

FORENSIC DNA AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns investigative searches for genetic information.

Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ establishes requirements that a law enforcement agency is required to meet in order

to:

- request a genetic genealogy service or a genealogy database search from a genetic genealogy company or the Bureau of Forensic Services; and
- obtain and process a third-party DNA specimen for information regarding the third-party individual's potential biological relatives;
- ▶ provides limitations on:
 - arrests and charges based on certain types of genetic information; and
 - uses of certain genetic information;
- ▶ establishes procedural requirements for retention and destruction of certain types of genetic information;
- ▶ establishes law enforcement reporting requirements for certain investigative genealogy database searches;
- ▶ requires the State Commission on Criminal and Juvenile Justice to receive, compile, and publish data concerning certain law enforcement genealogy searches; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **53-10-403.5**, as last amended by Laws of Utah 2020, Chapter 415

36 **63M-7-204**, as last amended by Laws of Utah 2022, Chapter 187

37 ENACTS:

38 **53-10-403.7**, Utah Code Annotated 1953

39 **53-22-101**, Utah Code Annotated 1953



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

42 Section 1. Section **53-10-403.5** is amended to read:

43 **53-10-403.5. Definitions.**

44 As used in Sections **53-10-403**, **53-10-403.7**, **53-10-404**, **53-10-404.5**, **53-10-405**, and
45 **53-10-406**:

46 (1) "Bureau" means the Bureau of Forensic Services.

47 (2) "Combined DNA Index System" or "CODIS" means the program operated by the
48 Federal Bureau of Investigation to support criminal justice DNA databases and the software
49 used to run the databases.

50 (3) "Conviction" means:

51 (a) a verdict or conviction;

52 (b) a plea of guilty or guilty and mentally ill;

53 (c) a plea of no contest; or

54 (d) the acceptance by the court of a plea in abeyance.

55 (4) "DNA" means deoxyribonucleic acid.

56 (5) "DNA profile" means the patterns of fragments of DNA used to identify an
57 individual.

58 ~~(5)~~ (6) "DNA specimen" or "specimen" means a biological sample ~~[of a person's~~

59 ~~saliva or blood, a biological sample~~ collected from an individual or a crime scene, or [a
60 ~~sample~~] that is collected as part of an investigation.

61 [(6)] (7) "Final judgment" means a judgment, including any supporting opinion,
62 concerning which all appellate remedies have been exhausted or the time for appeal has
63 expired.

64 [(7)] (8) "Rapid DNA" means the fully automated process of developing a DNA
65 profile.

66 [(8)] (9) "Violent felony" means any offense under Section [76-3-203.5](#).

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

68 **53-10-403.7. Genetic genealogy service -- Genealogy database search --**

69 **Third-party specimens -- Requirements.**

70 (1) As used in this section:

71 (a) "Genealogy database search" means a search of a genealogical database for the
72 purpose of identifying potential biological relatives to a DNA profile.

73 (b) "Genetic genealogy company" means a company that provides a genealogy database
74 search or a genetic genealogy service.

75 (c) "Genetic genealogy service" means the processing of an individual's DNA specimen
76 or genetic data file to be used for a genealogy database search.

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

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

81 (f) "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 (g) "Third-party DNA specimen" means a DNA specimen obtained from an individual
86 who is not a likely suspect in an investigation.

87 (2) A law enforcement agency may request a genetic genealogy service or a genealogy
88 database search from the bureau or a genetic genealogy company if:

89 (a) the law enforcement agency, through the law enforcement agency's investigation,

90 has a DNA profile from forensic evidence that the law enforcement agency reasonably believes
91 is attributable to:

- 92 (i) the perpetrator of a crime;
- 93 (ii) the remains of an unidentified individual; or
- 94 (iii) a missing person;
- 95 (b) the case for which the law enforcement agency requires the information is a
96 qualifying case;
- 97 (c) a routine search of CODIS revealed no DNA matches to the DNA profile;
- 98 (d) the law enforcement agency, the bureau, and the prosecuting agency consult and
99 agree that the genetic genealogy service or genealogy database search is an appropriate and
100 necessary step in the development of information that may contribute to solving the case; and
- 101 (e) the law enforcement agency and prosecuting agency commit to further investigation
102 of the case if the genetic genealogy service or genealogy database search produces information
103 that may contribute to solving the case.

104 (3) (a) Before a law enforcement agency may collect a third-party DNA specimen for
105 the purpose of obtaining biological relationship data, the law enforcement agency shall:

- 106 (i) consult with the prosecuting agency; and
- 107 (ii) (A) obtain informed, voluntary consent from the individual providing the
108 third-party DNA specimen; or
- 109 (B) if the law enforcement agency concludes that the case-specific circumstances
110 provide reasonable grounds to believe that a request for informed, voluntary consent would
111 compromise the integrity of the investigation, obtain from the prosecuting agency authorization
112 for a covert collection of the third-party DNA specimen.

