

Senator Todd D. Weiler proposes the following substitute bill:

INVESTIGATIVE GENETIC GENEALOGY MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns the use of investigative genetic genealogy.

Highlighted Provisions:

This bill:

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

to:

- request an investigative genetic genealogy service or a genetic 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 genetic



- 26 genealogy database searches;
- 27 ▶ requires the State Commission on Criminal and Juvenile Justice to receive, compile,
- 28 and publish data concerning certain law enforcement genetic genealogy searches;
- 29 ▶ creates provisions concerning postconviction relief involving an investigative
- 30 genetic genealogy service or a genetic genealogy database search; and
- 31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **53-10-403.5**, as last amended by Laws of Utah 2020, Chapter 415

39 **63M-7-204**, as last amended by Laws of Utah 2022, Chapter 187

40 **78B-9-301**, as last amended by Laws of Utah 2022, Chapter 274

41 **78B-9-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3

42 ENACTS:

43 **53-10-403.7**, Utah Code Annotated 1953

44 **53-22-101**, Utah Code Annotated 1953

45 REPEALS:

46 **78B-9-300**, as enacted by Laws of Utah 2008, Chapter 358

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

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

50 **53-10-403.5. Definitions.**

51 As used in Sections **53-10-403**, **53-10-403.7**, **53-10-404**, **53-10-404.5**, **53-10-405**, and

52 **53-10-406**:

- 53 (1) "Bureau" means the Bureau of Forensic Services.
- 54 (2) "Combined DNA Index System" or "CODIS" means the program operated by the
- 55 Federal Bureau of Investigation to support criminal justice DNA databases and the software
- 56 used to run the databases.

- 57 (3) "Conviction" means:
- 58 (a) a verdict or conviction;
- 59 (b) a plea of guilty or guilty and mentally ill;
- 60 (c) a plea of no contest; or
- 61 (d) the acceptance by the court of a plea in abeyance.

62 (4) "DNA" means deoxyribonucleic acid.

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

65 [~~(5)~~] (6) "DNA specimen" or "specimen" means a biological sample [~~of a person's~~
66 ~~saliva or blood, a biological sample~~] collected from an individual or a crime scene, or [a
67 sample] that is collected as part of an investigation.

68 [~~(6)~~] (7) "Final judgment" means a judgment, including any supporting opinion,
69 concerning which all appellate remedies have been exhausted or the time for appeal has
70 expired.

71 [~~(7)~~] (8) "Rapid DNA" means the fully automated process of developing a DNA
72 profile.

73 [~~(8)~~] (9) "Violent felony" means any offense under Section [76-3-203.5](#).

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

75 **53-10-403.7. Investigative genetic genealogy service -- Genetic genealogy database**
76 **search -- Third-party specimens -- Requirements.**

77 (1) As used in this section:

78 (a) "Genetic genealogy company" means a company that provides a genetic genealogy
79 database search or an investigative genetic genealogy service.

80 (b) "Genetic genealogy database search" means a search of a genetic genealogical
81 database for the purpose of identifying potential biological relatives to a DNA profile.

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

83 (d) "Investigative genetic genealogy service" means the processing of an individual's
84 DNA specimen or genetic data file to be used for a genetic genealogy database search.

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

88 (f) "Qualifying case" means an investigation of:

89 (i) a violent felony;

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

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

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

94 (2) A law enforcement agency may request an investigative genetic genealogy service
95 or a genetic genealogy database search from the bureau or a genetic genealogy company if:

96 (a) (i) the law enforcement agency, through the law enforcement agency's investigation,
97 has a DNA profile from forensic evidence that the law enforcement agency reasonably believes
98 is attributable to:

99 (A) the perpetrator of a crime;

100 (B) the remains of an unidentified individual; or

101 (C) a missing or unknown individual;

102 (ii) the case for which the law enforcement agency requires the information is a
103 qualifying case;

104 (iii) a routine search of any CODIS-eligible profiles developed in the case revealed no
105 DNA matches to the DNA profile;

106 (iv) the law enforcement agency and the prosecuting agency consult and agree that the
107 investigative genetic genealogy service or genetic genealogy database search is an appropriate
108 and necessary step in the development of information that may contribute to solving the case;
109 and

110 (v) the law enforcement agency and prosecuting agency commit to further investigation
111 of the case if the investigative genetic genealogy service or genetic genealogy database search
112 produces information that may contribute to solving the case; or

113 (b) ordered by a court in accordance with a postconviction relief proceeding under
114 Section [78B-9-301](#).

