

FORENSIC BIOLOGICAL EVIDENCE PRESERVATION

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns the preservation of biological evidence obtained in connection with the investigation or prosecution of a felony offense.

Highlighted Provisions:

This bill:

- ▶ creates definitions;
- ▶ requires the preservation of biological evidence obtained in connection with the investigation or prosecution of a felony offense for specific time periods;
- ▶ provides procedures for the destruction of certain types of biological evidence;
- ▶ establishes remedies and penalties for preservation noncompliance; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53-20-101, Utah Code Annotated 1953

53-20-102, Utah Code Annotated 1953

53-20-103, Utah Code Annotated 1953



28 53-20-104, Utah Code Annotated 1953
 29 53-20-105, Utah Code Annotated 1953
 30 53-20-106, Utah Code Annotated 1953



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **53-20-101** is enacted to read:

34 **CHAPTER 20. FORENSIC BIOLOGICAL EVIDENCE PRESERVATION**

35 **53-20-101. Title.**

36 This chapter is known as "Forensic Biological Evidence Preservation."

37 Section 2. Section **53-20-102** is enacted to read:

38 **53-20-102. Definitions.**

39 As used in this chapter:

40 (1) (a) "Biological evidence" means an item that contains blood, semen, hair, saliva,
 41 epithelial cells, a fingerprint, or other identifiable human biological material that:

- 42 (i) is collected as part of an investigation or prosecution of a felony offense; and
- 43 (ii) may reasonably be used to incriminate or exculpate a person for the felony offense.

44 (b) "Biological evidence" includes:

- 45 (i) material that is catalogued separately, including on a slide or swab or inside a test
 46 tube;
- 47 (ii) material that is present on other evidence, including clothing, a ligature, bedding, a
 48 drinking cup, a cigarette, a vehicle, or a weapon, from which a DNA profile may be obtained;
- 49 (iii) the contents of a sexual assault examination kit; and
- 50 (iv) material described in this Subsection (1) that is in the custody of an evidence
 51 collecting or retaining entity on May 4, 2022.

52 (2) "Continuous chain of custody" means:

- 53 (a) for a law enforcement agency, that legal standards regarding a continuous chain of
 54 custody are maintained; and
- 55 (b) for an entity that is not a law enforcement agency, that the entity maintains a record
 56 in accordance with legal standards required of the entity.

57 (3) "DNA" means deoxyribonucleic acid.

58 (4) "DNA profile" means a unique identifier of an individual derived from DNA.

59 (5) (a) "Evidence collecting or retaining entity" means an entity within the state that
60 collects, stores, or retrieves biological evidence.

61 (b) "Evidence collecting or retaining entity" includes:

62 (i) a medical or forensic entity;

63 (ii) a law enforcement agency; and

64 (iii) an official, employee, or agent of an entity or agency described in this Subsection

65 (5).

66 (6) "In custody" means an individual who:

67 (a) is incarcerated, civilly committed, on parole, or on probation; or

68 (b) is required to register under Title 77, Chapter 41, Sex and Kidnap Offender

69 Registry.

70 (7) "Law enforcement agency" means:

71 (a) a municipal, county, state institution of higher education, or state police force or
72 department;

73 (b) a sheriff's office;

74 (c) a municipal, county, or state prosecuting authority; or

75 (d) a municipal, county, or state court.

76 (8) "Medical or forensic entity" means a private or public hospital, medical facility, or
77 other entity that secures biological evidence or conducts forensic examinations related to
78 criminal investigations.

79 (9) "Physical evidence" includes evidence that:

80 (a) is related to:

81 (i) an investigation;

82 (ii) an arrest; or

83 (iii) a prosecution that resulted in a judgment of conviction; and

84 (b) is in the actual or constructive possession of a law enforcement agency or an agent
85 of a law enforcement agency.

86 Section 3. Section **53-20-103** is enacted to read:

87 **53-20-103. Preservation of evidence -- Procedures -- Inventory request.**

88 (1) Except as provided in Section [53-20-104](#), an evidence collecting or retaining entity
89 shall preserve biological evidence:

90 (a) for the longer of:
91 (i) the length of the statute of limitations for the felony offense if:
92 (A) no charges are filed for the felony offense; or
93 (B) the felony offense remains unsolved;
94 (ii) the length of time that the person convicted of the felony offense or any lesser
95 included offense remains in custody; or
96 (iii) the length of time that a co-defendant remains in custody;
97 (b) in an amount and manner sufficient to:
98 (i) develop a DNA profile; and
99 (ii) if practicable, allow for independent testing of the biological evidence by a
100 defendant; and
101 (c) subject to a continuous chain of custody.
102 (2) (a) Upon written request by a defendant, the evidence collecting or retaining entity
103 shall prepare an inventory of the biological evidence preserved in connection with the
104 defendant's criminal case.
105 (b) If the evidence collecting or retaining entity cannot locate biological evidence
106 requested under Subsection (2)(a), the custodian for the entity shall provide a sworn affidavit to
107 the defendant that:
108 (i) describes the efforts taken to locate the biological evidence; and
109 (ii) affirms that the biological evidence could not be located.
110 (3) The evidence collecting or retaining entity may dispose of biological evidence
111 before the day on which the period described in Subsection (1)(a) expires if:
112 (a) no other provision of federal or state law requires the evidence collecting or
113 retaining entity to preserve the biological evidence;
114 (b) the evidence collecting or retaining entity sends notice in accordance with
115 Subsection (4); and
116 (c) an individual notified under Subsection (4)(a) does not within 180 days after the
117 day on which the individual receives the notice under Subsection (4):
118 (i) file a motion for testing of the biological evidence under Section [78B-9-301](#); or
119 (ii) submit a written request under Subsection (4)(b)(ii).
120 (4) If the evidence collecting or retaining entity intends to dispose of the biological

