

1 **INVESTIGATIVE GENETIC GENEALOGY**

2 **MODIFICATIONS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd D. Weiler**

6 House Sponsor: Steve Eliason

8 **LONG TITLE**

9 **General Description:**

10 This bill concerns the use of investigative genetic genealogy.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines and modifies terms;
- 14 ▶ establishes requirements that a law enforcement agency is required to meet in order

15 to:

16 • request an investigative genetic genealogy service or a genetic genealogy

17 database utilization from a genetic genealogy company or the Bureau of

18 Forensic Services; and

19 • obtain and process a third-party DNA specimen for information regarding the

20 third-party individual's potential biological relatives;

21 ▶ provides limitations on:

- 22 • arrests and charges based on certain types of genetic information; and
- 23 • uses of certain genetic information;

24 ▶ establishes procedural requirements for retention and destruction of certain types of

25 genetic information;

26 ▶ establishes remedies for certain law enforcement investigation violations;

27 ▶ establishes law enforcement reporting requirements for certain investigative genetic

28 genealogy database utilizations;

29 ▶ requires the State Commission on Criminal and Juvenile Justice to receive, compile,

- 30 and publish data concerning certain law enforcement genetic genealogy utilizations;
- 31 ▶ creates provisions concerning postconviction relief involving an investigative
- 32 genetic genealogy service or a genetic genealogy database utilization; and
- 33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40 **53-10-403.5**, as last amended by Laws of Utah 2020, Chapter 415
- 41 **63M-7-204**, as last amended by Laws of Utah 2022, Chapter 187
- 42 **78B-9-301**, as last amended by Laws of Utah 2022, Chapter 274

43 ENACTS:

- 44 **53-10-403.7**, Utah Code Annotated 1953
- 45 **53-22-101**, Utah Code Annotated 1953

46 REPEALS:

- 47 **78B-9-300**, as enacted by Laws of Utah 2008, Chapter 358



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

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

51 **53-10-403.5. Definitions.**

52 As used in Sections **53-10-403**, **53-10-403.7**, **53-10-404**, **53-10-404.5**, **53-10-405**, and

53 **53-10-406**:

- 54 (1) "Bureau" means the Bureau of Forensic Services.
- 55 (2) "Combined DNA Index System" or "CODIS" means the program operated by the
- 56 Federal Bureau of Investigation to support criminal justice DNA databases and the software
- 57 used to run the databases.

- 58 (3) "Conviction" means:
- 59 (a) a verdict or conviction;
- 60 (b) a plea of guilty or guilty and mentally ill;
- 61 (c) a plea of no contest; or
- 62 (d) the acceptance by the court of a plea in abeyance.
- 63 (4) "DNA" means deoxyribonucleic acid.
- 64 (5) "DNA profile" means the patterns of fragments of DNA used to identify an
- 65 individual.
- 66 [~~(5)~~] (6) "DNA specimen" or "specimen" means a biological sample [~~of a person's~~
- 67 ~~saliva or blood, a biological sample~~] collected from an individual or a crime scene, or [a
- 68 sample] that is collected as part of an investigation.
- 69 [~~(6)~~] (7) "Final judgment" means a judgment, including any supporting opinion,
- 70 concerning which all appellate remedies have been exhausted or the time for appeal has
- 71 expired.
- 72 [~~(7)~~] (8) "Rapid DNA" means the fully automated process of developing a DNA
- 73 profile.
- 74 [~~(8)~~] (9) "Violent felony" means any offense under Section [76-3-203.5](#).
- 75 Section 2. Section **53-10-403.7** is enacted to read:
- 76 **53-10-403.7. Investigative genetic genealogy service -- Genetic genealogy database**
- 77 **utilization -- Third-party specimens -- Requirements.**
- 78 (1) As used in this section:
- 79 (a) "Genetic genealogy company" means a company that provides a genetic genealogy
- 80 database utilization or an investigative genetic genealogy service.
- 81 (b) "Genetic genealogy database utilization" means a utilization of a genetic
- 82 genealogical database for the purpose of identifying potential biological relatives to a DNA
- 83 profile.
- 84 (c) "Genetic information" means data acquired from an analysis of a DNA specimen.
- 85 (d) "Investigative genetic genealogy service" means the processing of an individual's

86 DNA specimen or genetic data file to be used for a genetic genealogy database utilization.

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

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

91 (i) a violent felony; or

92 (ii) the identity of a missing or unknown individual.

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

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

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

100 (A) the perpetrator of a crime;

101 (B) the remains of an unidentified individual; or

102 (C) a missing or unknown individual;

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

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

107 (iv) the law enforcement agency, the bureau, and the prosecuting agency consult
108 regarding whether an investigative genetic genealogy service or genetic genealogy database
109 utilization is an appropriate and necessary step in the development of information that may
110 contribute to solving the case; and

111 (v) the law enforcement agency and prosecuting agency commit to further investigation
112 of the case if the investigative genetic genealogy service or genetic genealogy database
113 utilization produces information that may contribute to solving the case; or

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

116 (3) (a) Before a law enforcement agency may collect a third-party DNA specimen for
117 the purpose of obtaining an investigative genetic genealogy service or a genetic genealogy
118 database utilization, the law enforcement agency shall:

119 (i) consult with the prosecuting agency; and

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

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

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

130 (c) A law enforcement agency that obtains a DNA specimen in accordance with
131 Subsection (3)(a)(ii)(B) shall obtain and process the DNA specimen in a lawful manner
132 including, if necessary, obtaining a search warrant.

