

State of Arizona
Senate
Forty-fourth Legislature
Second Regular Session
2000

CHAPTER 373

SENATE BILL 1353

AN ACT

AMENDING TITLE 13, CHAPTER 38, ARTICLE 29, ARIZONA REVISED STATUTES, BY
ADDING SECTION 13-4240; AMENDING SECTIONS 13-4438 AND 31-281, ARIZONA REVISED
STATUTES; MAKING AN APPROPRIATION; 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. Title 13, chapter 38, article 29, Arizona Revised Statutes,
3 is amended by adding section 13-4240, to read:

4 13-4240. Post-conviction deoxyribonucleic acid testing

5 A. AT ANY TIME, A PERSON WHO WAS CONVICTED OF AND SENTENCED FOR A
6 FELONY OFFENSE AND WHO MEETS THE REQUIREMENTS OF THIS SECTION MAY REQUEST THE
7 FORENSIC DEOXYRIBONUCLEIC ACID TESTING OF ANY EVIDENCE THAT IS IN THE
8 POSSESSION OR CONTROL OF THE COURT OR THE STATE, THAT IS RELATED TO THE
9 INVESTIGATION OR PROSECUTION THAT RESULTED IN THE JUDGMENT OF CONVICTION, AND
10 THAT MAY CONTAIN BIOLOGICAL EVIDENCE.

11 B. AFTER NOTICE TO THE PROSECUTOR AND AN OPPORTUNITY TO RESPOND, THE
12 COURT SHALL ORDER DEOXYRIBONUCLEIC ACID TESTING IF THE COURT FINDS THAT ALL
13 OF THE FOLLOWING APPLY:

14 1. A REASONABLE PROBABILITY EXISTS THAT THE PETITIONER WOULD NOT HAVE
15 BEEN PROSECUTED OR CONVICTED IF EXCULPATORY RESULTS HAD BEEN OBTAINED THROUGH
16 DEOXYRIBONUCLEIC ACID TESTING.

17 2. THE EVIDENCE IS STILL IN EXISTENCE AND IS IN A CONDITION THAT
18 ALLOWS DEOXYRIBONUCLEIC ACID TESTING TO BE CONDUCTED.

19 3. THE EVIDENCE WAS NOT PREVIOUSLY SUBJECTED TO DEOXYRIBONUCLEIC ACID
20 TESTING OR WAS NOT SUBJECTED TO THE TESTING THAT IS NOW REQUESTED AND THAT
21 MAY RESOLVE AN ISSUE NOT PREVIOUSLY RESOLVED BY THE PREVIOUS TESTING.

22 C. AFTER NOTICE TO THE PROSECUTOR AND AN OPPORTUNITY TO RESPOND, THE
23 COURT MAY ORDER DEOXYRIBONUCLEIC ACID TESTING IF THE COURT FINDS THAT ALL OF
24 THE FOLLOWING APPLY:

25 1. A REASONABLE PROBABILITY EXISTS THAT EITHER:

26 (a) THE PETITIONER'S VERDICT OR SENTENCE WOULD HAVE BEEN MORE
27 FAVORABLE IF THE RESULTS OF DEOXYRIBONUCLEIC ACID TESTING HAD BEEN AVAILABLE
28 AT THE TRIAL LEADING TO THE JUDGMENT OF CONVICTION.

29 (b) DEOXYRIBONUCLEIC ACID TESTING WILL PRODUCE EXCULPATORY EVIDENCE.

30 2. THE EVIDENCE IS STILL IN EXISTENCE AND IS IN A CONDITION THAT
31 ALLOWS DEOXYRIBONUCLEIC ACID TESTING TO BE CONDUCTED.

32 3. THE EVIDENCE WAS NOT PREVIOUSLY SUBJECTED TO DEOXYRIBONUCLEIC ACID
33 TESTING OR WAS NOT SUBJECTED TO THE TESTING THAT IS NOW REQUESTED AND THAT
34 MAY RESOLVE AN ISSUE NOT PREVIOUSLY RESOLVED BY THE PREVIOUS TESTING.

35 D. IF THE COURT ORDERS TESTING PURSUANT TO SUBSECTION B, THE COURT
36 SHALL ORDER THE METHOD AND RESPONSIBILITY FOR PAYMENT, IF NECESSARY. IF THE
37 COURT ORDERS TESTING PURSUANT TO SUBSECTION C, THE COURT MAY REQUIRE THE
38 PETITIONER TO PAY THE COSTS OF TESTING.

