

**DNA SPECIMEN ANALYSIS AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Don L. Ipson

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**LONG TITLE**

**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 9 voting for 1 voting against 6 absent

**General Description:**

This bill amends provisions related to DNA specimen analysis and destruction.

**Highlighted Provisions:**

This bill:

- ▶ requires a sheriff to provide a person notice related to the destruction of a DNA specimen and removal of the person's DNA sample and records from a database;
- ▶ requires certain DNA specimens to be processed and entered into a database;
- ▶ permits a person to request the destruction of the person's DNA specimen and related records under certain conditions; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-404.5**, as last amended by Laws of Utah 2014, Chapter 331



28 **53-10-406**, as last amended by Laws of Utah 2010, Chapter 405



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

31 Section 1. Section **53-10-404.5** is amended to read:

32 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**  
33 **conviction.**

34 (1) (a) When a sheriff books a person for any offense under Subsections  
35 **53-10-403**(1)(c) and (d), the sheriff shall:

36 (i) except as provided in Subsection (1)(b), obtain a DNA specimen from the person  
37 upon booking of the person at the county jail~~[, except under Subsection (1)(b).]; and~~

38 (ii) provide the person, in a manner the bureau specifies, notice of the process  
39 described in Subsection **53-10-406**(6)(b) to request destruction of the DNA specimen and  
40 removal of the person's DNA record from the database described in Subsection  
41 **53-10-406**(1)(d).

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

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

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

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

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

55 (b) The agency collecting the \$150 fee may not retain from each separate fee more than  
56 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

57 (4) Any DNA specimen obtained under this section shall be ~~[held and may not be~~  
58 ~~processed until:]~~ processed and entered into the database described in Subsection

59 53-10-406(1)(d), if the DNA specimen is:

60 ~~[(a) the court has bound the person over for trial following a preliminary hearing for~~  
61 ~~any charge arising out of the same criminal episode regarding which the person was booked;]~~

62 ~~[(b) the person has waived the preliminary hearing for any charge arising out of the~~  
63 ~~same criminal episode regarding which the person was booked; or]~~

64 ~~[(c) a grand jury has returned an indictment for any charge arising out of the same~~  
65 ~~criminal episode regarding which the person was booked.]~~

66 (a) obtained in accordance with Subsections 53-10-403(1)(c) through (e); and

67 (b) in the possession of the bureau, or a correctional facility booking station approved  
68 by the bureau, in its capacity as the state's National DNA Index System participating  
69 laboratory.

70 Section 2. Section **53-10-406** is amended to read:

71 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

72 (1) The bureau shall:

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

74 ~~[(b) store all DNA specimens received and other physical evidence obtained from~~  
75 ~~analysis of those specimens;]~~

76 (b) store each DNA specimen and associated records received;

77 (c) analyze each specimen, or contract with a qualified public or private laboratory to  
78 analyze the [specimens] specimen, to establish the genetic profile of the donor or to otherwise  
79 determine the identity of [persons or contract with other qualified public or private laboratories  
80 to conduct the analysis] the person;

81 (d) maintain a criminal identification ~~[data base]~~ database containing information  
82 derived from DNA analysis;

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

86 ~~[(f)]~~ (e) ensure that the DNA identification system does not provide information  
87 allowing prediction of genetic disease or predisposition to illness;

88 ~~[(g)]~~ (f) ensure that only DNA markers routinely used or accepted in the field of  
89 forensic science are used to establish the gender and unique individual identification of the

90 donor;

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

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

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

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

105 (3) (a) In accordance with Section ~~63G-2-305~~, ~~[all DNA specimens received shall be]~~  
106 each DNA specimen and associated record is classified as protected.

107 (b) The ~~[Department of Public Safety]~~ department may not transfer or disclose any  
108 DNA specimen, ~~[physical evidence]~~ associated record, or criminal identification information  
109 obtained, stored, or maintained under this section, except under ~~[its]~~ the provisions of this  
110 section.

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

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

117 (6) A person whose DNA specimen ~~[has been]~~ is obtained under this part may,  
118 personally or through a legal representative, submit;

119 (a) to the court a motion for a court order requiring the destruction of the person's DNA  
120 specimen, associated record, and any criminal identification record created in connection with

121 that specimen, and removal of the person's DNA record from the database described in  
122 Subsection (1)(d) if:

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

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

128 (b) to the department a request for the destruction of the person's DNA specimen, and  
129 associated record, and removal of the person's DNA record from the database described in  
130 Subsection (1)(d) if:

131 (i) no charge arising from the same criminal episode for which the DNA specimen was  
132 obtained under Subsection 53-10-404.5(1)(a) is filed against the person within one year after  
133 the day on which the person is booked; or

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

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

140 (7) A court order issued under Subsection (6)(a) may be accompanied by a written  
141 notice to the person advising that state law provides for expungement of criminal charges if the  
142 charge is resolved by a final judgment of dismissal or acquittal.

143 ~~[(8) Upon receipt of]~~

144 (8) The department shall destroy the person's DNA specimen, and associated record,  
145 and remove the person's DNA record from the database described in Subsection (1)(d), if:

146 (a) the person provides the department with:

147 (i) a court order for destruction ~~[pursuant to]~~ described in Subsection (6)(a), and  
148 ~~[receipt of]~~ a certified copy of:

149 (A) the court order reversing the conviction, judgment, or order~~;~~a certified copy of];

150 (B) a court order to set aside the conviction~~;~~or a certified copy of]; or

151 (C) the dismissal or acquittal of the charge regarding which the person was arrested~~;~~

152 ~~the Department of Public Safety shall destroy any specimen received from the person, any~~  
153 ~~physical evidence obtained from that specimen, and any criminal identification records~~  
154 ~~pertaining to the person, unless prohibited under Subsection (6)(b).]; or~~

155 (ii) a written request for destruction of the DNA specimen, and associated record, and  
156 removal of the DNA record from the database described in Subsection (6)(b), and a certified  
157 copy of:

158 (A) a declination to prosecute from the prosecutor; or

159 (B) a court document that indicates all charges have been resolved by a final judgment  
160 of dismissal with prejudice or acquittal; and

161 (b) the department determines that the person is not obligated to submit a DNA  
162 specimen as a result of a separate conviction or juvenile adjudication for an offense listed in  
163 Subsection [53-10-403\(2\)](#).

164 (9) The department [~~is not required to destroy any item of physical evidence obtained~~  
165 ~~from a DNA specimen if evidence relating to another person subject to the provisions of~~  
166 ~~Sections [53-10-404](#) and [53-10-405](#) would as a result be destroyed.~~] may not destroy a person's  
167 DNA specimen or remove a person's DNA record from the database described in Subsection  
168 (1)(d) if the person has a prior conviction or a pending charge for which collection of a sample  
169 is authorized in accordance with Section [53-10-404](#).

170 (10) A DNA specimen, [~~physical evidence~~] associated record, or criminal identification  
171 record created in connection with that specimen may not be affected by an order to set aside a  
172 conviction, except under the provisions of this section.

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

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

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

183 by this part.

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

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

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

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