

HB0019S01 compared with HB0019

~~{deleted text}~~ shows text that was in HB0019 but was deleted in HB0019S01.

inserted text shows text that was not in HB0019 but was inserted into HB0019S01.

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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

~~{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

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- ▶ 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

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.

(~~b~~c) If at the time of booking the sheriff is able to obtain information from the bureau stating that the bureau has ~~on file~~received a DNA specimen for the person and the sample analysis is pending, the sheriff ~~is not required to~~may obtain an additional DNA specimen.

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

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

(4) Any DNA specimen obtained under this section shall be ~~{}~~held and may not be processed until: ~~{}~~ processed and entered into the database described in Subsection 53-10-406(1)(d), if the DNA specimen is:}

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

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

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

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

~~— (b) in the possession of the bureau, or a correctional facility booking station approved by the bureau, in its capacity as the state's National DNA Index System participating laboratory}~~ d) sixty days after the issuance of an arrest warrant for failure to appear, provided the warrant is still outstanding or has not been recalled.

Section 2. 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;}~~

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

(c) analyze each specimen, or contract with a qualified public or private laboratory to analyze the [specimens] specimen, 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] the person;

(d) maintain a criminal identification [~~data base~~] database 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)]~~ (e) ensure that the DNA identification system does not provide information allowing prediction of genetic disease or predisposition to illness;

~~[(g)]~~ (f) 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)]~~ (g) 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; ~~{ and }~~

~~[(i)]~~ (h) 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)]~~ ~~[(h)]~~ (i) 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~~] associated records, and criminal identification information obtained from the analysis.

(2) Procedures for DNA analysis may include all techniques which the [~~Department of Public Safety~~] department 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~~] each DNA specimen and associated record is classified as protected.

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

(4) Notwithstanding Subsection 63G-2-202(1), the department may deny inspection if ~~[it]~~ the department 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]~~ is obtained under this part may, personally or through a legal representative, submit:

(a) to the court a motion for a court order requiring the destruction of the person's DNA specimen, associated record, and any criminal identification record created in connection with that specimen, and removal of the person's DNA record from the database described in Subsection (1)(d) 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 with prejudice or acquittal; or

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

(i) no charge arising from the same criminal episode for which the DNA specimen was obtained under Subsection 53-10-404.5(1)(a) is filed against the person within one year after the day on which the person is booked; 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 with prejudice or acquittal~~[-and]~~.

~~[(b) the department determines that the person has not otherwise become obligated to~~

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~~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)(a) may be accompanied by a written notice to the person 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]~~

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

(a) the person provides the department with:

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

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

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

(C) 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).]; or

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

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

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

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

(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.]~~ may not destroy a person's DNA specimen or remove a person's DNA record from the database described in Subsection (1)(d) if the person has a prior conviction or a pending charge for which collection of a sample

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is authorized in accordance with Section 53-10-404.

(10) A DNA specimen, [~~physical evidence~~] associated record, or criminal identification record created in connection with that specimen 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.