113 (b) Before obtaining a third-party DNA specimen in accordance with Subsection
114 (3)(a)(ii)(B), a law enforcement agency shall, if applicable, request the prosecuting agency to
115 notify and consult with the prosecuting agency in the jurisdiction in which the sample will be
116 covertly collected to ensure that all applicable laws and procedures are followed.

117 (c) A law enforcement agency that obtains a DNA specimen in accordance with
118 Subsection (3)(a)(ii)(B) shall obtain the DNA specimen in a lawful manner.

119 (4) A law enforcement agency or a prosecuting agency may only use a third-party DNA
120 specimen obtained under Subsection (3) to:

- 121 (a) identify a possible suspect;
122 (b) exonerate a possible suspect; or
123 (c) identify a missing or unknown individual.
- 124 (5) When requesting a genetic genealogy service or genealogy database search from a
125 genetic genealogy company under Subsection (2) or (3), a law enforcement agency shall:
- 126 (a) disclose to the genetic genealogy company that the request is from a law
127 enforcement agency;
- 128 (b) only make a request to a genetic genealogy company that provides notice to the
129 genetic genealogy company's service users and the public that law enforcement may use the
130 genetic genealogy company's services to investigate crimes or to identify unidentified human
131 remains;
- 132 (c) confirm that the request is permitted under the terms of service for the genetic
133 genealogy company; and
- 134 (d) if possible, configure service site user settings that control access to the DNA
135 submitted by the law enforcement agency and associated account information in a manner that
136 will prevent the information from being viewed by other service users.
- 137 (6) (a) Before an individual may be arrested as a suspect in a crime for which a genetic
138 genealogy service or genealogy database search has been conducted under Subsection (2) or
139 (3), the law enforcement agency and the bureau shall confirm that the DNA obtained from the
140 crime scene could have originated from the individual.
- 141 (b) After an individual has been charged with an offense after a genetic genealogy
142 service or a genealogy database search has been conducted for that offense, the law
143 enforcement agency shall:
- 144 (i) if applicable, confirm that the DNA obtained from the crime scene could have
145 originated from the individual;
- 146 (ii) if applicable, make a prompt, formal request to the genetic genealogy company to:
- 147 (A) provide the DNA information and any associated account information related to
148 the charged crime directly to the law enforcement agency; and
- 149 (B) remove the DNA information and any associated account information held by the
150 genetic genealogy company;
- 151 (iii) if applicable, document the request described in Subsection (6)(b)(ii); and

152 (iv) retain the information received from the genetic genealogy company or the bureau
153 for use during prosecution and subsequent judicial proceedings.

154 (7) A law enforcement agency or a prosecuting agency:

155 (a) may not request a genetic genealogy service or a genealogy database search except
156 as provided in this section;

157 (b) shall ensure that genetic information obtained under this section is used only for
158 law enforcement purposes; and

159 (c) shall ensure that a DNA specimen and associated genetic information is:

160 (i) retained in conformance with applicable laws; and

161 (ii) destroyed once permitted under applicable laws.

162 Section 3. Section 53-22-101 is enacted to read:

163 **CHAPTER 22. REPORTING REQUIREMENTS FOR GENEALOGY DATABASE**

164 **SEARCHES**

165 **53-22-101. Law enforcement reporting requirements for genealogy database**
166 **searches -- Report.**

167 (1) As used in this section:

168 (a) "Commission" means the State Commission on Criminal and Juvenile Justice
169 created in Section [63M-7-201](#).

170 (b) "Genealogy database search" means the same as that term is defined in Section
171 [53-10-403.7](#).

172 (c) "Law enforcement agency" means the same as that term is defined in Section
173 [53-1-102](#).

174 (d) "Qualifying case" means the same as that term is defined in Section [53-10-403.7](#).

175 (2) (a) Beginning on January 1, 2024, a law enforcement agency shall annually on or
176 before April 30 submit a report to the commission with the following data for the previous
177 calendar year:

178 (i) the number of genealogy database searches requested by the law enforcement
179 agency under Section [53-10-403.7](#); and

180 (ii) the type of qualifying case for each search described in Subsection (2)(a)(i).

181 (b) A law enforcement agency shall compile the report described in Subsection (2)(a)
182 for each year in the standardized format developed by the commission under Subsection (4).

183 (3) If a genealogy database search is requested by a multijurisdictional team of law
184 enforcement officers, the reporting requirement in this section is the responsibility of the
185 commanding agency or governing authority of the multijurisdictional team.

186 (4) The commission shall:

187 (a) develop a standardized format for reporting the data described in Subsection (2);

188 (b) compile the data submitted under Subsection (2); and

189 (c) annually on or before August 1, publish a report of the data described in Subsection
190 (2) on the commission's website.