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

135 (a) identify a possible suspect;

136 (b) exonerate a possible suspect; or

137 (c) identify a missing or unknown individual.

138 (5) When requesting an investigative genetic genealogy service or genetic genealogy
139 database utilization from a genetic genealogy company under Subsection (2), a law
140 enforcement agency shall:

141 (a) disclose to the genetic genealogy company that the request is from a law

142 enforcement agency;

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

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

147 (ii) allows a user to:

148 (A) opt in or out of having the user's data be accessible in an investigation requested by
149 law enforcement; and

150 (B) access the genetic genealogy company's services even if the user opts out of having
151 the user's data be accessible in an investigation requested by law enforcement; and

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

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

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

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

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

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

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

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

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

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

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

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

184 (a) may not request an investigative genetic genealogy service or a genetic genealogy
185 database utilization except as provided in this section;

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

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

189 (i) retained in conformance with applicable laws; and

190 (ii) destroyed once permitted under applicable laws.

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

194 (b) (i) If a court in a civil suit finds that an employee or agent of a law enforcement
195 agency knowingly has violated a provision of this section, the court shall order that the
196 employee or agent may not participate in another investigative genetic genealogy service or
197 genetic genealogy database utilization under this section for one year.

198 (ii) A finding or order under Subsection (8)(b)(i) may not constitute cause for a
199 judgment for monetary damages or attorney fees against the state or a governmental entity or an
200 individual employed by the state or a governmental entity.

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

202 **CHAPTER 22. REPORTING REQUIREMENTS FOR GENETIC GENEALOGY**
203 **DATABASE UTILIZATIONS**

204 **53-22-101. Law enforcement reporting requirements for genetic genealogy**
205 **database utilizations -- Report.**

206 (1) As used in this section:

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

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

211 (c) "Law enforcement agency" means the same as that term is defined in Section
212 [53-1-102](#).

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

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

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

219 (ii) for each utilization described in Subsection (2)(a)(i):

220 (A) if applicable, the type of qualifying case;

221 (B) for a criminal investigation, the alleged offense;

222 (C) whether the case was a cold case, as that term is defined in Section [53-10-115](#), at
223 the time of the request for the utilization; and

224 (D) whether the results of the utilization revealed the identity of the owner of the DNA
225 specimen.

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

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

231 (4) The commission shall:

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

233 (b) compile the data submitted under Subsection (2), including the number of genetic
234 genealogy database utilizations requested by each reporting law enforcement agency; and

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

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

238 **63M-7-204. Duties of commission.**

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

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

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

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

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

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

253 (f) identify and promote the implementation of specific policies and programs the

254 commission determines will significantly reduce crime in Utah;

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

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

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

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

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

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

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

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

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

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

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

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

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

286 (p) request, receive, and evaluate data and recommendations collected and reported by
287 agencies and contractors related to policies recommended by the commission regarding
288 recidivism reduction, including the data described in Section 13-53-111 and Subsection
289 62A-15-103(2)(l);

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

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

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

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

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

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

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

306 (i) ensuring oversight and accountability;

307 (ii) supporting local corrections systems;

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

309 (iv) strengthening probation and parole supervision;

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

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

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

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

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

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

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

327 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
328 **Notification of victim -- Investigative genetic genealogy.**

329 (1) As used in this part:

330 (a) "DNA" means deoxyribonucleic acid.

331 (b) "Factually innocent" means the same as that term is defined in Section
332 78B-9-401.5.

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

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

337 (2) An individual convicted of a felony offense may at any time file a petition for

338 postconviction DNA testing in the trial court that entered the judgment of conviction if the
339 individual asserts factual innocence under oath and the petition alleges:

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

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

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

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

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

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

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

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

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

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

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

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

364 (4) After a petition is filed under this section, prosecutors, law enforcement officers,
365 and crime laboratory personnel have a duty to cooperate in preserving evidence and in

366 determining the sufficiency of the chain of custody of the evidence which may be subject to
367 DNA testing.

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

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

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

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

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

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

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

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

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

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

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

394 necessary testing; and

395 (iii) the petitioner who has filed for postconviction DNA testing under Section
396 78B-9-201 is serving a sentence of imprisonment and is indigent.

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

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

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

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

410 (a) the individual requests an investigative genetic genealogy service or a genetic
411 genealogy database utilization;

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

413 (i) a conclusive result; or

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

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

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

420 (e) if applicable, the individual or a third party agrees to pay for additional

421 investigative expenses that may occur subsequent to the investigative genetic genealogy service

422 or genetic genealogy database utilization.

423 Section 6. **Repealer.**

424 This bill repeals:

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