

DNA COLLECTION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the provisions of the Public Safety Code regarding the collection of DNA from offenders.

Highlighted Provisions:

This bill:

- ▶ provides that law enforcement agencies may collect DNA samples at the time of booking for any person arrested for any felony offense beginning May 13, 2014 through December 31, 2014; and
- ▶ on and after January 1, 2015, requires law enforcement agencies to collect DNA samples at the time of booking for any person arrested for any felony offense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-403, as last amended by Laws of Utah 2013, Chapter 344

53-10-404, as last amended by Laws of Utah 2012, Chapter 145

53-10-404.5, as enacted by Laws of Utah 2010, Chapter 405

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

Section 1. Section **53-10-403** is amended to read:

30 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

31 (1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person
32 who:

33 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
34 (2)(a) or (b) on or after July 1, 2002;

35 (b) has pled guilty to or has been convicted by any other state or by the United States
36 government of an offense which if committed in this state would be punishable as one or more
37 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

38 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
39 offense under Subsection (2)(c); ~~or~~

40 (d) has been booked:

41 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
42 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

43 (ii) on or after January 1, 2015, for any felony offense; or

44 ~~(d)~~ (e) is a minor under Subsection (3).

45 (2) Offenses referred to in Subsection (1) are:

46 (a) any felony or class A misdemeanor under the Utah Code;

47 (b) any offense under Subsection (2)(a):

48 (i) for which the court enters a judgment for conviction to a lower degree of offense
49 under Section 76-3-402; or

50 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
51 defined in Section 77-2a-1; or

52 (c) (i) any violent felony as defined in Section 53-10-403.5;

53 (ii) sale or use of body parts, Section 26-28-116;

54 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

55 (iv) driving with any amount of a controlled substance in a person's body and causing
56 serious bodily injury or death, Subsection 58-37-8(2)(g);

57 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

- 58 (vi) a felony violation of propelling a substance or object at a correctional or peace
- 59 officer, Section 76-5-102.6;
- 60 (vii) aggravated human trafficking and aggravated human smuggling, Section
- 61 76-5-310;
- 62 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 63 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 64 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 65 (xi) sale of a child, Section 76-7-203;
- 66 (xii) aggravated escape, Subsection 76-8-309(2);
- 67 (xiii) a felony violation of assault on an elected official, Section 76-8-315;
- 68 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of
- 69 Pardons and Parole, Section 76-8-316;
- 70 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 71 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 72 (xvii) a felony violation of sexual battery, Section 76-9-702.1;
- 73 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 74 (xix) a felony violation of abuse or desecration of a dead human body, Section
- 75 76-9-704;
- 76 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
- 77 76-10-402;
- 78 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
- 79 Section 76-10-403;
- 80 (xxii) possession of a concealed firearm in the commission of a violent felony,
- 81 Subsection 76-10-504(4);
- 82 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,
- 83 Subsection 76-10-1504(3);
- 84 (xxiv) commercial obstruction, Subsection 76-10-2402(2);
- 85 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section

86 77-41-107;

87 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

88 (xxvii) violation of condition for release after arrest for domestic violence, Section

89 77-36-2.5.

90 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah
91 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission
92 of any offense described in Subsection (2), and who is:

93 (a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense
94 under Subsection (2); or

95 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
96 2002 for an offense under Subsection (2).

97 Section 2. Section 53-10-404 is amended to read:

98 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

99 (1) As used in this section, "person" refers to any person as described under Section
100 53-10-403.

101 (2) (a) A person under Section 53-10-403 or any person added to the sex offender
102 register as defined in Section 77-41-102 shall provide a DNA specimen and shall reimburse the
103 agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA
104 specimen unless:

105 (i) the person was booked under Section 53-10-403 and is not required to reimburse the
106 agency under Section 53-10-404.5; or

107 (ii) the agency determines the person lacks the ability to pay.

108 (b) (i) (A) The responsible agencies shall establish guidelines and procedures for
109 determining if the person is able to pay the fee.

110 (B) An agency's implementation of Subsection (2)(b)(~~ii~~)(i) meets an agency's
111 obligation to determine an inmate's ability to pay.

112 (ii) An agency's guidelines and procedures may provide for the assessment of \$150 on
113 the inmate's county trust fund account and may allow a negative balance in the account until

114 the \$150 is paid in full.

