

**DNA AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Steve Eliason

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**LONG TITLE**

**Committee Note:**

The Judiciary Interim Committee recommended this bill.

**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

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

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

30 **17-22-2.5. Fees of sheriff.**

31 (1) (a) The legislative body of a county may set a fee for a service described in this  
32 section and charged by the county sheriff:

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

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

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

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

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

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

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

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

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

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

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

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

- 59 (i) for serving a writ of possession or restitution, and putting any person entitled to  
60 possession into possession of premises, and removing occupant, \$50;
- 61 (j) for holding each trial of right of property, to include all services in the matter,  
62 except mileage, \$35;
- 63 (k) for conducting, postponing, or canceling a sale of property, \$15;
- 64 (l) for taking a prisoner in civil cases from prison before a court or magistrate, for each  
65 mile necessarily traveled, in going only, to a maximum of 100 miles, \$2.50;
- 66 (m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a  
67 court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100  
68 miles, \$2.50;
- 69 (n) for receiving and paying over money on execution or other process, as follows:
- 70 (i) if the amount collected does not exceed \$1,000, 2% of this amount, with a  
71 minimum of \$1; and
- 72 (ii) if the amount collected exceeds \$1,000, 2% on the first \$1,000 and 1-1/2% on the  
73 balance; and
- 74 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$10.
- 75 (3) The fees allowed by Subsection (2)(f) for the levy of execution and for advertising  
76 shall be collected from the judgment debtor as part of the execution in the same manner as the  
77 sum directed to be made.
- 78 (4) When serving an attachment on property, an order of arrest, or an order for the  
79 delivery of personal property, the sheriff may only collect traveling fees for the distance  
80 actually traveled beyond the distance required to serve the summons if the attachment or those  
81 orders:
- 82 (a) accompany the summons in the action; and
- 83 (b) may be executed at the time of the service of the summons.
- 84 (5) (a) (i) When traveling generally to serve notices, orders, process, or other papers,  
85 the sheriff may receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each  
86 mile necessarily traveled, in going only, computed from the courthouse for each person served,  
87 to a maximum of 100 miles.
- 88 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may  
89 receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each mile necessarily

90 traveled, in going only, computed from the post office where received for each person served,  
91 to a maximum of 100 miles.

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

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

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

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

103 (7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under  
104 Section 53-10-404, the sheriff shall collect the fee of [~~\$100~~] \$150 in accordance with Section  
105 53-10-404.

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

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

109 **53-10-407. DNA Specimen Restricted Account.**

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

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

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

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

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

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

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

120 (a) to the Department of Corrections for the costs of collecting DNA specimens as

121 required under Section 53-10-403;

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

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

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

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

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

131 (iii) reimbursing sheriffs for collecting the DNA specimens as provided under Sections  
132 53-10-404 and 53-10-404.5.

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

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

137 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**  
138 **Notification of victim.**

139 (1) As used in this part:

140 (a) "DNA" means deoxyribonucleic acid.

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

143 (2) A person convicted of a felony offense may at any time file a petition for  
144 postconviction DNA testing in the trial court that entered the judgment of conviction if the  
145 person asserts factual innocence under oath and the petition alleges:

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

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

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

152 testing would support;

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

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

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

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

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

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

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

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

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

170 [~~(4) The court may not order DNA testing in cases in which DNA testing was available  
171 at the time of trial and the person did not request DNA testing or present DNA evidence for  
172 tactical reasons.~~]

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

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

182 (b) After the attorney general responds under Subsection [~~(6)~~] (5)(a), the petitioner has

183 the right to reply to the response of the attorney general.

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

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

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

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

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

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

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

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

204 (iii) the petitioner who has filed for postconviction DNA testing under Section  
205 78B-9-201 is serving a sentence of imprisonment and is indigent.

206 (b) Under this Subsection ~~[(8)]~~ (7), costs of DNA testing include those necessary to  
207 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports  
208 of findings.

209 ~~[(9)]~~ (8) If the person is serving a sentence of imprisonment and is indigent, the state  
210 shall pay for the costs of the testing under this part, but if the result is not favorable to the  
211 person the court may order the person to reimburse the state for the costs of the testing,  
212 pursuant to ~~[the provisions of]~~ Subsections 78B-9-302(4) and 78B-9-304(1)(b).

213 ~~[(10)]~~ (9) Any victim of the crime regarding which the person petitions for DNA

214 testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's  
215 attorney of any hearing regarding the petition and testing, even though the hearing is a civil  
216 proceeding.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**