191 Section 4. Section **63M-7-204** is amended to read:

192 **63M-7-204. Duties of commission.**

193 (1) The State Commission on Criminal and Juvenile Justice administration shall:

194 (a) promote the commission's purposes as enumerated in Section **63M-7-201**;

195 (b) promote the communication and coordination of all criminal and juvenile justice
196 agencies;

197 (c) study, evaluate, and report on the status of crime in the state and on the
198 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
199 reduction of crime in the state;

200 (d) study, evaluate, and report on programs initiated by state and local agencies to
201 address reducing recidivism, including changes in penalties and sentencing guidelines intended
202 to reduce recidivism, costs savings associated with the reduction in the number of inmates, and
203 evaluation of expenses and resources needed to meet goals regarding the use of treatment as an
204 alternative to incarceration, as resources allow;

205 (e) study, evaluate, and report on policies, procedures, and programs of other
206 jurisdictions which have effectively reduced crime;

207 (f) identify and promote the implementation of specific policies and programs the
208 commission determines will significantly reduce crime in Utah;

209 (g) provide analysis and recommendations on all criminal and juvenile justice
210 legislation, state budget, and facility requests, including program and fiscal impact on all
211 components of the criminal and juvenile justice system;

212 (h) provide analysis, accountability, recommendations, and supervision for state and
213 federal criminal justice grant money;

214 (i) provide public information on the criminal and juvenile justice system and give
215 technical assistance to agencies or local units of government on methods to promote public
216 awareness;

217 (j) promote research and program evaluation as an integral part of the criminal and
218 juvenile justice system;

219 (k) provide a comprehensive criminal justice plan annually;

220 (l) review agency forecasts regarding future demands on the criminal and juvenile
221 justice systems, including specific projections for secure bed space;

222 (m) promote the development of criminal and juvenile justice information systems that
223 are consistent with common standards for data storage and are capable of appropriately sharing
224 information with other criminal justice information systems by:

225 (i) developing and maintaining common data standards for use by all state criminal
226 justice agencies;

227 (ii) annually performing audits of criminal history record information maintained by
228 state criminal justice agencies to assess their accuracy, completeness, and adherence to
229 standards;

230 (iii) defining and developing state and local programs and projects associated with the
231 improvement of information management for law enforcement and the administration of
232 justice; and

233 (iv) establishing general policies concerning criminal and juvenile justice information
234 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this
235 Subsection (1)(m);

236 (n) allocate and administer grants, from money made available, for approved education
237 programs to help prevent the sexual exploitation of children;

238 (o) allocate and administer grants for law enforcement operations and programs related
239 to reducing illegal drug activity and related criminal activity;

240 (p) request, receive, and evaluate data and recommendations collected and reported by
241 agencies and contractors related to policies recommended by the commission regarding
242 recidivism reduction, including the data described in Section [13-53-111](#) and Subsection
243 [62A-15-103\(2\)\(l\)](#);

244 (q) establish and administer a performance incentive grant program that allocates funds

245 appropriated by the Legislature to programs and practices implemented by counties that reduce
246 recidivism and reduce the number of offenders per capita who are incarcerated;

247 (r) oversee or designate an entity to oversee the implementation of juvenile justice
248 reforms;

249 (s) make rules and administer the juvenile holding room standards and juvenile jail
250 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements
251 pursuant to 42 U.S.C. Sec. 5633;

252 (t) allocate and administer grants, from money made available, for pilot qualifying
253 education programs;

254 (u) oversee the trauma-informed justice program described in Section 63M-7-209;

255 (v) request, receive, and evaluate the aggregate data collected from prosecutorial
256 agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216
257 and 78A-2-109.5;

258 (w) report annually to the Law Enforcement and Criminal Justice Interim Committee
259 on the progress made on each of the following goals of the Justice Reinvestment Initiative:

260 (i) ensuring oversight and accountability;

261 (ii) supporting local corrections systems;

262 (iii) improving and expanding reentry and treatment services; and

263 (iv) strengthening probation and parole supervision;

264 (x) compile a report of findings based on the data and recommendations provided
265 under Section 13-53-111 and Subsection 62A-15-103(2)(n) that:

266 (i) separates the data provided under Section 13-53-111 by each residential, vocational
267 and life skills program; and

268 (ii) separates the data provided under Subsection 62A-15-103(2)(n) by each mental
269 health or substance use treatment program; ~~and~~

270 (y) publish the report described in Subsection (1)(x) on the commission's website and
271 annually provide the report to the Judiciary Interim Committee, the Health and Human Services
272 Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the
273 related appropriations subcommittees[-]; and

274 (z) receive, compile, and publish on the commission's website the data provided under
275 Section 53-22-101.

276 (2) If the commission designates an entity under Subsection (1)(r), the commission
277 shall ensure that the membership of the entity includes representation from the three branches
278 of government and, as determined by the commission, representation from relevant stakeholder
279 groups across all parts of the juvenile justice system, including county representation.