39 E. THE COURT MAY APPOINT COUNSEL FOR AN INDIGENT PETITIONER AT ANY
40 TIME DURING ANY PROCEEDINGS UNDER THIS SECTION.

41 F. IF THE COURT ORDERS TESTING PURSUANT TO THIS SECTION, THE COURT
42 SHALL SELECT A LABORATORY THAT MEETS THE STANDARDS OF THE DEOXYRIBONUCLEIC
43 ACID ADVISORY BOARD TO CONDUCT THE TESTING.

44 G. IF THE PROSECUTOR OR DEFENSE COUNSEL HAS PREVIOUSLY SUBJECTED
45 EVIDENCE TO DEOXYRIBONUCLEIC ACID TESTING, THE COURT MAY ORDER THE PROSECUTOR

1 OR DEFENSE COUNSEL TO PROVIDE ALL THE PARTIES AND THE COURT WITH ACCESS TO
2 THE LABORATORY REPORTS THAT WERE PREPARED IN CONNECTION WITH THE TESTING,
3 INCLUDING UNDERLYING DATA AND LABORATORY NOTES. IF THE COURT ORDERS
4 DEOXYRIBONUCLEIC ACID TESTING PURSUANT TO THIS SECTION, THE COURT SHALL ORDER
5 THE PRODUCTION OF ANY LABORATORY REPORTS THAT ARE PREPARED IN CONNECTION WITH
6 THE TESTING AND MAY ORDER THE PRODUCTION OF ANY UNDERLYING DATA AND
7 LABORATORY NOTES.

8 H. IF A PETITION IS FILED PURSUANT TO THIS SECTION, THE COURT SHALL
9 ORDER THE STATE TO PRESERVE DURING THE PENDENCY OF THE PROCEEDING ALL
10 EVIDENCE IN THE STATE'S POSSESSION OR CONTROL THAT COULD BE SUBJECTED TO
11 DEOXYRIBONUCLEIC ACID TESTING. THE STATE SHALL PREPARE AN INVENTORY OF THE
12 EVIDENCE AND SHALL SUBMIT A COPY OF THE INVENTORY TO THE DEFENSE AND THE
13 COURT. IF EVIDENCE IS INTENTIONALLY DESTROYED AFTER THE COURT ORDERS ITS
14 PRESERVATION, THE COURT MAY IMPOSE APPROPRIATE SANCTIONS, INCLUDING CRIMINAL
15 CONTEMPT, FOR A KNOWING VIOLATION.

16 I. THE COURT MAY MAKE ANY OTHER ORDERS THAT THE COURT DEEMS
17 APPROPRIATE, INCLUDING DESIGNATING ANY OF THE FOLLOWING:

- 18 1. THE TYPE OF DEOXYRIBONUCLEIC ACID ANALYSIS TO BE USED.
- 19 2. THE PROCEDURES TO BE FOLLOWED DURING THE TESTING.
- 20 3. THE PRESERVATION OF SOME OF THE SAMPLE FOR REPLICATING THE TESTING.
- 21 4. ELIMINATION SAMPLES FROM THIRD PARTIES.

22 J. IF THE RESULTS OF THE POST-CONVICTION DEOXYRIBONUCLEIC ACID TESTING
23 ARE NOT FAVORABLE TO THE PETITIONER, THE COURT SHALL DISMISS THE PETITION.
24 THE COURT MAY MAKE FURTHER ORDERS AS IT DEEMS APPROPRIATE, INCLUDING ANY OF
25 THE FOLLOWING:

- 26 1. NOTIFYING THE BOARD OF EXECUTIVE CLEMENCY OR A PROBATION
27 DEPARTMENT.
- 28 2. REQUESTING THAT THE PETITIONER'S SAMPLE BE ADDED TO THE FEDERAL
29 COMBINED DNA INDEX SYSTEM OFFENDER DATABASE.
- 30 3. PROVIDING NOTIFICATION TO THE VICTIM OR FAMILY OF THE VICTIM.

