

FORENSIC DNA PRIVACY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns investigative searches for familial genetic information.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes requirements that a law enforcement agency and the Bureau of Forensic Services are required to meet before the bureau may conduct a database search for the purpose of identifying potential biological relatives to an unknown DNA profile;
- ▶ establishes requirements that a law enforcement agency is required to meet in order to request a genealogy database search from a genetic genealogy company or the Bureau of Forensic Services;
- ▶ establishes requirements that a law enforcement agency must follow in order to obtain and process a third-party DNA specimen for information regarding the third-party individual's potential biological relatives; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [53-10-403.5](#), as last amended by Laws of Utah 2020, Chapter 415

30 ENACTS:

31 [53-10-403.7](#), Utah Code Annotated 1953



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

34 Section 1. Section [53-10-403.5](#) is amended to read:

35 **[53-10-403.5](#). Definitions.**

36 As used in Sections [53-10-403](#), [53-10-403.7](#), [53-10-404](#), [53-10-404.5](#), [53-10-405](#), and
37 [53-10-406](#):

- 38 (1) "Bureau" means the Bureau of Forensic Services.
- 39 (2) "Combined DNA Index System" or "CODIS" means the program operated by the
40 Federal Bureau of Investigation to support criminal justice DNA databases and the software
41 used to run the databases.
- 42 (3) "Conviction" means:
 - 43 (a) a verdict or conviction;
 - 44 (b) a plea of guilty or guilty and mentally ill;
 - 45 (c) a plea of no contest; or
 - 46 (d) the acceptance by the court of a plea in abeyance.
- 47 (4) "DNA" means deoxyribonucleic acid.
- 48 (5) "DNA profile" means the patterns of fragments of DNA used to identify an
49 individual.

50 ~~[(5)]~~ (6) "DNA specimen" or "specimen" means a biological reference sample ~~[of a~~
51 ~~person's saliva or blood, a biological sample]~~ from an individual or a crime scene, or ~~[a~~
52 ~~sample]~~ that is collected as part of an investigation.

53 ~~[(6)]~~ (7) "Final judgment" means a judgment, including any supporting opinion,
54 concerning which all appellate remedies have been exhausted or the time for appeal has
55 expired.

56 ~~[(7)]~~ (8) "Rapid DNA" means the fully automated process of developing a DNA
57 profile.

58 ~~[(8)]~~ (9) "Violent felony" means any offense under Section [76-3-203.5](#).

59 Section 2. Section **53-10-403.7** is enacted to read:

60 **53-10-403.7. Familial DNA specimen search -- Third-party specimens.**

61 (1) As used in this section:

62 (a) "Bureau familial search" means a search of CODIS conducted for the purpose of
63 identifying potential biological relatives to an unknown DNA profile.

64 (b) "Genealogy database search" means a search of a genealogical database for the
65 purpose of identifying potential biological relatives to an unknown DNA profile.

66 (c) "Genetic genealogy company" means a company that provides a genetic genealogy
67 service.

68 (d) "Genetic genealogy service" means the processing of an individual's DNA
69 specimen or genetic data file to provide data about the individual's genetic information,
70 including the individual's:

71 (i) kinship inference data; or

72 (ii) biological relationships.

73 (e) "Genetic information" means data acquired from an analysis of a DNA specimen.

74 (f) "Kinship inference data" means the information produced by a genealogy database
75 search regarding an individual's potential biological relatives.

76 (g) "Law enforcement agency" means the same as that term is defined in Section
77 [77-23c-101.2](#).

78 (h) "Prosecuting agency" means the Office of the Attorney General or the office of a
79 county attorney, including an attorney on the staff, whether acting in a civil or criminal
80 capacity.

81 (i) "Qualifying case" means an investigation of:

82 (i) a violent felony;

83 (ii) a crime in which the public safety is critically threatened; or

84 (iii) the identity of a missing or unknown individual.

85 (j) "Third-party DNA specimen" means a DNA specimen obtained from an individual
86 who is not a potential suspect in an investigation.

87 (2) (a) A law enforcement agency may request that the bureau conduct a bureau
88 familial search for investigative information.

89 (b) The bureau may conduct a bureau familial search if the law enforcement agency

90 provides documentation demonstrating that:

91 (i) the law enforcement agency, through the law enforcement agency's investigation,
92 has a DNA profile from forensic evidence that the law enforcement agency reasonably believes
93 is attributable to the perpetrator of a crime;

94 (ii) a routine search of CODIS revealed no DNA matches to the DNA profile;

95 (iii) the case for which the law enforcement agency requires the information is a
96 qualifying case; and

97 (iv) the law enforcement agency has pursued and exhausted all reasonably reliable and
98 material investigative leads.

99 (3) A law enforcement agency may request a genealogy database search from the
100 bureau or a genetic genealogy company if:

101 (a) the law enforcement agency, through the law enforcement agency's investigation,
102 has a DNA profile from forensic evidence that the law enforcement agency reasonably believes
103 is attributable to:

104 (i) the perpetrator of a crime;

105 (ii) the remains of an unidentified individual; or

106 (iii) a missing person;

107 (b) the case for which the law enforcement agency requires the information is a
108 qualifying case;

109 (c) a routine search of CODIS revealed no DNA matches to the DNA profile;

110 (d) a bureau familial search may limit future testing capabilities or cause a delay that
111 would create a critical risk to public safety;

112 (e) the law enforcement agency and prosecuting agency consult and agree that the
113 genealogy database search is an appropriate and necessary step in the development of
114 information that may contribute to solving the case; and

115 (f) the law enforcement agency and prosecuting agency commit to further investigation
116 of the case if the genealogy database search produces information that may contribute to
117 solving the case.

118 (4) (a) Before a law enforcement agency may collect a third-party DNA specimen for
119 the purpose of obtaining kinship inference data, the law enforcement agency shall:

120 (i) consult with the prosecuting agency; and

121 (ii) (A) obtain informed, voluntary consent from the individual providing the
122 third-party DNA specimen; or
123 (B) if the law enforcement agency concludes that the case-specific circumstances
124 provide reasonable grounds to believe that a request for informed, voluntary consent would
125 compromise the integrity of the investigation, obtain from the prosecuting agency authorization
126 for a covert collection of the third-party DNA specimen.
127 (b) If a third-party DNA specimen is obtained in accordance with Subsection
128 (4)(a)(ii)(B), the law enforcement agency shall obtain a search warrant before the law
129 enforcement agency may request a genetic genealogy service on the third-party DNA specimen.
130 (5) A law enforcement agency or a prosecuting agency may only use a third-party DNA
131 specimen obtained under Subsection (4) to:
132 (a) identify a possible suspect;
133 (b) exonerate a possible suspect; or
134 (c) identify a missing or unknown individual.
135 (6) A law enforcement agency or a prosecuting agency may not request a genetic
136 genealogy service except as provided in this section.