

Representative Matthew H. Gwynn proposes the following substitute bill:

DNA SPECIMEN ANALYSIS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Don L. Ipson

LONG TITLE

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

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



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

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

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

(1) (a) When a sheriff books a person for any offense under Subsections [53-10-403\(1\)\(c\)](#) and (d), the sheriff shall:

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

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

(b) If at the time of booking the sheriff is able to obtain information from the bureau stating that the bureau has ~~[on file a DNA specimen for the person]~~ received a DNA specimen for the person and the sample analysis is either in process or complete, the sheriff is not required to obtain an additional DNA specimen.

(c) If at the time of booking the sheriff is able to obtain information from the bureau stating that the bureau has received a DNA specimen for the person and the sample analysis is pending, the sheriff may obtain an additional DNA specimen.

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

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

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

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

(b) The agency collecting the \$150 fee may not retain from each separate fee more than

57 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

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

60 (a) the court has bound the person over for trial following a preliminary hearing for any
61 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~~[-]; or~~

66 (d) sixty days after the issuance of an arrest warrant for failure to appear, provided the
67 warrant is still outstanding or has not been recalled.

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

69 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

70 (1) The bureau shall:

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

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

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

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

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

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

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

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

88 donor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (a) the person provides the department with:

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

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

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

149 (C) the dismissal or acquittal of the charge regarding which the person was arrested~~[-~~

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

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

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

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

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

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

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

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

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

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

181 by this part.

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

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

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

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