121 evidence before the day on which the period described in Subsection (1)(a) expires, the
122 evidence collecting or retaining entity shall send a notice of intent to dispose of the biological
123 evidence that:

124 (a) is sent by certified mail, return receipt requested, or a delivery service that provides
125 proof of delivery, to:

126 (i) an individual who remains in custody based on a criminal conviction related to the
127 biological evidence;

128 (ii) the private attorney or public defender of record for each individual described in
129 Subsection (4)(a)(i);

130 (iii) if applicable, the city or county attorney for the city or county responsible for the
131 prosecution of each individual described in Subsection (4)(a)(i); and

132 (iv) the Utah Attorney General; and

133 (b) explains that the party receiving the notice may:

134 (i) file a motion for testing of biological evidence under Section [78B-9-301](#); or

135 (ii) submit a written request that the evidence collecting or retaining entity retain the
136 biological evidence.

137 (5) (a) Subject to Subsections (5)(b) and (c), if the evidence collecting or retaining
138 entity receives a written request to retain the biological evidence under Subsection (4)(b)(ii),
139 the evidence collecting or retaining entity shall retain the biological evidence while the
140 defendant remains in custody.

141 (b) Subject to Subsection (5)(c), the evidence collecting or retaining entity is not
142 required to preserve physical evidence that may contain biological evidence if the physical
143 evidence's size, bulk, or physical character renders retention impracticable.

144 (c) If the evidence collecting or retaining entity determines that retention is
145 impracticable, before returning or disposing of the physical evidence, the evidence collecting or
146 retaining entity shall:

147 (i) remove the portions of the physical evidence likely to contain biological evidence
148 related to the felony offense; and

149 (ii) preserve the removed biological evidence in a quantity sufficient to permit future
150 DNA testing.

151 (6) To comply with the preservation requirements described in Subsection (1), a law

152 enforcement agency may:

153 (a) retain the biological evidence; or

154 (b) if a continuous chain of custody can be maintained, return the biological evidence

155 to the custody of the other law enforcement agency that originally provided the biological

156 evidence to the law enforcement agency.

157 Section 4. Section **53-20-104** is enacted to read:

158 **53-20-104. Exceptions.**

159 (1) As used in this section, "offense concerning driving under the influence" means:

160 (a) Section 41-6a-502;

161 (b) Section 41-6a-502.5;

162 (c) Section 41-6a-517;

163 (d) Section 41-6a-530;

164 (e) Subsection 58-37-8(2)(g);

165 (f) Section 76-5-207; and

166 (g) a local ordinance similar to the offenses described in this Subsection (1).

167 (2) Section 53-20-103 does not apply to biological evidence obtained during an
168 investigation or prosecution for an offense concerning driving under the influence solely for
169 toxicology purposes.

170 Section 5. Section **53-20-105** is enacted to read:

171 **53-20-105. Criminal failure to preserve evidence -- Penalty -- Investigation.**

172 (1) A person commits the offense of criminal failure to preserve evidence if the person
173 intentionally or knowingly destroys, alters, conceals, or tampers with biological evidence with
174 the intent to:

175 (a) impair the integrity of the evidence;

176 (b) prevent the evidence from being subjected to DNA testing or other analysis; or

177 (c) prevent production or use of the evidence in a criminal investigation or proceeding.

178 (2) A violation of Subsection (1) is a class A misdemeanor.

179 (3) An investigation of a person suspected of violating Subsection (1) may not be
180 conducted by the entity that employs the suspected person.

181 Section 6. Section **53-20-106** is enacted to read:

182 **53-20-106. Remedies for failure to preserve evidence.**

183 (1) If a court finds that biological evidence was not preserved in accordance with this
184 chapter, the court may impose sanctions and remedies at the court's discretion, including:

185 (a) the grant of a new trial;

186 (b) an instruction to the jury that evidence was not preserved as required by law;

187 (c) the reduction of the sentence;

188 (d) the dismissal of the criminal charge;

189 (e) the vacation of the conviction; or

190 (f) the entry of a finding that because the evidence was not preserved in accordance
191 with this chapter, a presumption exists that the evidence would have been exculpatory to the
192 defendant.

193 (2) The imposition of a remedy or sanction under Subsection (1) does not preclude a
194 prosecution under Section [53-20-105](#).