

REFERENCE TITLE: DNA collection; testing; felony arrests

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

HB 2572

Introduced by
Representatives Blackman: Payne

AN ACT

AMENDING SECTIONS 8-238, 13-610 AND 13-3967, ARIZONA REVISED STATUTES;
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 8-238, Arizona Revised Statutes, is amended to
3 read:

4 8-238. Advisory hearing; DNA

5 A. If a juvenile is **ARRESTED FOR OR** charged with a violation of any
6 of the following offenses and is summoned to appear at an advisory
7 hearing, the judicial officer shall order the juvenile to report within
8 five days to the law enforcement agency that investigated the juvenile or
9 to the agency's designee and submit a sufficient sample of buccal cells or
10 other bodily substances for deoxyribonucleic acid testing and extraction:

11 ~~1. An offense listed in title 13, chapter 11.~~

12 1. A **FELONY OFFENSE**.

13 2. A violation of section 13-1402, **OR** 13-1403, ~~13-1404, 13-1405,~~
14 ~~13-1406, 13-1410, 13-1411 or 13-1417.~~

15 ~~3. A violation of section 13-1507 or 13-1508.~~

16 ~~4. A violation of any serious offense as defined in section 13-706~~
17 ~~that is a dangerous offense as defined in section 13-105.~~

18 B. If a juvenile does not comply with an order issued pursuant to
19 subsection A of this section, the court shall revoke the juvenile's
20 release.

21 C. The investigating law enforcement agency or its designee shall
22 transmit the sample to the department of public safety.

23 D. Section 13-610, subsections H, I, J, K, M and N, ~~are applicable~~
24 **APPLY** to samples collected pursuant to this section.

25 Sec. 2. Section 13-610, Arizona Revised Statutes, is amended to
26 read:

27 13-610. DNA testing

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

40 B. Within thirty days after a person is placed on probation and
41 sentenced to a term of incarceration in a county jail detention facility
42 or is detained in a county juvenile detention facility, the county
43 detention facility shall secure a sufficient sample of blood or other
44 bodily substances for deoxyribonucleic acid testing and extraction from
45 the person if the person was convicted of or adjudicated delinquent for an

1 offense listed in this section. The county detention facility shall
 2 transmit the sample to the department of public safety.

3 C. Within thirty days after a person is convicted and placed on
 4 probation without a term of incarceration or adjudicated delinquent and
 5 placed on probation, the county probation department shall secure a
 6 sufficient sample of blood or other bodily substances for deoxyribonucleic
 7 acid testing and extraction from the person if the person was convicted of
 8 or adjudicated delinquent for an offense listed in this section. The
 9 county probation department shall transmit the sample to the department of
 10 public safety.

11 D. Within thirty days after the arrival of a person who is accepted
 12 under the interstate compact for the supervision of parolees and
 13 probationers and who is under the supervision of a county probation
 14 department, the county probation department shall secure a sufficient
 15 sample of blood or other bodily substances for deoxyribonucleic acid
 16 testing and extraction from the person if the person was convicted of an
 17 offense that was committed in another jurisdiction that if committed in
 18 this state would be a violation of any offense listed in this section and
 19 was sentenced to a term of probation. The county probation department
 20 shall transmit the sample to the department of public safety.

21 E. Within thirty days after a juvenile is committed to the
 22 department of juvenile corrections, the department of juvenile corrections
 23 shall secure a sufficient sample of blood or other bodily substances for
 24 deoxyribonucleic acid testing and extraction from the youth if the youth
 25 was adjudicated delinquent for an offense listed in this section and was
 26 committed to a secure care facility. The department of juvenile
 27 corrections shall transmit the sample to the department of public safety.

