

FORENSIC DNA RETENTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns the destruction of DNA specimens from individuals booked for certain alleged offenses.

Highlighted Provisions:

This bill:

▶ for certain alleged offenses, requires the Bureau of Forensic Services:

• if criminal charges are not filed against an individual within 90 days after booking, to destroy the DNA specimen obtained from the individual within a specified time period; and

• to notify the individual that the individual's DNA specimen was destroyed;

▶ establishes a procedure for an individual whose DNA specimen is obtained as part of booking for certain alleged offenses to submit a motion for a court order requiring the destruction of the individual's DNA specimen; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **53-10-406**, as last amended by Laws of Utah 2010, Chapter 405

29

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

31 Section 1. Section **53-10-406** is amended to read:

32 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

33 (1) The bureau shall:

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

35 (b) store all DNA specimens received and other physical evidence obtained from
36 analysis of ~~[those]~~ the DNA specimens;

37 (c) analyze the DNA specimens to establish the genetic profile of the donor or to
38 otherwise determine the identity of persons or contract with other qualified public or private
39 laboratories to conduct the analysis;

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

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

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

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

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

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

55 (i) (i) destroy within 30 calendar days after the day on which the 90-day period expires
56 the DNA specimen obtained from the individual under this part if criminal charges are not filed
57 within 90 days after the day on which an individual is booked for an alleged offense under
58 Subsection **53-10-403**(2)(c); and

59 (ii) notify the individual that the individual's DNA specimen obtained under this part
60 has been destroyed within 10 business days after the day on which the DNA specimen is
61 destroyed, including the date of the destruction; and

62 (j) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
63 Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA
64 specimens and for storing and destroying DNA specimens and other physical evidence and
65 criminal identification information obtained from the analysis.

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

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

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

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

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

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

83 (6) [~~A person~~] An individual whose DNA specimen [~~has been~~] is obtained under this
84 part may, personally or through a legal representative, submit to the court a motion for a court
85 order requiring the destruction of the [~~person's~~] individual's DNA specimen and any criminal
86 identification record created in connection with that specimen if:

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

89 (ii) all charges arising from the same criminal episode for which the DNA specimen

90 was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of
91 dismissal or acquittal; ~~and~~ or

92 (iii) criminal charges are not filed within 90 calendar days after the day on which the
93 individual is booked for an alleged offense under Subsection 53-10-403(2)(c), 140 calendar
94 days have passed since the day on which the individual is booked, and the individual has not
95 received the notice described in Subsection (1)(i)(ii); and

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

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

102 (8) Upon receipt of a court order for destruction ~~[pursuant to]~~ under Subsection (6)
103 and, if applicable under Subsection (6)(a), receipt of a certified copy of the court order
104 reversing the conviction, judgment, or order, a certified copy of a court order to set aside the
105 conviction, or a certified copy of the dismissal or acquittal of the charge regarding which the
106 ~~[person]~~ individual was arrested, the ~~[Department of Public Safety]~~ department shall destroy
107 any DNA specimen received from the ~~[person]~~ individual, any physical evidence obtained from
108 that DNA specimen, and any criminal identification records pertaining to the ~~[person]~~
109 individual, unless prohibited under Subsection (6)(b).

110 (9) The department is not required to destroy any item of physical evidence obtained
111 from a DNA specimen if evidence relating to another ~~[person]~~ individual subject to the
112 provisions of Sections 53-10-404 and 53-10-405 would as a result be destroyed.

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

115 (11) If funding is not available for analysis of any of the DNA specimens collected
116 under this part, the bureau shall store the collected specimens until funding is made available
117 for analysis through state or federal funds.

118 (12) (a) (i) A person who, due to the person's employment or authority, has possession
119 of or access to individually identifiable DNA information contained in the state criminal
120 identification database or the state DNA specimen repository may not willfully disclose the

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

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

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

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

130 (b) (i) A person who violates Subsection (12)(a)(i), (ii), or (iii) is guilty of a third
131 degree felony.

132 (ii) A person who violates Subsection (12)(a)(iv) is guilty of a class B misdemeanor.