

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: Steve Eliason

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 remedies for certain law enforcement investigation violations;



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

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **53-10-403.5**, as last amended by Laws of Utah 2020, Chapter 415

40 **63M-7-204**, as last amended by Laws of Utah 2022, Chapter 187

41 **78B-9-301**, as last amended by Laws of Utah 2022, Chapter 274

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 CODIS-eligible profiles, if any, developed in the case revealed
105 no 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), a law enforcement
138 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 or request the genetic genealogy company to configure
151 service site user settings that control access to the DNA submitted by the law enforcement
152 agency and associated account information in a manner that will prevent the information from
153 being viewed by other service users.

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

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

166 (i) if applicable, verify with confirmatory genetic testing that the DNA obtained from
167 the crime scene could have originated from the individual;

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

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

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

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

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

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

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

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

181 (c) shall ensure that a DNA specimen and associated genetic information is:
182 (i) retained in conformance with applicable laws; and
183 (ii) destroyed once permitted under applicable laws.
184 (8) (a) A violation of this section does not confer standing to a criminal defendant to
185 request the suppression of evidence unless a court determines that the violation led to a
186 deprivation of the defendant's constitutional rights.

187 (b) If a court in a civil suit finds that an employee or agent of a law enforcement
188 agency knowingly has violated a provision of this section, the court shall order that the
189 employee or agent may not participate in another search under this section for one year.

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

191 **CHAPTER 22. REPORTING REQUIREMENTS FOR GENETIC GENEALOGY**
192 **DATABASE SEARCHES**

193 **53-22-101. Law enforcement reporting requirements for genetic genealogy**
194 **database searches -- Report.**

195 (1) As used in this section:

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

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

200 (c) "Law enforcement agency" means the same as that term is defined in Section
201 [53-1-102](#).

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

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

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

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

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

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

215 (4) The commission shall:

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

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

218 (c) annually on or before August 1, publish a report of the data described in Subsection

219 (2) on the commission's website.

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

221 **63M-7-204. Duties of commission.**

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

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

224 (b) promote the communication and coordination of all criminal and juvenile justice
225 agencies;

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

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

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

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

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

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

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

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

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

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

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

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

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

259 (iii) defining and developing state and local programs and projects associated with the
260 improvement of information management for law enforcement and the administration of
261 justice; and

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

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

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

269 (p) request, receive, and evaluate data and recommendations collected and reported by
270 agencies and contractors related to policies recommended by the commission regarding
271 recidivism reduction, including the data described in Section 13-53-111 and Subsection
272 62A-15-103(2)(l);

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

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

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

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

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

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

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

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

289 (i) ensuring oversight and accountability;

290 (ii) supporting local corrections systems;

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

292 (iv) strengthening probation and parole supervision;

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

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

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

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

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

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

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

310 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
311 **Notification of victim -- Investigative genetic genealogy.**

312 (1) As used in this part:

313 (a) "DNA" means deoxyribonucleic acid.

314 (b) "Factually innocent" means the same as that term is defined in Section
315 [78B-9-401.5](#).

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

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

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

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

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

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

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

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

335 (f) the evidence that is the subject of the request for testing;

336 (i) has the potential to produce new, noncumulative evidence; and
337 (ii) there is a reasonable probability that the defendant would not have been convicted
338 or would have received a lesser sentence if the evidence had been presented at the original trial;
339 and

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

341 (i) the consequences specified in Sections 78B-9-302 and 78B-9-304; and

342 (ii) that the individual is waiving any statute of limitations in all jurisdictions as to any
343 felony offense the individual has committed which is identified through DNA database
344 comparison.

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

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

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

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

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

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

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

366 (b) If the court orders that the testing be conducted by any laboratory other than the

367 state crime laboratory, the court shall require that the testing be performed:

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

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

371 (7) (a) DNA testing under this section shall be paid for from funds appropriated to the
372 Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen
373 Restricted Account created in Section 53-10-407 if:

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

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

378 (iii) the petitioner who has filed for postconviction DNA testing under Section
379 78B-9-201 is serving a sentence of imprisonment and is indigent.

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

383 (8) If the individual is serving a sentence of imprisonment and is indigent, the state
384 shall pay for the costs of the testing under this part, but if the result is not favorable to the
385 individual, the court may order the individual to reimburse the state for the costs of the testing,
386 in accordance with Subsections 78B-9-302(4) and 78B-9-304(1)(b).

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

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

393 (a) the individual requests an investigative genetic genealogy service or a genetic
394 genealogy database search;

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

396 (i) a conclusive result; or

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

398 (c) the individual demonstrates that an investigative genetic genealogy service or a
399 genetic genealogy database search may reasonably be expected to provide meaningful
400 information about the identity of the perpetrator;

401 (d) the investigative genetic genealogy service or genetic genealogy database search
402 will be performed in accordance with the requirements described in Subsection (6); and

403 (e) if applicable, the individual or a third party agrees to pay for additional
404 investigative expenses that may occur subsequent to the investigative genetic genealogy service
405 or genetic genealogy database search.

406 Section 6. **Repealer.**

407 This bill repeals:

408 Section **78B-9-300**, Title.