

**Representative Steve Eliason** proposes the following substitute bill:

**DNA SPECIMEN ANALYSIS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to DNA specimen analysis and destruction.

**Highlighted Provisions:**

This bill:

- ▶ requires a sheriff to provide a person notice related to the destruction of a DNA specimen and removal of the person's DNA sample and records from a database;
- ▶ requires certain DNA specimen to be processed and entered into a database;
- ▶ permits a person to request the destruction of the person's DNA specimen and related records under certain conditions; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

This bill appropriates in the fiscal year 2019:

- ▶ to the Department of Public Safety -- Public Safety Programs and Operations, as an ongoing appropriation:
  - from the General Fund, Ongoing, \$450,000.

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 [53-10-404.5](#), as last amended by Laws of Utah 2014, Chapter 331

28 [53-10-406](#), as last amended by Laws of Utah 2010, Chapter 405

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

31 Section 1. Section [53-10-404.5](#) is amended to read:

32 **[53-10-404.5. Obtaining DNA specimen at time of booking -- Payment of fee upon](#)**  
33 **conviction.**

34 (1) (a) When a sheriff books a person for any offense under Subsections  
35 [53-10-403](#)(1)(c) and (d), the sheriff shall:

36 (i) except as provided in Subsection (1)(b), obtain a DNA specimen from the person  
37 upon booking of the person at the county jail[~~, except under Subsection (1)(b).~~]; and

38 (ii) provide the person, in a manner the bureau specifies, notice of the process  
39 described in Subsection [53-10-406](#)(6)(b) to request destruction of the DNA specimen and  
40 removal of the person's DNA sample and DNA records from the database described in  
41 Subsection [53-10-406](#)(1)(d).

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

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

47 (a) the charge upon which the booking is based is resolved by a conviction or the  
48 person is convicted of any charge arising out of the same criminal episode regarding which the  
49 DNA specimen was obtained; and

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

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

54 (b) The agency collecting the \$150 fee may not retain from each separate fee more than  
55 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

56 (4) Any DNA specimen obtained under this section shall be ~~held and may not be~~

57 ~~processed until]~~ processed and entered into the database described in Subsection  
58 53-10-406(1)(d), if the DNA specimen is:

59 ~~[(a) the court has bound the person over for trial following a preliminary hearing for~~  
60 ~~any charge arising out of the same criminal episode regarding which the person was booked;]~~

61 ~~[(b) the person has waived the preliminary hearing for any charge arising out of the~~  
62 ~~same criminal episode regarding which the person was booked; or]~~

63 ~~[(c) a grand jury has returned an indictment for any charge arising out of the same~~  
64 ~~criminal episode regarding which the person was booked.]~~

65 (a) obtained in accordance with Subsections 53-10-403(1)(c) through (e); and

66 (b) in the possession of the bureau.

67 Section 2. Section **53-10-406** is amended to read:

68 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

69 (1) The bureau shall:

70 (a) administer and oversee the DNA specimen collection process;

71 (b) store ~~[all DNA specimens]~~ each DNA specimen received and other physical  
72 evidence obtained from analysis of ~~[those specimens]~~ each specimen;

73 (c) analyze ~~[the specimens]~~ each specimen, or contract with a qualified public or  
74 private laboratory to analyze the specimen, to establish the genetic profile of the donor or to  
75 otherwise determine the identity of ~~[persons or contract with other qualified public or private~~  
76 ~~laboratories to conduct the analysis]~~ the person;

77 (d) maintain a criminal identification data base containing information derived from  
78 DNA analysis;

79 (e) utilize the specimens to create statistical population frequency data bases, provided  
80 that genetic profiles or other information in a population frequency data base may not be  
81 identified with specific individuals;

82 (f) ensure that the DNA identification system does not provide information allowing  
83 prediction of genetic disease or predisposition to illness;

84 (g) ensure that only DNA markers routinely used or accepted in the field of forensic  
85 science are used to establish the gender and unique individual identification of the donor;

86 (h) utilize only those DNA analysis procedures that are consistent with, and do not  
87 exceed, procedures established and used by the Federal Bureau of Investigation for the forensic

88 analysis of DNA; and

89 ~~[(i) destroy a DNA specimen obtained under this part if criminal charges have not been~~  
90 ~~filed within 90 days after booking for an alleged offense under Subsection ~~53-10-403(2)(c);~~~~  
91 ~~and]~~

92 ~~[(j)]~~ (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
93 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA  
94 specimens and for storing and destroying DNA specimens and other physical evidence and  
95 criminal identification information obtained from the analysis.