115 (3) (a) Before a law enforcement agency may collect a third-party DNA specimen for
116 the purpose of obtaining an investigative genetic genealogy service or a genetic genealogy
117 database search, the law enforcement agency shall:

118 (i) consult with the prosecuting agency; and

- 119 (ii) (A) obtain informed, voluntary consent from the individual providing the
120 third-party DNA specimen; or
- 121 (B) if the law enforcement agency concludes that the case-specific circumstances
122 provide reasonable grounds to believe that a request for informed, voluntary consent would
123 compromise the integrity of the investigation, obtain from the prosecuting agency authorization
124 for a covert collection of the third-party DNA specimen.
- 125 (b) Before obtaining a third-party DNA specimen in accordance with Subsection
126 (3)(a)(ii)(B), a law enforcement agency shall, if applicable, request the prosecuting agency to
127 notify and consult with the prosecuting agency in the jurisdiction in which the sample will be
128 covertly collected to ensure that all applicable laws and procedures are followed.
- 129 (c) A law enforcement agency that obtains a DNA specimen in accordance with
130 Subsection (3)(a)(ii)(B) shall obtain the DNA specimen in a lawful manner.
- 131 (4) A law enforcement agency or a prosecuting agency may only use a third-party DNA
132 specimen obtained under Subsection (3) to:
- 133 (a) identify a possible suspect;
134 (b) exonerate a possible suspect; or
135 (c) identify a missing or unknown individual.
- 136 (5) When requesting an investigative genetic genealogy service or genetic genealogy
137 database search from a genetic genealogy company under Subsection (2) or (3), a law
138 enforcement agency shall:
- 139 (a) disclose to the genetic genealogy company that the request is from a law
140 enforcement agency;
- 141 (b) only make a request to a genetic genealogy company that:
- 142 (i) provides notice to the genetic genealogy company's service users and the public that
143 law enforcement may use the genetic genealogy company's services to investigate crimes or to
144 identify unidentified human remains; and
- 145 (ii) has a policy that prevents the genetic genealogy company from compiling, selling,
146 licensing, or transferring to a third party any data generated by the genetic genealogy company
147 concerning a victim, crime scene, or suspect;
- 148 (c) confirm that the request is permitted under the terms of service for the genetic
149 genealogy company; and

150 (d) if possible, configure service site user settings that control access to the DNA
151 submitted by the law enforcement agency and associated account information in a manner that
152 will prevent the information from being viewed by other service users.

153 (6) (a) Before an individual may be arrested as a suspect in a crime for which an
154 investigative genetic genealogy service or genetic genealogy database search has been
155 conducted under Subsection (2)(a) or (3) and the investigative genetic genealogy service or
156 genetic genealogy database search has aided in the identification of the individual as a suspect,
157 the law enforcement agency and the bureau shall confirm that the DNA obtained from the
158 crime scene could have originated from the individual unless the law enforcement agency or
159 the prosecuting agency has sufficient evidence outside of the investigative genetic genealogy
160 service or genetic genealogy database search to independently support the individual's arrest.

161 (b) After an individual has been charged with an offense after an investigative genetic
162 genealogy service or a genetic genealogy database search has been conducted for that offense,
163 the law enforcement agency shall:

164 (i) if applicable, confirm that the DNA obtained from the crime scene could have
165 originated from the individual;

166 (ii) if applicable, make a prompt, formal request to the genetic genealogy company to:

167 (A) provide the DNA information and any associated account information related to
168 the charged crime directly to the law enforcement agency; and

169 (B) remove the DNA information and any associated account information held by the
170 genetic genealogy company;

171 (iii) if applicable, document the request described in Subsection (6)(b)(ii); and

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

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

175 (a) may not request an investigative genetic genealogy service or a genetic genealogy
176 database search except as provided in this section;

177 (b) shall ensure that genetic information obtained under this section is used only for
178 law enforcement purposes or postconviction relief purposes under Section [78B-9-301](#); and

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

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

181 (ii) destroyed once permitted under applicable laws.

