

**DNA COLLECTION AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies the provisions of the Public Safety Code regarding the collection of DNA from offenders.

**Highlighted Provisions:**

This bill:

- ▶ provides that law enforcement agencies may collect DNA samples at the time of booking for any person arrested for any felony offense beginning May 13, 2014 through December 31, 2014; and

- ▶ on and after January 1, 2015, requires law enforcement agencies to collect DNA samples at the time of booking for any person arrested for any felony offense.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-403**, as last amended by Laws of Utah 2013, Chapter 344

**53-10-404**, as last amended by Laws of Utah 2012, Chapter 145

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

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

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

30 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

31 (1) Sections **53-10-404**, **53-10-404.5**, **53-10-405**, and **53-10-406** apply to any person  
32 who:

33 (a) has pled guilty to or has been convicted of any of the offenses under Subsection  
34 (2)(a) or (b) on or after July 1, 2002;

35 (b) has pled guilty to or has been convicted by any other state or by the United States  
36 government of an offense which if committed in this state would be punishable as one or more  
37 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

38 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any  
39 offense under Subsection (2)(c); [~~or~~]

40 (d) has been booked:

41 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,  
42 2014, through December 31, 2014, under Subsection **53-10-404(4)(b)** for any felony offense; or

43 (ii) on or after January 1, 2015, for any felony offense; or

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

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

46 (a) any felony or class A misdemeanor under the Utah Code;

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

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

50 (ii) regarding which the court allows the defendant to enter a plea in abeyance as  
51 defined in Section **77-2a-1**; or

52 (c) (i) any violent felony as defined in Section **53-10-403.5**;

53 (ii) sale or use of body parts, Section **26-28-116**;

54 (iii) failure to stop at an accident that resulted in death, Section **41-6a-401.5**;

55 (iv) driving with any amount of a controlled substance in a person's body and causing  
56 serious bodily injury or death, Subsection **58-37-8(2)(g)**;

57 (v) a felony violation of enticing a minor over the Internet, Section **76-4-401**;

58 (vi) a felony violation of propelling a substance or object at a correctional or peace

- 59 officer, Section [76-5-102.6](#);
- 60 (vii) aggravated human trafficking and aggravated human smuggling, Section
- 61 [76-5-310](#);
- 62 (viii) a felony violation of unlawful sexual activity with a minor, Section [76-5-401](#);
- 63 (ix) a felony violation of sexual abuse of a minor, Section [76-5-401.1](#);
- 64 (x) unlawful sexual contact with a 16 or 17-year old, Section [76-5-401.2](#);
- 65 (xi) sale of a child, Section [76-7-203](#);
- 66 (xii) aggravated escape, Subsection [76-8-309\(2\)](#);
- 67 (xiii) a felony violation of assault on an elected official, Section [76-8-315](#);
- 68 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of
- 69 Pardons and Parole, Section [76-8-316](#);
- 70 (xv) advocating criminal syndicalism or sabotage, Section [76-8-902](#);
- 71 (xvi) assembly for advocating criminal syndicalism or sabotage, Section [76-8-903](#);
- 72 (xvii) a felony violation of sexual battery, Section [76-9-702.1](#);
- 73 (xviii) a felony violation of lewdness involving a child, Section [76-9-702.5](#);
- 74 (xix) a felony violation of abuse or desecration of a dead human body, Section
- 75 [76-9-704](#);
- 76 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
- 77 [76-10-402](#);
- 78 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
- 79 Section [76-10-403](#);
- 80 (xxii) possession of a concealed firearm in the commission of a violent felony,
- 81 Subsection [76-10-504\(4\)](#);
- 82 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,
- 83 Subsection [76-10-1504\(3\)](#);
- 84 (xxiv) commercial obstruction, Subsection [76-10-2402\(2\)](#);
- 85 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section
- 86 [77-41-107](#);
- 87 (xxvi) repeat violation of a protective order, Subsection [77-36-1.1\(2\)\(c\)](#); or
- 88 (xxvii) violation of condition for release after arrest for domestic violence, Section
- 89 [77-36-2.5](#).

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

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

95 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,  
96 2002 for an offense under Subsection (2).

97 Section 2. Section **53-10-404** is amended to read:

98 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

99 (1) As used in this section, "person" refers to any person as described under Section  
100 [53-10-403](#).

101 (2) (a) A person under Section [53-10-403](#) or any person added to the sex offender  
102 register as defined in Section [77-41-102](#) shall provide a DNA specimen and shall reimburse the  
103 agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA  
104 specimen unless:

105 (i) the person was booked under Section [53-10-403](#) and is not required to reimburse the  
106 agency under Section [53-10-404.5](#); or

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

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

110 (B) An agency's implementation of Subsection (2)(b)(~~ii~~)(i) meets an agency's  
111 obligation to determine an inmate's ability to pay.

