

H.B. 212

DNA COLLECTION AMENDMENTS

Senator **Stephen H. Urquhart** proposes the following amendments:

1. *Page 1, Lines 13 through 17:*

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

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

▶ requires the law enforcement agency that obtained a DNA specimen to notify the Department of Public Safety and provide appropriate records if the specimen should be destroyed as provided under current law, including if the case results in an acquittal or dismissal, and removes from the private citizen the obligation to obtain destruction of the DNA .

2. *Page 1, Line 26:*

26 53-10-404.5, as enacted by Laws of Utah 2010, Chapter 405

= **53-10-406, as last amended by Laws of Utah 2010, Chapter 405**

3. *Page 9, Lines 267 through 268:*

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.

= **Section 4. Section 53-10-406 is amended to read:**

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

(1) The bureau shall:

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

(b) store all DNA specimens received and other physical evidence obtained from analysis of those specimens;

(c) analyze the specimens to establish the genetic profile of the donor or to otherwise determine the identity of persons or contract with other qualified public or private laboratories to conduct the analysis;

(d) maintain a criminal identification data base containing information derived from DNA analysis;

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

(f) ensure that the DNA identification system does not provide information allowing prediction of genetic disease or predisposition to illness;

(g) ensure that only DNA markers routinely used or accepted in the field of forensic science are used to

establish the gender and unique individual identification of the donor;

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

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

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

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

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

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

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

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

(6) ~~{A person whose DNA specimen has been obtained under this part may, personally or through a legal representative, submit to the court a motion for a court order}~~ The law enforcement agency that collected a DNA specimen from a person under this part shall submit to the department a written directive accompanied by the documents required under Subsection (8) requiring the destruction of ~~{the}~~ that person's DNA specimen and any criminal identification record created in connection with that specimen if:

(a) (i) a final judgment reverses the conviction, judgment, or order that created an obligation to provide a DNA specimen; or

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

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

(7) ~~{A court order issued under Subsection (6) may be accompanied by}~~ The bureau may provide a written notice to the person whose DNA is destroyed in compliance with Subsections (6) and (8) advising that state law provides for expungement of criminal charges if the charge is resolved by a final judgment of dismissal or acquittal.

(8) Upon receipt ~~{ of a court order for destruction }~~ from a law enforcement agency of a directive to destroy a DNA specimen pursuant to Subsection (6) and receipt of a certified copy of the court order reversing the conviction, judgment, or order, a certified copy of a court order to set aside the conviction, or a certified copy of the dismissal or acquittal of the charge regarding which the person was arrested, the Department of Public Safety shall destroy any specimen received from the person, any physical evidence obtained from that specimen, and any criminal identification records pertaining to the person, unless prohibited under Subsection (6)(b).

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

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

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

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

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

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

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

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

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