28 F. Within thirty days after the arrival in this state of a juvenile
 29 who is accepted by the department of juvenile corrections pursuant to the
 30 interstate compact on juveniles and who was adjudicated for an offense
 31 that was committed in another jurisdiction that if committed in this state
 32 would be a violation of any offense listed in this section, the compact
 33 administrator shall request that the sending state impose as a condition
 34 of supervision that the juvenile submit a sufficient sample of blood or
 35 other bodily substances for deoxyribonucleic acid testing. If the sending
 36 state does not impose that condition, the department of juvenile
 37 corrections shall request a sufficient sample of blood or other bodily
 38 substances for deoxyribonucleic acid testing within thirty days after the
 39 juvenile's arrival in this state. The department of juvenile corrections
 40 shall transmit the sample to the department of public safety.

41 G. Notwithstanding subsections A through F, K, L and O of this
 42 section, the agency that is responsible for securing a sample pursuant to
 43 this section shall not secure the sample if the scientific criminal
 44 analysis section of the department of public safety has previously

1 received and is maintaining a sample sufficient for deoxyribonucleic acid
2 testing.

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

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

7 2. Make and maintain a report of the results of each
8 deoxyribonucleic acid analysis.

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

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

13 1. For law enforcement identification purposes.

14 2. In a proceeding in a criminal prosecution or juvenile
15 adjudication.

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

17 J. If the conviction or adjudication of a person who is subject to
18 this section or section 8-238 is overturned on appeal or postconviction
19 relief and a final mandate has been issued, on petition of the person to
20 the superior court in the county in which the conviction occurred, the
21 court shall order that the person's deoxyribonucleic acid profile
22 resulting from that conviction or adjudication be expunged from the
23 Arizona deoxyribonucleic acid identification system established by section
24 41-2418 unless the person has been convicted or adjudicated delinquent of
25 another offense that would require the person to submit to
26 deoxyribonucleic acid testing pursuant to this section.

27 K. If a person is arrested for **A FELONY OFFENSE OR** any offense
28 listed in subsection O, paragraph 3 of this section and is transferred by
29 the arresting authority to a state, county or local law enforcement agency
30 or jail, the arresting authority or its designee shall secure a sufficient
31 sample of buccal cells or other bodily substances for deoxyribonucleic
32 acid testing and extraction from the person for the purpose of determining
33 identification characteristics. The arresting authority or its designee
34 shall transmit the sample to the department of public safety.

35 L. A person who is charged with a felony or **A** misdemeanor offense
36 listed in subsection O, paragraph 3 of this section and who is summoned to
37 appear in court for an initial appearance shall report within five days of
38 release on bail or on the person's own recognizance to the law enforcement
39 agency that investigated the person or its designee and submit a
40 sufficient sample of buccal cells or other bodily substances for
41 deoxyribonucleic acid testing and extraction. The arresting authority or
42 its designee shall transmit the sample to the department of public safety.

43 M. A person who is subject to subsection K or L of this section or
44 section 8-238 may petition the superior court in the county in which the
45 arrest occurred or the criminal charge was filed to order that the

1 person's deoxyribonucleic acid profile and sample be expunged from the
2 Arizona deoxyribonucleic acid identification system, unless the person has
3 been arrested, charged with or convicted of or adjudicated delinquent ~~of~~
4 **FOR** another offense that would require the person to submit to
5 deoxyribonucleic acid testing pursuant to this section, if any of the
6 following applies:

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

9 2. The criminal charges are dismissed.

10 3. The person is acquitted at trial.

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

16 0. This section applies to persons who are:

17 1. Convicted of any felony offense.

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

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

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

24 (c) A violation of any felony offense in chapter 34 of this title
25 that may be prosecuted pursuant to section 13-501, subsection B, paragraph
26 2.

27 (d) A violation of any felony offense that is listed in section
28 13-501.