115 (3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA
116 Specimen Restricted Account created in Section 53-10-407, except that the agency collecting
117 the fee may retain not more than \$25 per individual specimen for the costs of obtaining the
118 saliva DNA specimen.

119 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than
120 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

121 (b) The responsible agency shall determine the method of collecting the DNA
122 specimen. Unless the responsible agency determines there are substantial reasons for using a
123 different method of collection or the person refuses to cooperate with the collection, the
124 preferred method of collection shall be obtaining a saliva specimen.

125 (c) The responsible agency may use reasonable force, as established by its guidelines
126 and procedures, to collect the DNA sample if the person refuses to cooperate with the
127 collection.

128 (d) If the judgment places the person on probation, the person shall submit to the
129 obtaining of a DNA specimen as a condition of the probation.

130 (e) (i) Under this section a person is required to provide one DNA specimen and pay
131 the collection fee as required under this section.

132 (ii) The person shall provide an additional DNA specimen only if the DNA specimen
133 previously provided is not adequate for analysis.

134 (iii) The collection fee is not imposed for a second or subsequent DNA specimen
135 collected under this section.

136 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect
137 any outstanding amount of a fee due under this section from any person who owes any portion
138 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section
139 53-10-407.

140 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
141 possible and transferred to the Department of Public Safety:

142 (i) after a conviction or a finding of jurisdiction by the juvenile court; ~~[and]~~
143 (ii) on and after January 1, 2011, through December 31, 2014, after the booking of a
144 person for any offense under Subsection 53-10-403(1)(c)[-]; and
145 (iii) on and after January 1, 2015, after the booking of a person for any felony offense,
146 as provided under Subsection 53-10-403(1)(d)(ii).

147 (b) On and after May 13, 2014, through December 31, 2014, the responsible agency
148 may cause a DNA specimen to be obtained and transferred to the Department of Public Safety
149 after the booking of a person for any felony offense, as provided under Subsection
150 53-10-403(1)(d)(i).

151 ~~[(b)]~~ (c) If notified by the Department of Public Safety that a DNA specimen is not
152 adequate for analysis, the agency shall, as soon as possible:

- 153 (i) obtain and transmit an additional DNA specimen; or
- 154 (ii) request that another agency that has direct access to the person and that is
155 authorized to collect DNA specimens under this section collect the necessary second DNA
156 specimen and transmit it to the Department of Public Safety.

157 ~~[(c)]~~ (d) Each agency that is responsible for collecting DNA specimens under this
158 section shall establish:

- 159 (i) a tracking procedure to record the handling and transfer of each DNA specimen it
160 obtains; and
- 161 (ii) a procedure to account for the management of all fees it collects under this section.

162 (5) (a) The Department of Corrections is the responsible agency whenever the person is
163 committed to the custody of or is under the supervision of the Department of Corrections.

164 (b) The juvenile court is the responsible agency regarding a minor under Subsection
165 53-10-403(3), but if the minor has been committed to the legal custody of the Division of
166 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
167 minor has not previously been obtained by the juvenile court under Section 78A-6-117.

168 (c) The sheriff operating a county jail is the responsible agency regarding the collection
169 of DNA specimens from persons who:

170 (i) have pled guilty to or have been convicted of an offense listed under Subsection
171 53-10-403(2) but who have not been committed to the custody of or are not under the
172 supervision of the Department of Corrections;

173 (ii) are incarcerated in the county jail:

174 (A) as a condition of probation for a felony offense; or

175 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

176 [and]

177 (iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail
178 for any offense under Subsection 53-10-403(1)(c)[-]; and

179 (iv) are booked at the county jail:

180 (A) by a law enforcement agency that is obtaining a DNA specimen for any felony
181 offense on or after May 13, 2014, through December 31, 2014, under Subsection

182 53-10-404(4)(b); or

183 (B) on or after January 1, 2015, for any felony offense.

184 (d) Each agency required to collect a DNA specimen under this section shall:

185 (i) designate employees to obtain the saliva DNA specimens required under this
186 section; and

187 (ii) ensure that employees designated to collect the DNA specimens receive appropriate
188 training and that the specimens are obtained in accordance with generally accepted protocol.