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

183 **CHAPTER 22. REPORTING REQUIREMENTS FOR GENETIC GENEALOGY**
184 **DATABASE SEARCHES**

185 **53-22-101. Law enforcement reporting requirements for genetic genealogy**
186 **database searches -- Report.**

187 (1) As used in this section:

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

190 (b) "Genetic genealogy database search" means the same as that term is defined in
191 Section [53-10-403.7](#).

192 (c) "Law enforcement agency" means the same as that term is defined in Section
193 [53-1-102](#).

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

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

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

200 (ii) if applicable, the type of qualifying case for each search described in Subsection
201 (2)(a)(i).

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

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

207 (4) The commission shall:

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

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

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

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

213 **63M-7-204. Duties of commission.**

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

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

216 (b) promote the communication and coordination of all criminal and juvenile justice
217 agencies;

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

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

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

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

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

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

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

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

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

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

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

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

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

251 (iii) defining and developing state and local programs and projects associated with the
252 improvement of information management for law enforcement and the administration of
253 justice; and

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

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

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

261 (p) request, receive, and evaluate data and recommendations collected and reported by
262 agencies and contractors related to policies recommended by the commission regarding
263 recidivism reduction, including the data described in Section 13-53-111 and Subsection
264 62A-15-103(2)(l);

265 (q) establish and administer a performance incentive grant program that allocates funds
266 appropriated by the Legislature to programs and practices implemented by counties that reduce
267 recidivism and reduce the number of offenders per capita who are incarcerated;

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

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

273 (t) allocate and administer grants, from money made available, for pilot qualifying

274 education programs;

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

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

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

281 (i) ensuring oversight and accountability;

282 (ii) supporting local corrections systems;

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

284 (iv) strengthening probation and parole supervision;

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

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

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

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

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

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

301 Section 5. Section 78B-9-301 is amended to read:

302 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
303 **Notification of victim -- Investigative genetic genealogy.**

304 (1) As used in this part:

305 (a) "DNA" means deoxyribonucleic acid.

306 (b) "Factually innocent" means the same as that term is defined in Section
307 [78B-9-401.5](#).

308 (c) "Genetic genealogy database search" means the same as that term is defined in
309 Section [53-10-403.7](#).

310 (d) "Investigative genetic genealogy service" means the same as that term is defined in
311 Section [53-10-403.7](#).

312 (2) An individual convicted of a felony offense may at any time file a petition for
313 postconviction DNA testing in the trial court that entered the judgment of conviction if the
314 individual asserts factual innocence under oath and the petition alleges:

315 (a) evidence has been obtained regarding the individual's case that is still in existence
316 and is in a condition that allows DNA testing to be conducted;

317 (b) the chain of custody is sufficient to establish that the evidence has not been altered
318 in any material aspect;

319 (c) the individual identifies the specific evidence to be tested and states a theory of
320 defense, not inconsistent with theories previously asserted at trial, that the requested DNA
321 testing would support;

322 (d) the evidence was not previously subjected to DNA testing, or if the evidence was
323 tested previously, the evidence was not subjected to the testing that is now requested, and the
324 new testing may resolve an issue not resolved by the prior testing;

325 (e) the proposed DNA testing is generally accepted as valid in the scientific field or is
326 otherwise admissible under Utah law;

327 (f) the evidence that is the subject of the request for testing:

328 (i) has the potential to produce new, noncumulative evidence; and

329 (ii) there is a reasonable probability that the defendant would not have been convicted
330 or would have received a lesser sentence if the evidence had been presented at the original trial;
331 and

332 (g) the individual is aware of the consequences of filing the petition, including:

333 (i) the consequences specified in Sections [78B-9-302](#) and [78B-9-304](#); and

334 (ii) that the individual is waiving any statute of limitations in all jurisdictions as to any
335 felony offense the individual has committed which is identified through DNA database

336 comparison.

337 (3) The petition under Subsection (2) shall comply with Utah Rules of Civil Procedure,
338 Rule 65C, including providing the underlying criminal case number.

339 (4) After a petition is filed under this section, prosecutors, law enforcement officers,
340 and crime laboratory personnel have a duty to cooperate in preserving evidence and in
341 determining the sufficiency of the chain of custody of the evidence which may be subject to
342 DNA testing.

343 (5) (a) (i) An individual who files a petition under this section shall serve notice upon
344 the office of the prosecutor who obtained the conviction, and upon the Utah attorney general.

