

Senate Engrossed House Bill

~~survival of action; deceased sheriff~~
(now: DNA collection; felony arrests; expungement)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2102

AN ACT

AMENDING SECTIONS 13-610 AND 13-3967, ARIZONA REVISED STATUTES;
APPROPRIATING MONIES; RELATING TO DEOXYRIBONUCLEIC ACID TESTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-610, Arizona Revised Statutes, is amended to
3 read:

4 13-610. DNA testing

5 A. Within thirty days after a person is sentenced to the state
6 department of corrections or a person who is accepted under the interstate
7 compact for the supervision of parolees and probationers arrives in this
8 state, the state department of corrections shall secure a sufficient
9 sample of blood or other bodily substances for deoxyribonucleic acid
10 testing and extraction from the person if the person was convicted of an
11 offense listed in this section and was sentenced to a term of imprisonment
12 or was convicted of any offense that was committed in another jurisdiction
13 that if committed in this state would be a violation of any offense listed
14 in this section and the person is under the supervision of the state
15 department of corrections. The state department of corrections shall
16 transmit the sample to the department of public safety.

17 B. Within thirty days after a person is placed on probation and
18 sentenced to a term of incarceration in a county jail detention facility
19 or is detained in a county juvenile detention facility, the county
20 detention facility shall secure a sufficient sample of blood or other
21 bodily substances for deoxyribonucleic acid testing and extraction from
22 the person if the person was convicted of or adjudicated delinquent for an
23 offense listed in this section. The county detention facility shall
24 transmit the sample to the department of public safety.

25 C. Within thirty days after a person is convicted and placed on
26 probation without a term of incarceration or adjudicated delinquent and
27 placed on probation, the county probation department shall secure a
28 sufficient sample of blood or other bodily substances for deoxyribonucleic
29 acid testing and extraction from the person if the person was convicted of
30 or adjudicated delinquent for an offense listed in this section. The
31 county probation department shall transmit the sample to the department of
32 public safety.

33 D. Within thirty days after the arrival of a person who is accepted
34 under the interstate compact for the supervision of parolees and
35 probationers and who is under the supervision of a county probation
36 department, the county probation department shall secure a sufficient
37 sample of blood or other bodily substances for deoxyribonucleic acid
38 testing and extraction from the person if the person was convicted of an
39 offense that was committed in another jurisdiction that if committed in
40 this state would be a violation of any offense listed in this section and
41 was sentenced to a term of probation. The county probation department
42 shall transmit the sample to the department of public safety.

43 E. Within thirty days after a juvenile is committed to the
44 department of juvenile corrections, the department of juvenile corrections

1 shall secure a sufficient sample of blood or other bodily substances for
2 deoxyribonucleic acid testing and extraction from the youth if the youth
3 was adjudicated delinquent for an offense listed in this section and was
4 committed to a secure care facility. The department of juvenile
5 corrections shall transmit the sample to the department of public safety.

6 F. Within thirty days after the arrival in this state of a juvenile
7 who is accepted by the department of juvenile corrections pursuant to the
8 interstate compact on juveniles and who was adjudicated for an offense
9 that was committed in another jurisdiction that if committed in this state
10 would be a violation of any offense listed in this section, the compact
11 administrator shall request that the sending state impose as a condition
12 of supervision that the juvenile submit a sufficient sample of blood or
13 other bodily substances for deoxyribonucleic acid testing. If the sending
14 state does not impose that condition, the department of juvenile
15 corrections shall request a sufficient sample of blood or other bodily
16 substances for deoxyribonucleic acid testing within thirty days after the
17 juvenile's arrival in this state. The department of juvenile corrections
18 shall transmit the sample to the department of public safety.

19 G. Notwithstanding subsections A through F, K, L and O of this
20 section, the agency that is responsible for securing a sample pursuant to
21 this section shall not secure the sample if the scientific criminal
22 analysis section of the department of public safety has previously
23 received and is maintaining a sample sufficient for deoxyribonucleic acid
24 testing.

25 H. The department of public safety shall do all of the following:

26 1. Conduct or oversee through mutual agreement an analysis of the
27 samples that it receives pursuant to subsections K, L and O of this
28 section.

29 2. Make and maintain a report of the results of each
30 deoxyribonucleic acid analysis.

31 3. Maintain samples of blood and other bodily substances for at
32 least thirty-five years.

33 I. Any sample and the result of any test that is obtained pursuant
34 to this section or section 8-238 may be used only as follows:

35 1. For law enforcement identification purposes.

36 2. In a proceeding in a criminal prosecution or juvenile
37 adjudication.

38 3. In a proceeding under title 36, chapter 37.

39 J. If the conviction or adjudication of a person who is subject to
40 this section or section 8-238 is overturned on appeal or postconviction
41 relief and a final mandate has been issued, on petition of the person to
42 the superior court in the county in which the conviction occurred, the
43 court shall order that the person's deoxyribonucleic acid profile
44 resulting from that conviction or adjudication be expunged from the

1 Arizona deoxyribonucleic acid identification system established by section
2 41-2418 unless the person has been convicted or adjudicated delinquent of
3 another offense that would require the person to submit to
4 deoxyribonucleic acid testing pursuant to this section.