29 3. Arrested for a violation of ~~any offense in chapter 11 of this~~
30 ~~title, a violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406,~~
31 ~~13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208, 13-3214, OR 13-3555~~
32 ~~or 13-3608 or a violation of any serious offense as defined in section~~
33 ~~13-706 that is a dangerous offense.~~

34 4. **ARRESTED FOR ANY FELONY OFFENSE.**

35 Sec. 3. Section 13-3967, Arizona Revised Statutes, is amended to
36 read:

37 13-3967. Release on bailable offenses before trial;
38 definition

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

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

- 1 1. The views of the victim.
- 2 2. The nature and circumstances of the offense charged.
- 3 3. Whether the accused has a prior arrest or conviction for a
4 serious offense or violent or aggravated felony as defined in section
5 13-706 or an offense in another state that would be a serious offense or
6 violent or aggravated felony as defined in section 13-706 if committed in
7 this state.
- 8 4. Evidence that the accused poses a danger to others in the
9 community.
- 10 5. The results of a risk or lethality assessment in a domestic
11 violence charge that is presented to the court.
- 12 6. The weight of evidence against the accused.
- 13 7. The accused's family ties, employment, financial resources,
14 character and mental condition.
- 15 8. The results of any drug test submitted to the court.
- 16 9. Whether the accused is using any substance if its possession or
17 use is illegal pursuant to chapter 34 of this title.
- 18 10. Whether the accused violated section 13-3407, subsection A,
19 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
- 20 11. The length of residence in the community.
- 21 12. The accused's record of arrests and convictions.
- 22 13. The accused's record of appearance at court proceedings or of
23 flight to avoid prosecution or failure to appear at court proceedings.
- 24 14. Whether the accused has entered or remained in the United
25 States illegally.
- 26 15. Whether the accused's residence is in this state, in another
27 state or outside the United States.
- 28 C. If a judicial officer orders the release of a defendant who is
29 charged with a felony either on his own recognizance or on bail, the
30 judicial officer shall condition the defendant's release on the
31 defendant's good behavior while so released. On a showing of probable
32 cause that the defendant committed any offense during the period of
33 release, a judicial officer may revoke the defendant's release pursuant to
34 section 13-3968.
- 35 D. After providing notice to the victim pursuant to section
36 13-4406, a judicial officer may impose any of the following conditions on
37 a person who is released on his own recognizance or on bail:
 - 38 1. Place the person in the custody of a designated person or
39 organization agreeing to supervise him.
 - 40 2. Place restrictions on the person's travel, associates or place
41 of abode during the period of release.
 - 42 3. Require the deposit with the clerk of the court of cash or other
43 security, such deposit to be returned on the performance of the conditions
44 of release.

1 4. Prohibit the person from possessing any deadly weapon or
2 engaging in certain described activities or indulging in intoxicating
3 liquors or certain drugs.

4 5. Require the person to report regularly to and remain under the
5 supervision of an officer of the court.

6 6. Impose any other conditions deemed reasonably necessary to
7 assure appearance as required including a condition requiring that the
8 person return to custody after specified hours.

9 E. In addition to any of the conditions a judicial officer may
10 impose pursuant to subsection D of this section, the judicial officer
11 shall impose both of the following conditions on a person who is charged
12 with a felony violation of chapter 14 or 35.1 of this title and who is
13 released on his own recognizance or on bail:

14 1. Electronic monitoring where available.

15 2. A condition prohibiting the person from having any contact with
16 the victim.

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

19 1. Issue an appropriate order containing statements of the
20 conditions imposed.

21 2. Inform the person of the penalties that apply to any violation
22 of the conditions of release.

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

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

35 G. At any time after providing notice to the victim pursuant to
36 section 13-4406, the judicial officer who orders the release of a person
37 on any condition specified in this section or the court in which a
38 prosecution is pending may amend the order to employ additional or
39 different conditions of release, including either an increase or reduction
40 in the amount of bail. On application, the defendant shall be entitled to
41 have the conditions of release reviewed by the judicial officer who
42 imposed them or by the court in which the prosecution is pending.
43 Reasonable notice of the application shall be given to the county attorney
44 and the victim.

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

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

7 J. A judicial officer who orders the release of a juvenile who has
8 been transferred to the criminal division of the superior court pursuant
9 to section 8-327 or who has been charged as an adult pursuant to section
10 13-501 shall notify the appropriate school district on the release of the
11 juvenile from custody.

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