

DNA AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill addresses DNA.

Highlighted Provisions:

This bill:

- ▶ corrects fees collected by sheriff for obtaining a DNA specimen;
 - ▶ repeals language regarding when postconviction testing of DNA may be requested;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-2.5, as last amended by Laws of Utah 2011, Chapters 67 and 340

53-10-407, as last amended by Laws of Utah 2011, Chapter 81

78B-9-301, as last amended by Laws of Utah 2017, Chapter 306

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

Section 1. Section **17-22-2.5** is amended to read:

17-22-2.5. Fees of sheriff.

(1) (a) The legislative body of a county may set a fee for a service described in this

30 section and charged by the county sheriff:

31 (i) in an ordinance adopted under Section 17-53-223; and

32 (ii) in an amount reasonably related to, but not exceeding, the actual cost of providing
33 the service.

34 (b) If the legislative body of a county does not under Subsection (1)(a) set a fee
35 charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2)
36 through (7).

37 (2) Unless under Subsection (1) the legislative body of a county sets a fee amount for a
38 fee described in this Subsection (2), the sheriff shall charge the following fees:

39 (a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and
40 complaint, or garnishee execution, or other process by which an action or proceeding is
41 commenced, on each defendant, including copies when furnished by plaintiff, \$20;

42 (b) for taking or approving a bond or undertaking in any case in which he is authorized
43 to take or approve a bond or undertaking, including justification, \$5;

44 (c) for a copy of any writ, process or other paper when demanded or required by law,
45 for each folio, 50 cents;

46 (d) for serving an attachment on property, or levying an execution, or executing an
47 order of arrest or an order for the delivery of personal property, including copies when
48 furnished by plaintiff, \$50;

49 (e) for taking and keeping possession of and preserving property under attachment or
50 execution or other process, the amount the court orders to a maximum of \$15 per day;

51 (f) for advertising property for sale on execution, or any judgment, or order of sale,
52 exclusive of the cost of publication, \$15;

53 (g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive
54 of acknowledgment, \$15, to be paid by the grantee;

55 (h) for recording each deed, conveyance, or other instrument affecting real estate,
56 exclusive of the cost of recording, \$10, to be paid by the grantee;

57 (i) for serving a writ of possession or restitution, and putting any person entitled to

58 possession into possession of premises, and removing occupant, \$50;

59 (j) for holding each trial of right of property, to include all services in the matter,
60 except mileage, \$35;

61 (k) for conducting, postponing, or canceling a sale of property, \$15;

62 (l) for taking a prisoner in civil cases from prison before a court or magistrate, for each
63 mile necessarily traveled, in going only, to a maximum of 100 miles, \$2.50;

64 (m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a
65 court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100
66 miles, \$2.50;

67 (n) for receiving and paying over money on execution or other process, as follows:

68 (i) if the amount collected does not exceed \$1,000, 2% of this amount, with a
69 minimum of \$1; and

70 (ii) if the amount collected exceeds \$1,000, 2% on the first \$1,000 and 1-1/2% on the
71 balance; and

72 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$10.

73 (3) The fees allowed by Subsection (2)(f) for the levy of execution and for advertising
74 shall be collected from the judgment debtor as part of the execution in the same manner as the
75 sum directed to be made.

76 (4) When serving an attachment on property, an order of arrest, or an order for the
77 delivery of personal property, the sheriff may only collect traveling fees for the distance
78 actually traveled beyond the distance required to serve the summons if the attachment or those
79 orders:

80 (a) accompany the summons in the action; and

81 (b) may be executed at the time of the service of the summons.

82 (5) (a) (i) When traveling generally to serve notices, orders, process, or other papers,
83 the sheriff may receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each
84 mile necessarily traveled, in going only, computed from the courthouse for each person served,
85 to a maximum of 100 miles.

86 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may
87 receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each mile necessarily
88 traveled, in going only, computed from the post office where received for each person served,
89 to a maximum of 100 miles.

90 (b) The sheriff may only charge one mileage fee if any two or more papers are required
91 to be served in the same action or proceeding at the same time and at the same address.

92 (c) If it is necessary to make more than one trip to serve any notice, order, process, or
93 other paper, the sheriff may not collect more than two additional mileage charges.

94 (6) (a) For transporting a patient to the Utah State Hospital or to or from a hospital or a
95 mental health facility, as defined in Section 62A-15-602, when the cost of transportation is
96 payable by private individuals, the sheriff may collect, except as otherwise provided under
97 Subsection (1)(a), \$2.50 for each mile necessarily traveled, in going only, to a maximum of 100
98 miles.