96 (2) Procedures for DNA analysis may include all techniques which the ~~[Department of~~  
97 ~~Public Safety]~~ department determines are accurate and reliable in establishing identity,  
98 including ~~[but not limited to,]~~ analysis of DNA, antigen antibodies, polymorphic enzymes, or  
99 polymorphic proteins.

100 (3) (a) In accordance with Section ~~63G-2-305~~, ~~[all DNA specimens received shall be]~~  
101 each DNA specimen received is classified as protected.

102 (b) The ~~[Department of Public Safety]~~ department may not transfer or disclose any  
103 DNA specimen, physical evidence, or criminal identification information obtained, stored, or  
104 maintained under this section, except under ~~[its]~~ the provisions of this section.

105 (4) Notwithstanding Subsection ~~63G-2-202(1)~~, the department may deny inspection if  
106 ~~[it]~~ the department determines that there is a reasonable likelihood that the inspection would  
107 prejudice a pending criminal investigation.

108 (5) (a) The department shall adopt procedures governing the inspection of ~~[records;~~  
109 ~~DNA specimens, and challenges to the accuracy of records]~~ a record, a DNA specimen, and a  
110 challenge to the accuracy of a record.

111 (b) The procedures described in Subsection (5)(a) shall accommodate the need to  
112 preserve ~~[the materials]~~ material from contamination and destruction.

113 (6) A person whose DNA specimen ~~[has been]~~ is obtained under this part may,  
114 personally or through a legal representative, submit:

115 (a) to the court a motion for a court order requiring the destruction of the person's DNA  
116 specimen and any criminal identification record created in connection with that specimen if:

117 ~~[(a)]~~ (i) a final judgment reverses the conviction, judgment, or order that created an  
118 obligation to provide a DNA specimen; or

119 (ii) all charges arising from the same criminal episode for which the DNA specimen  
120 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of  
121 dismissal or acquittal; ~~[and] or~~

122 ~~[(b) the department determines that the person has not otherwise become obligated to~~  
123 ~~submit a DNA specimen as a result of any separate conviction or juvenile adjudication for any~~  
124 ~~offense listed in Subsection 53-10-403(2).]~~

125 (b) to the department a request for the destruction of the person's DNA specimen and  
126 removal of the person's DNA specimen and DNA records from the database described in  
127 Subsection (1)(d) if:

128 (i) no charge arising from the same criminal episode for which the DNA specimen was  
129 obtained under Subsection 53-10-404.5(1)(a) is filed against the person within one year after  
130 the day on which the person is booked; or

131 (ii) all charges arising from the same criminal episode for which the DNA specimen  
132 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of  
133 dismissal with prejudice or acquittal.

134 (7) A court order issued under Subsection (6)(a) may be accompanied by a written  
135 notice to the person advising that state law provides for expungement of criminal charges if the  
136 charge is resolved by a final judgment of dismissal or acquittal.

137 (8) ~~[Upon receipt of]~~ The department shall destroy the person's DNA specimen, all  
138 physical evidence obtained from the person's DNA specimen, and all criminal identification  
139 records related to the person, if:

140 (a) the person provides the department with:

141 (i) a court order for destruction [pursuant to] described in Subsection [(6) and receipt  
142 of] (6)(a); and

143 (ii) a certified copy of:

144 (A) the court order reversing the conviction, judgment, or order[~~-, a certified copy of~~];

145 (B) a court order to set aside the conviction[~~-, or a certified copy of~~]; or

146 (C) the dismissal or acquittal of the charge regarding which the person was arrested[~~-,~~  
147 the Department of Public Safety shall destroy any specimen received from the person, any  
148 physical evidence obtained from that specimen, and any criminal identification records  
149 pertaining to the person, unless prohibited under Subsection (6)(b).]; and

150 (b) the department determines that the person has not otherwise become obligated to  
151 submit a DNA specimen as a result of any separate conviction or juvenile adjudication for any  
152 offense listed in Subsection 53-10-403(2).