5 K. If a person is arrested for A FELONY OFFENSE OR any offense
6 listed in subsection 0, paragraph 3 of this section and is transferred by
7 the arresting authority to a state, county or local law enforcement agency
8 or jail, the arresting authority or its designee shall secure a sufficient
9 sample of buccal cells or other bodily substances for deoxyribonucleic
10 acid testing and extraction from the person for the purpose of determining
11 identification characteristics. The arresting authority or its designee
12 shall transmit the sample to the department of public safety.

13 L. A person who is charged with a felony or A misdemeanor offense
14 listed in subsection 0, paragraph 3 of this section and who is summoned to
15 appear in court for an initial appearance shall report within five days of
16 release on bail or on the person's own recognizance to the law enforcement
17 agency that investigated the person or its designee and submit a
18 sufficient sample of buccal cells or other bodily substances for
19 deoxyribonucleic acid testing and extraction. The arresting authority or
20 its designee shall transmit the sample to the department of public safety.

21 M. A person who is subject to subsection K or L of this section or
22 section 8-238 may petition the superior court in the county in which the
23 arrest occurred or the criminal charge was filed to order that the
24 person's deoxyribonucleic acid profile and sample be expunged from the
25 Arizona deoxyribonucleic acid identification system, unless the person has
26 been arrested, charged with or convicted of or adjudicated delinquent ~~of~~
27 FOR another offense that would require the person to submit to
28 deoxyribonucleic acid testing pursuant to this section, if any of the
29 following applies:

30 1. The criminal charges are not filed within the applicable period
31 prescribed by section 13-107.

32 2. The criminal charges are dismissed.

33 3. The person is acquitted at trial.

34 N. If any sample that is submitted to the department of public
35 safety under this section or section 8-238 is found to be unacceptable for
36 analysis and use or cannot be used by the department, the department shall
37 require that another sample of blood or other bodily substances be secured
38 pursuant to this section.

39 O. This section applies to persons who are:

40 1. Convicted of any felony offense.

41 2. Adjudicated delinquent for any of the following offenses:

42 (a) A violation or an attempt to violate any offense in chapter 11
43 of this title, any felony offense in chapter 14 or 35.1 of this title or
44 section 13-1507, 13-1508 or 13-3608.

1 (b) Any offense for which a person is required to register pursuant
2 to section 13-3821.

3 (c) A violation of any felony offense in chapter 34 of this title
4 that may be prosecuted pursuant to section 13-501, subsection B,
5 paragraph 2.

6 (d) A violation of any felony offense that is listed in section
7 13-501.

8 3. Arrested for a violation of ~~any offense in chapter 11 of this~~
9 ~~title, a violation of~~ section 13-1402, 13-1403, ~~13-1404, 13-1405, 13-1406,~~
10 ~~13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208,~~ 13-3214, ~~OR~~ 13-3555
11 ~~or 13-3608 or a violation of any serious offense as defined in section~~
12 ~~13-706 that is a dangerous offense.~~

13 4. ARRESTED FOR ANY FELONY OFFENSE.

14 P. THE AGENCY THAT IS RESPONSIBLE FOR SECURING A DEOXYRIBONUCLEIC
15 ACID SAMPLE PURSUANT TO THIS SECTION MUST DO BOTH OF THE FOLLOWING:

16 1. PROVIDE TO EACH PERSON WHO SUBMITS A SAMPLE BOTH ORAL AND
17 WRITTEN NOTICE THAT EXPLAINS THE EXPUNGEMENT PROCESS AND THAT INCLUDES
18 INSTRUCTIONS ON HOW TO REQUEST AN EXPUNGEMENT PURSUANT TO THIS SECTION.

19 2. POST ON THE AGENCY'S WEBSITE THE ELIGIBILITY CRITERIA FOR
20 EXPUNGEMENT AND THE INSTRUCTIONS ON HOW TO REQUEST AN EXPUNGEMENT PURSUANT
21 TO THIS SECTION.

22 Sec. 2. Section 13-3967, Arizona Revised Statutes, is amended to
23 read:

24 13-3967. Release on bailable offenses before trial;
25 definition

26 A. At his appearance before a judicial officer, any person who is
27 charged with a public offense that is bailable as a matter of right shall
28 be ordered released pending trial on his own recognizance or on the
29 execution of bail in an amount specified by the judicial officer.

30 B. In determining the method of release or the amount of bail, the
31 judicial officer, on the basis of available information, shall take into
32 account all of the following:

33 1. The views of the victim.

34 2. The nature and circumstances of the offense charged.

35 3. Whether the accused has a prior arrest or conviction for a
36 serious offense or violent or aggravated felony as defined in section
37 13-706 or an offense in another state that would be a serious offense or
38 violent or aggravated felony as defined in section 13-706 if committed in
39 this state.

40 4. Evidence that the accused poses a danger to others in the
41 community.

42 5. The results of a risk or lethality assessment in a domestic
43 violence charge that is presented to the court.

