subsection  
87 53-10-403(3), but if the minor has been committed to the legal custody of the Division of  
88 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the  
89 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

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

92 (i) have pled guilty to or have been convicted of an offense listed under Subsection  
93 53-10-403(2) but who have not been committed to the custody of or are not under the  
94 supervision of the Department of Corrections;

95 (ii) are incarcerated in the county jail:

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

97 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

98 and

99 (iii) on and after January 1, 2011, are booked at the county jail for any offense under  
100 Subsection 53-10-403(1)(c).

101 (d) Each agency required to collect a DNA specimen under this section shall:

102 (i) designate employees to obtain the saliva DNA specimens required under this  
103 section; and

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

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

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

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

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

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

120 (i) first, persons on probation;

121 (ii) second, persons on parole; and

122 (iii) third, incarcerated persons.

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

127 (7) (a) As used in this Subsection (7):

128 (i) "Court" means the juvenile court.

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

130 (b) Priority of obtaining DNA specimens by the court from minors under Section  
131 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of  
132 the division shall be:

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

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

139 (c) Priority of obtaining DNA specimens by the division from minors under Section  
140 53-10-403 who are committed to the legal custody of the division shall be:

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

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

148 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile  
149 Justice Services, and all law enforcement agencies in the state shall by policy establish  
150 procedures for obtaining saliva DNA specimens, and shall provide training for employees  
151 designated to collect saliva DNA specimens.

152 (b) (i) The department may designate correctional officers, including those employed  
153 by the adult probation and parole section of the department, to obtain the saliva DNA  
154 specimens required under this section.

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

157 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

158 Section 2. Section **53-10-404.5** is amended to read:

159 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**  
160 **conviction.**

161 (1) (a) When a sheriff books a person for any offense under Subsection  
162 53-10-403(1)(c), the sheriff shall obtain a DNA specimen from the person upon booking of the  
163 person at the county jail, except under Subsection (1)(b).

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

167 (2) The person booked under Subsection (1) shall pay a fee of [~~\$150~~] \$235 for the cost  
168 of obtaining the DNA specimen if:

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

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

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

176 (b) The agency collecting the [~~\$150~~] \$235 fee may not retain from each separate fee  
177 more than \$25, and no amount of the [~~\$150~~] \$235 fee may be credited to any other fee or  
178 agency obligation.

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

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

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

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

---

---

**Legislative Review Note**  
**as of 2-7-11 9:20 AM**

**Office of Legislative Research and General Counsel**