99 (b) If the sheriff requires assistance to transport the person, the sheriff may also charge
100 the actual and necessary cost of that assistance.

101 (7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under
102 Section 53-10-404, the sheriff shall collect the fee of [~~\$100~~] \$150 in accordance with Section
103 53-10-404.

104 (b) The fee amount described in Subsection (7)(a) may not be changed by a county
105 legislative body under Subsection (1).

106 Section 2. Section 53-10-407 is amended to read:

107 **53-10-407. DNA Specimen Restricted Account.**

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

110 (2) The sources of money for the account are:

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

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

113 (c) all federal money provided to the state for the purpose of funding the collection or

114 analysis of DNA specimens collected under Section 53-10-403.

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

116 (4) The Legislature may appropriate money from the account solely for the following
117 purposes:

118 (a) to the Department of Corrections for the costs of collecting DNA specimens as
119 required under Section 53-10-403;

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

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

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

125 (i) storing and analyzing DNA specimens in accordance with the requirements of this
126 part;

127 (ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided
128 in Subsection 78B-9-301[(8)](7); and

129 (iii) reimbursing sheriffs for collecting the DNA specimens as provided under Sections
130 53-10-404 and 53-10-404.5.

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

134 Section 3. Section 78B-9-301 is amended to read:

135 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
136 **Notification of victim.**

137 (1) As used in this part:

138 (a) "DNA" means deoxyribonucleic acid.

139 (b) "Factually innocent" [has] means the same [definition] as that term is defined in
140 Section 78B-9-402.

141 (2) A person convicted of a felony offense may at any time file a petition for

142 postconviction DNA testing in the trial court that entered the judgment of conviction if the
143 person asserts factual innocence under oath and the petition alleges:

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

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

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

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

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

156 (f) the evidence that is the subject of the request for testing:

157 (i) has the potential to produce new, noncumulative evidence; and

158 (ii) there is a reasonable probability that the defendant would not have been convicted
159 or would have received a lesser sentence if the evidence had been presented at the original trial;
160 and

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

162 (i) those specified in Sections [78B-9-302](#) and [78B-9-304](#); and

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

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

168 [~~(4) The court may not order DNA testing in cases in which DNA testing was available~~
169 ~~at the time of trial and the person did not request DNA testing or present DNA evidence for~~

170 tactical reasons.]

171 ~~[(5)]~~ (4) After a petition is filed under this section, prosecutors, law enforcement
172 officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in
173 determining the sufficiency of the chain of custody of the evidence which may be subject to
174 DNA testing.

175 ~~[(6)]~~ (5) (a) A person who files a petition under this section shall serve notice upon the
176 office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The
177 attorney general shall, within 30 days after receipt of service of a copy of the petition, or within
178 any additional period of time the court allows, answer or otherwise respond to all proceedings
179 initiated under this part.

180 (b) After the attorney general responds under Subsection ~~[(6)]~~ (5)(a), the petitioner has
181 the right to reply to the response of the attorney general.

182 (c) After the attorney general and the petitioner have filed a response and reply in
183 compliance with Subsection ~~[(6)]~~ (5)(b), the court shall order DNA testing if it finds by a
184 preponderance of the evidence that all criteria of Subsection (2) have been met.

185 ~~[(7)]~~ (6) (a) If the court grants the petition for testing, the DNA test shall be performed
186 by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services
187 Division created in Section 53-10-103, unless the person establishes that the state crime
188 laboratory has a conflict of interest or does not have the capability to perform the necessary
189 testing.

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

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

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

195 ~~[(8)]~~ (7) (a) DNA testing under this section shall be paid for from funds appropriated to
196 the Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen
197 Restricted Account created in Section 53-10-407 if:

198 (i) the court ordered the DNA testing under this section;
199 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical
200 Services Division has a conflict of interest or does not have the capability to perform the
201 necessary testing; and
202 (iii) the petitioner who has filed for postconviction DNA testing under Section
203 78B-9-201 is serving a sentence of imprisonment and is indigent.
204 (b) Under this Subsection [~~(8)~~] (7), costs of DNA testing include those necessary to
205 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
206 of findings.
207 [~~(9)~~] (8) If the person is serving a sentence of imprisonment and is indigent, the state
208 shall pay for the costs of the testing under this part, but if the result is not favorable to the
209 person the court may order the person to reimburse the state for the costs of the testing,
210 pursuant to [~~the provisions of~~] Subsections 78B-9-302(4) and 78B-9-304(1)(b).
211 [~~(10)~~] (9) Any victim of the crime regarding which the person petitions for DNA
212 testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's
213 attorney of any hearing regarding the petition and testing, even though the hearing is a civil
214 proceeding.