44 6. The weight of evidence against the accused.

- 1 7. The accused's family ties, employment, financial resources,
2 character and mental condition.
- 3 8. The results of any drug test submitted to the court.
- 4 9. Whether the accused is using any substance if its possession or
5 use is illegal pursuant to chapter 34 of this title.
- 6 10. Whether the accused violated section 13-3407, subsection A,
7 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
- 8 11. The length of residence in the community.
- 9 12. The accused's record of arrests and convictions.
- 10 13. The accused's record of appearance at court proceedings or of
11 flight to avoid prosecution or failure to appear at court proceedings.
- 12 14. Whether the accused has entered or remained in the United
13 States illegally.
- 14 15. Whether the accused's residence is in this state, in another
15 state or outside the United States.
- 16 C. If a judicial officer orders the release of a defendant who is
17 charged with a felony either on his own recognizance or on bail, the
18 judicial officer shall condition the defendant's release on the
19 defendant's good behavior while so released. On a showing of probable
20 cause that the defendant committed any offense during the period of
21 release, a judicial officer may revoke the defendant's release pursuant to
22 section 13-3968.
- 23 D. After providing notice to the victim pursuant to section
24 13-4406, a judicial officer may impose any of the following conditions on
25 a person who is released on his own recognizance or on bail:
 - 26 1. Place the person in the custody of a designated person or
27 organization agreeing to supervise him.
 - 28 2. Place restrictions on the person's travel, associates or place
29 of abode during the period of release.
 - 30 3. Require the deposit with the clerk of the court of cash or other
31 security, such deposit to be returned on the performance of the conditions
32 of release.
 - 33 4. Prohibit the person from possessing any deadly weapon or
34 engaging in certain described activities or indulging in intoxicating
35 liquors or certain drugs.
 - 36 5. Require the person to report regularly to and remain under the
37 supervision of an officer of the court.
 - 38 6. Impose any other conditions deemed reasonably necessary to
39 assure appearance as required including a condition requiring that the
40 person return to custody after specified hours.
- 41 E. In addition to any of the conditions a judicial officer may
42 impose pursuant to subsection D of this section, the judicial officer
43 shall impose both of the following conditions on a person who is charged

1 with a felony violation of chapter 14 or 35.1 of this title and who is
2 released on his own recognizance or on bail:

3 1. Electronic monitoring where available.

4 2. A condition prohibiting the person from having any contact with
5 the victim.

6 F. The judicial officer who authorizes the release of the person
7 charged on his own recognizance or on bail shall do all of the following:

8 1. Issue an appropriate order containing statements of the
9 conditions imposed.

10 2. Inform the person of the penalties that apply to any violation
11 of the conditions of release.

12 3. Advise the person that a warrant for his arrest may be issued
13 immediately on any violation of the conditions of release, including the
14 failure to submit to deoxyribonucleic acid testing ordered pursuant to
15 paragraph 4 of this subsection.

16 4. If the person is **ARRESTED FOR OR** charged with a felony or **A**
17 misdemeanor offense listed in section 13-610, subsection 0, paragraph 3
18 and is summoned to appear, order the person to report within five days to
19 the law enforcement agency that arrested the person or to the agency's
20 designee and submit a sufficient sample of buccal cells or other bodily
21 substances for deoxyribonucleic acid testing and extraction. If a person
22 does not comply with an order issued pursuant to this paragraph, the court
23 shall revoke the person's release.

24 G. At any time after providing notice to the victim pursuant to
25 section 13-4406, the judicial officer who orders the release of a person
26 on any condition specified in this section or the court in which a
27 prosecution is pending may amend the order to employ additional or
28 different conditions of release, including either an increase or reduction
29 in the amount of bail. On application, the defendant shall be entitled to
30 have the conditions of release reviewed by the judicial officer who
31 imposed them or by the court in which the prosecution is pending.
32 Reasonable notice of the application shall be given to the county attorney
33 and the victim.

34 H. Any information that is stated or offered in connection with any
35 order pursuant to this section need not conform to the rules pertaining to
36 admissibility of evidence in a court of law.

37 I. This section does not prevent the disposition of any case or
38 class of cases by forfeiture of bail or collateral security if such
39 disposition is authorized by the court.

40 J. A judicial officer who orders the release of a juvenile who has
41 been transferred to the criminal division of the superior court pursuant
42 to section 8-327 or who has been charged as an adult pursuant to section
43 13-501 shall notify the appropriate school district on the release of the
44 juvenile from custody.

1 K. For the purposes of this section and section 13-3968, "judicial
2 officer" means any person or court authorized pursuant to the constitution
3 or laws of this state to bail or otherwise release a person before trial
4 or sentencing or pending appeal.

5 Sec. 3. Appropriation; department of public safety; DNA
6 testing; exemption

7 A. The sum of \$1,100,000 is appropriated from the state general
8 fund in fiscal year 2022-2023 to the department of public safety for DNA
9 testing.

10 B. The appropriation made in subsection A of this section is exempt
11 from the provisions of section 35-190, Arizona Revised Statutes, relating
12 to lapsing of appropriations.