345 (ii) The attorney general shall, within 30 days after receipt of service of a copy of the
346 petition, or within any additional period of time the court allows, answer or otherwise respond
347 to all proceedings initiated under this part.

348 (b) After the attorney general responds under Subsection (5)(a), the petitioner has the
349 right to reply to the response of the attorney general.

350 (c) After the attorney general and the petitioner have filed a response and reply in
351 compliance with Subsection (5)(b), the court shall order DNA testing if it finds by a
352 preponderance of the evidence that all criteria of Subsection (2) have been met.

353 (6) (a) If the court grants the petition for testing, the DNA test shall be performed by
354 the Utah State Crime Laboratory within the Criminal Investigations and Technical Services
355 Division created in Section 53-10-103, unless the individual establishes that the state crime
356 laboratory has a conflict of interest or does not have the capability to perform the necessary
357 testing.

358 (b) If the court orders that the testing be conducted by any laboratory other than the
359 state crime laboratory, the court shall require that the testing be performed:

360 (i) under reasonable conditions designed to protect the state's interests in the integrity
361 of the evidence; and

362 (ii) according to accepted scientific standards and procedures.

363 (7) (a) Except as provided in Subsection (10), DNA testing under this section shall be
364 paid for from funds appropriated to the Department of Public Safety under Subsection
365 53-10-407(4)(d)(ii) from the DNA Specimen Restricted Account created in Section 53-10-407
366 if:

367 (i) the court ordered the DNA testing under this section;

368 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical
369 Services Division has a conflict of interest or does not have the capability to perform the
370 necessary testing; and

371 (iii) the petitioner who has filed for postconviction DNA testing under Section
372 78B-9-201 is serving a sentence of imprisonment and is indigent.

373 (b) Under this Subsection (7), costs of DNA testing include costs that are necessary to
374 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
375 of findings.

376 (8) [Hf] Except as provided in Subsection (10), if the individual is serving a sentence of
377 imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but
378 if the result is not favorable to the individual, the court may order the individual to reimburse
379 the state for the costs of the testing, in accordance with Subsections 78B-9-302(4) and
380 78B-9-304(1)(b).

381 (9) Any victim of the crime regarding which the individual petitions for DNA testing,
382 who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney
383 of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.

384 (10) A court order requiring DNA testing under this section may include an order to
385 perform an investigative genetic genealogy service or a genetic genealogy database search only
386 if:

387 (a) the individual requests an investigative genetic genealogy service or a genetic
388 genealogy database search;

389 (b) the individual demonstrates no other available DNA test can provide:

390 (i) a conclusive result; or

391 (ii) any result due to the nature or quantity of the DNA evidence;

392 (c) the investigative genetic genealogy service or genetic genealogy database search
393 will be performed in accordance with the requirements described in Subsection (6); and

394 (d) the individual covers the expenses of the investigative genetic genealogy service or
395 genetic genealogy database search.

396 Section 6. Section 78B-9-302 is amended to read:

397 **78B-9-302. Effect of petition for postconviction DNA testing -- Requests for**

398 **appointment of counsel -- Appeals -- Subsequent postconviction petitions.**

399 (1) The filing of a petition for DNA testing constitutes the person's consent to provide
400 samples of body fluids for use in the DNA testing.

401 (2) The data from any DNA samples or test results obtained as a result of the petition
402 may be entered into law enforcement DNA databases.

403 (3) The filing of a petition for DNA testing constitutes the person's waiver of any
404 statute of limitations in all jurisdictions as to any felony offense the person has committed
405 which is identified through DNA database comparison.

406 (4) The person filing the petition for postconviction DNA testing bears the cost of the
407 testing unless:

408 (a) the person is serving a sentence of imprisonment;

409 (b) the person is indigent; [~~and~~]

410 (c) the DNA test is favorable to the petitioner[:]; and

411 (d) the DNA testing is not an investigative genetic genealogy service or a genetic
412 genealogy database search in accordance with Subsection [78B-9-301\(10\)](#).

413 (5) (a) Subsections [78B-9-109\(1\)](#) and (2), regarding the appointment of pro bono
414 counsel, apply to any request for the appointment of counsel under this part.

415 (b) Subsection [78B-9-109\(3\)](#), regarding effectiveness of counsel, applies to subsequent
416 postconviction petitions and to appeals under this part.

417 **Section 7. Repealer.**

418 This bill repeals:

419 Section [78B-9-300](#), Title.