189 (6) (a) As used in this Subsection (6), "department" means the Department of
190 Corrections.

191 (b) Priority of obtaining DNA specimens by the department is:

192 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
193 of or under the supervision of the department before these persons are released from
194 incarceration, parole, or probation, if their release date is prior to that of persons under
195 Subsections (6)(b)(ii), but in no case later than July 1, 2004; and

196 (ii) second, the department shall obtain DNA specimens from persons who are
197 committed to the custody of the department or who are placed under the supervision of the

198 department after July 1, 2002, within 120 days after the commitment, if possible, but not later
199 than prior to release from incarceration if the person is imprisoned, or prior to the termination
200 of probation if the person is placed on probation.

201 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
202 is:

- 203 (i) first, persons on probation;
- 204 (ii) second, persons on parole; and
- 205 (iii) third, incarcerated persons.

206 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
207 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
208 specimens from persons in the custody of or under the supervision of the Department of
209 Corrections as of July 1, 2002, prior to their release.

210 (7) (a) As used in this Subsection (7):

- 211 (i) "Court" means the juvenile court.
- 212 (ii) "Division" means the Division of Juvenile Justice Services.

213 (b) Priority of obtaining DNA specimens by the court from minors under Section
214 [53-10-403](#) who are under the jurisdiction of the court but who are not in the legal custody of
215 the division shall be:

216 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the court's
217 jurisdiction, prior to termination of the court's jurisdiction over these minors; and

218 (ii) second, to obtain specimens from minors who are found to be within the court's
219 jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the
220 court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction
221 over the minor.

222 (c) Priority of obtaining DNA specimens by the division from minors under Section
223 [53-10-403](#) who are committed to the legal custody of the division shall be:

224 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the
225 division's legal custody and who have not previously provided a DNA specimen under this

226 section, prior to termination of the division's legal custody of these minors; and

227 (ii) second, to obtain specimens from minors who are placed in the legal custody of the
228 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the
229 division, if possible, but not later than prior to termination of the court's jurisdiction over the
230 minor.

231 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile
232 Justice Services, and all law enforcement agencies in the state shall by policy establish
233 procedures for obtaining saliva DNA specimens, and shall provide training for employees
234 designated to collect saliva DNA specimens.

235 (b) (i) The department may designate correctional officers, including those employed
236 by the adult probation and parole section of the department, to obtain the saliva DNA
237 specimens required under this section.

238 (ii) The department shall ensure that the designated employees receive appropriate
239 training and that the specimens are obtained in accordance with accepted protocol.

240 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

241 Section 3. Section 53-10-404.5 is amended to read:

242 **53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon**
243 **conviction.**

244 (1) (a) When a sheriff books a person for any offense under [~~Subsection~~] Subsections
245 53-10-403(1)(c) and (d), the sheriff shall obtain a DNA specimen from the person upon
246 booking of the person at the county jail, except under Subsection (1)(b).

247 (b) If at the time of booking the sheriff is able to obtain information from the bureau
248 stating that the bureau has on file a DNA specimen for the person, the sheriff is not required to
249 obtain an additional DNA specimen.

250 (2) The person booked under Subsection (1) shall pay a fee of \$150 for the cost of
251 obtaining the DNA specimen if:

252 (a) the charge upon which the booking is based is resolved by a conviction or the
253 person is convicted of any charge arising out of the same criminal episode regarding which the

254 DNA specimen was obtained; and

255 (b) the person's DNA sample is not on file under Subsection (1)(b).

256 (3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen
257 Restricted Account created in Section [53-10-407](#), except that the agency collecting the fee may
258 retain not more than \$25 per individual specimen for the costs of obtaining the DNA specimen.

259 (b) The agency collecting the \$150 fee may not retain from each separate fee more than
260 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

261 (4) Any DNA specimen obtained under this section shall be held and may not be
262 processed until:

263 (a) the court has bound the person over for trial following a preliminary hearing for any
264 charge arising out of the same criminal episode regarding which the person was booked;

265 (b) the person has waived the preliminary hearing for any charge arising out of the
266 same criminal episode regarding which the person was booked; or

267 (c) a grand jury has returned an indictment for any charge arising out of the same
268 criminal episode regarding which the person was booked.