

## SB0156S02 compared with SB0156

~~{deleted text}~~ shows text that was in SB0156 but was deleted in SB0156S02.

inserted text shows text that was not in SB0156 but was inserted into SB0156S02.

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~~{FORENSIC DNA AMENDMENTS}~~ Senator Todd Weiler proposes the following substitute bill:

### INVESTIGATIVE GENETIC GENEALOGY MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill concerns the use of investigative ~~{searches for}~~ genetic ~~{information}~~ genealogy.

##### Highlighted Provisions:

This bill:

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

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

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

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

REPEALS:

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

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

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

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### 53-10-403.5. Definitions.

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

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

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

(3) "Conviction" means:

(a) a verdict or conviction;

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

(c) a plea of no contest; or

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

(4) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

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

**53-10-403.7. ~~{ Genetic}~~ Investigative genetic genealogy service --**

**~~{Genealogy}~~ Genetic genealogy database search -- Third-party specimens --**

### **Requirements.**

(1) As used in this section:

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

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

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

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

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

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

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

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

(i) a violent felony;

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

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

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

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

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

~~(i)A)~~ the perpetrator of a crime;

~~(i)B)~~ the remains of an unidentified individual; or

~~(i)C)~~ a missing ~~(person)~~or unknown individual;

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

~~(c)iii)~~ a routine search of ~~(CODIS)~~CODIS-eligible profiles, if any, developed in the case revealed no DNA matches to the DNA profile;

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(~~f~~~~d~~~~i~~~~v~~) the law enforcement agency~~, the bureau,~~ and the prosecuting agency consult and agree that the investigative genetic genealogy service or genetic genealogy database search is an appropriate and necessary step in the development of information that may contribute to solving the case; and

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

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

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

(i) consult with the prosecuting agency; and

(ii) (A) obtain informed, voluntary consent from the individual providing the third-party DNA specimen; or

(B) if the law enforcement agency concludes that the case-specific circumstances provide reasonable grounds to believe that a request for informed, voluntary consent would compromise the integrity of the investigation, obtain from the prosecuting agency authorization for a covert collection of the third-party DNA specimen.

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

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

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

(a) identify a possible suspect;

(b) exonerate a possible suspect; or

(c) identify a missing or unknown individual.

(5) When requesting ~~f~~~~a~~an investigative genetic genealogy service or genetic

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genealogy database search from a genetic genealogy company under Subsection (2) ~~or (3)~~, a law enforcement agency shall:

(a) disclose to the genetic genealogy company that the request is from a law enforcement agency;

(b) only make a request to a genetic genealogy company that:

(i) provides notice to the genetic genealogy company's service users and the public that law enforcement may use the genetic genealogy company's services to investigate crimes or to identify unidentified human remains; and

(ii) has a policy that prevents the genetic genealogy company from compiling, selling, licensing, or transferring to a third party any data generated by the genetic genealogy company concerning a victim, crime scene, or suspect;

(c) confirm that the request is permitted under the terms of service for the genetic genealogy company; and

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

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

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

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

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(ii) if applicable, make a prompt, formal request to the genetic genealogy company to:  
(A) provide the DNA information and any associated account information related to the charged crime directly to the law enforcement agency; and

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

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

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

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

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

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

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

(i) retained in conformance with applicable laws; and

(ii) destroyed once permitted under applicable laws.

(8) (a) A violation of this section does not confer standing to a criminal defendant to request the suppression of evidence unless a court determines that the violation led to a deprivation of the defendant's constitutional rights.

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

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

### CHAPTER 22. REPORTING REQUIREMENTS FOR GENETIC GENEALOGY DATABASE SEARCHES

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

(1) As used in this section:

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

(b) "~~{Genealogy}~~Genetic genealogy database search" means the same as that term is

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defined in Section 53-10-403.7.

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

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

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

(i) the number of **genetic** genealogy database searches requested by the law enforcement agency under Section 53-10-403.7; and

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

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

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

(4) The commission shall:

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

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

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

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

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

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

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

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

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

(d) study, evaluate, and report on programs initiated by state and local agencies to

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address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

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

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

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

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

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

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

(k) provide a comprehensive criminal justice plan annually;

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

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

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

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

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

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justice; and

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

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

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

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

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

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

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

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

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

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

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

(i) ensuring oversight and accountability;

(ii) supporting local corrections systems;

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

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(iv) strengthening probation and parole supervision;

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

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

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

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

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

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

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

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

(1) As used in this part:

(a) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The attorney general shall, within 30 days after receipt of service of a copy of the

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petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

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

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

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

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

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

(ii) according to accepted scientific standards and procedures.

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

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

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

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

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

(8) If the individual is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the

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individual, the court may order the individual to reimburse the state for the costs of the testing, in accordance with Subsections 78B-9-302(4) and 78B-9-304(1)(b).

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

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

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

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

(i) a conclusive result; or

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

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

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

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

Section 6. **Repealer.**

This bill repeals:

Section 78B-9-300, Title.