112 (ii) An agency's guidelines and procedures may provide for the assessment of \$150 on  
113 the inmate's county trust fund account and may allow a negative balance in the account until  
114 the \$150 is paid in full.

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

119 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than  
120 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

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

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

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

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

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

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

136 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect  
137 any outstanding amount of a fee due under this section from any person who owes any portion  
138 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section  
139 [53-10-407](#).

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

142 (i) after a conviction or a finding of jurisdiction by the juvenile court; [~~and~~]

143 (ii) on and after January 1, 2011, through December 31, 2014, after the booking of a  
144 person for any offense under Subsection [53-10-403\(1\)\(c\)](#)[-]; and

145 (iii) on and after January 1, 2015, after the booking of a person for any felony offense,  
146 as provided under Subsection [53-10-403\(1\)\(d\)\(ii\)](#).

147 (b) On and after May 13, 2014, through December 31, 2014, the responsible agency  
148 may cause a DNA specimen to be obtained and transferred to the Department of Public Safety  
149 after the booking of a person for any felony offense, as provided under Subsection  
150 [53-10-403\(1\)\(d\)\(i\)](#).

151 [~~(b)~~] (c) If notified by the Department of Public Safety that a DNA specimen is not

152 adequate for analysis, the agency shall, as soon as possible:

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

154 (ii) request that another agency that has direct access to the person and that is

155 authorized to collect DNA specimens under this section collect the necessary second DNA

156 specimen and transmit it to the Department of Public Safety.

157 ~~[(e)]~~ (d) Each agency that is responsible for collecting DNA specimens under this

158 section shall establish:

159 (i) a tracking procedure to record the handling and transfer of each DNA specimen it

160 obtains; and

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

162 (5) (a) The Department of Corrections is the responsible agency whenever the person is

163 committed to the custody of or is under the supervision of the Department of Corrections.

164 (b) The juvenile court is the responsible agency regarding a minor under Subsection

165 53-10-403(3), but if the minor has been committed to the legal custody of the Division of

166 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the

167 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

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

169 of DNA specimens from persons who:

170 (i) have pled guilty to or have been convicted of an offense listed under Subsection

171 53-10-403(2) but who have not been committed to the custody of or are not under the

172 supervision of the Department of Corrections;

173 (ii) are incarcerated in the county jail:

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

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

176 ~~[and]~~

177 (iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail

178 for any offense under Subsection 53-10-403(1)(c)~~[-]; and~~

179 are booked at the county jail:

180 (A) by a law enforcement agency that is obtaining a DNA specimen for any felony

181 offense on or after May 13, 2014, through December 31, 2014, under Subsection

182 53-10-404(4)(b); or

- 183           (B) on or after January 1, 2015, for any felony offense.
- 184           (d) Each agency required to collect a DNA specimen under this section shall:
- 185           (i) designate employees to obtain the saliva DNA specimens required under this
- 186 section; and
- 187           (ii) ensure that employees designated to collect the DNA specimens receive appropriate
- 188 training and that the specimens are obtained in accordance with generally accepted protocol.
- 189           (6) (a) As used in this Subsection (6), "department" means the Department of
- 190 Corrections.
- 191           (b) Priority of obtaining DNA specimens by the department is:
- 192           (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
- 193 of or under the supervision of the department before these persons are released from
- 194 incarceration, parole, or probation, if their release date is prior to that of persons under
- 195 Subsections (6)(b)(ii), but in no case later than July 1, 2004; and
- 196           (ii) second, the department shall obtain DNA specimens from persons who are
- 197 committed to the custody of the department or who are placed under the supervision of the
- 198 department after July 1, 2002, within 120 days after the commitment, if possible, but not later
- 199 than prior to release from incarceration if the person is imprisoned, or prior to the termination
- 200 of probation if the person is placed on probation.
- 201           (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
- 202 is:
- 203           (i) first, persons on probation;
- 204           (ii) second, persons on parole; and
- 205           (iii) third, incarcerated persons.
- 206           (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
- 207 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
- 208 specimens from persons in the custody of or under the supervision of the Department of
- 209 Corrections as of July 1, 2002, prior to their release.
- 210           (7) (a) As used in this Subsection (7):
- 211           (i) "Court" means the juvenile court.
- 212           (ii) "Division" means the Division of Juvenile Justice Services.
- 213           (b) Priority of obtaining DNA specimens by the court from minors under Section

214 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of  
215 the division shall be:

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

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

222 (c) Priority of obtaining DNA specimens by the division from minors under Section  
223 53-10-403 who are committed to the legal custody of the division shall be:

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

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

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

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

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

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

241 Section 3. Section 53-10-404.5 is amended to read:

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

244 (1) (a) When a sheriff books a person for any offense under [~~Subsection~~] Subsections



245 53-10-403(1)(c) and (d), the sheriff shall obtain a DNA specimen from the person upon  
246 booking of the person at the county jail, except under Subsection (1)(b).

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

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 1-31-14 5:23 PM**

**Office of Legislative Research and General Counsel**