153 (9) The department shall destroy a person's DNA specimen and remove the person's  
154 DNA sample and DNA records from the database described in Subsection (1)(d), if:

155 (a) the person provides the department with:

156 (i) a written request for destruction of the DNA specimen and removal of the DNA  
157 sample and DNA records described in Subsection (6)(b); and

158 (ii) a certified copy of:

159 (A) a declination to prosecute from the prosecutor; or

160 (B) a court document that indicates all charges have been resolved by a final judgment  
161 of dismissal with prejudice or acquittal; and

162 (b) the department determines that the person is not obligated to submit a DNA  
163 specimen as a result of a separate conviction or juvenile adjudication for an offense listed in  
164 Subsection 53-10-403(2).

165 [~~9~~] (10) The department:

166 (a) is not required to destroy any item of physical evidence obtained from a DNA  
167 specimen if evidence relating to another person subject to the provisions of Sections 53-10-404  
168 and 53-10-405 would as a result be destroyed[;]; and

169 (b) may not destroy a person's DNA specimen or remove a person's DNA sample and  
170 DNA records from the database described in Subsection (1)(d) if the person has a prior  
171 conviction or a pending charge for which collection of a sample is authorized in accordance  
172 with Section 53-10-404.

173 [~~10~~] (11) A DNA specimen, physical evidence, or criminal identification record may  
174 not be affected by an order to set aside a conviction, except under the provisions of this section.

175 [~~11~~] (12) If funding is not available for analysis of any of the DNA specimens  
176 collected under this part, the bureau shall store the collected specimens until funding is made  
177 available for analysis through state or federal funds.

178 [~~12~~] (13) (a) (i) A person who, due to the person's employment or authority, has  
179 possession of or access to individually identifiable DNA information contained in the state  
180 criminal identification database or the state DNA specimen repository may not willfully

181 disclose the information in any manner to any individual, agency, or entity that is not entitled  
182 under this part to receive the information.

183 (ii) A person may not willfully obtain individually identifiable DNA information from  
184 the state criminal identification database or the state DNA repository other than as authorized  
185 by this part.

186 (iii) A person may not willfully analyze a DNA specimen for any purpose, or to obtain  
187 any information other than as required under this part.

188 (iv) A person may not willfully fail to destroy or fail to ensure the destruction of a  
189 DNA specimen when destruction is required by this part or by court order.

190 (b) (i) A person who violates Subsection [~~(+2)~~] (13)(a)(i), (ii), or (iii) is guilty of a third  
191 degree felony.

192 (ii) A person who violates Subsection [~~(+2)~~] (13)(a)(iv) is guilty of a class B  
193 misdemeanor.

194 Section 3. **Appropriation.**

195 The following sums of money are appropriated for the fiscal year beginning July 1,  
196 2019, and ending June 30, 2020. These are additions to amounts previously appropriated for  
197 fiscal year 2020. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
198 Act, the Legislature appropriates the following sums of money from the funds or accounts  
199 indicated for the use and support of the government of the state of Utah.

200 ITEM 1

201 To the Department of Public Safety -- Public Safety Programs and Operations

202 From General Fund, Ongoing \$450,000

203 Schedule of Programs:

204 CITS State Crime Labs \$450,000

205 The Legislature intends that the use of these funds is limited to the costs of obtaining,  
206 analyzing, and destroying DNA samples as well as maintaining a criminal identification  
207 database as these tasks are described in Title 53, Chapter 10, Part 4, Bureau of Forensic  
208 Services.