31 K. NOTWITHSTANDING ANY OTHER PROVISION OF LAW THAT WOULD BAR A HEARING
32 AS UNTIMELY, IF THE RESULTS OF THE POST-CONVICTION DEOXYRIBONUCLEIC ACID
33 TESTING ARE FAVORABLE TO THE PETITIONER, THE COURT SHALL ORDER A HEARING AND
34 MAKE ANY FURTHER ORDERS THAT ARE REQUIRED PURSUANT TO THIS ARTICLE OR THE
35 ARIZONA RULES OF CRIMINAL PROCEDURE.

36 Sec. 2. Section 13-4438, Arizona Revised Statutes, is amended to read:
37 13-4438. Deoxyribonucleic acid testing; exception

38 A. ~~Except as provided in subsection E of this section,~~ Before a person
39 ~~who~~ IS RELEASED AND WITHIN THIRTY DAYS AFTER THE ARRIVAL OF A PERSON WHO IS
40 ACCEPTED UNDER THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND
41 PROBATIONERS, THE STATE DEPARTMENT OF CORRECTIONS SHALL SECURE A BLOOD SAMPLE
42 SUFFICIENT FOR DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION FROM THE PERSON
43 IF THE PERSON was convicted of ~~or adjudicated delinquent for a sexual~~ AN
44 offense LISTED IN THIS SECTION or an attempt to commit ~~a sexual offense as~~
45 ~~provided in section 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411,~~

1 ~~13 1412, 13 1417 or 13 3608 or who was convicted of or adjudicated delinquent~~
2 ~~for a violation of section 13 3821, 13 3822 or 13 3824~~ AN OFFENSE LISTED IN
3 THIS SECTION and who was sentenced to a term of imprisonment. ~~is released and~~
4 ~~within thirty days after the arrival of a person who is accepted under the~~
5 ~~interstate compact for the supervision of parolees and probationers, the~~
6 ~~state department of corrections shall secure a blood sample sufficient for~~
7 ~~deoxyribonucleic acid testing and extraction.~~ The state department of
8 corrections shall transmit the sample to the department of public safety. A
9 person who is accepted for interstate parole supervision by this state shall
10 pay for the costs of the testing.

11 B. ~~Except as provided in subsection E of this section,~~ Before a person
12 who IS RELEASED, THE COUNTY JAIL DETENTION FACILITY SHALL SECURE A BLOOD
13 SAMPLE SUFFICIENT FOR DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION FROM THE
14 PERSON IF THE PERSON was convicted OF or adjudicated delinquent ~~of a sexual~~
15 FOR AN offense LISTED IN THIS SECTION or an attempt to commit ~~a sexual~~
16 ~~offense as provided in section 13 1403, 13 1404, 13 1405, 13 1406, 13 1410,~~
17 ~~13 1411, 13 1412, 13 1417 or 13 3608 or who was convicted of or adjudicated~~
18 ~~delinquent for a violation of section 13 3821, 13 3822 or 13 3824~~ AN OFFENSE
19 LISTED IN THIS SECTION and who was sentenced to a term of incarceration in a
20 county jail detention facility or a county juvenile detention facility ~~is~~
21 ~~released, the county jail detention facility shall secure a blood sample~~
22 ~~sufficient for deoxyribonucleic acid testing and extraction.~~ The county jail
23 detention facility shall transmit the sample to the department of public
24 safety.

25 C. ~~Except as provided in subsection E of this section,~~ Within fifteen
26 days after a person is convicted or adjudicated delinquent ~~of a sexual,~~ A
27 COUNTY PROBATION DEPARTMENT SHALL SECURE A BLOOD SAMPLE SUFFICIENT FOR
28 DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION FROM THE PERSON IF THE PERSON IS
29 CONVICTED OF OR ADJUDICATED DELINQUENT FOR AN offense LISTED IN THIS SECTION
30 or an attempt to commit ~~a sexual offense as provided in section 13 1403,~~
31 ~~13 1404, 13 1405, 13 1406, 13 1410, 13 1411, 13 1412, 13 1417 or 13 3608 or~~
32 ~~is convicted of or adjudicated delinquent for a violation of section 13 3821,~~
33 ~~13 3822 or 13 3824~~ AN OFFENSE LISTED IN THIS SECTION and is sentenced to OR
34 PLACED ON a term of probation. ~~and within thirty days after the arrival of a~~
35 ~~person who is accepted under the interstate compact for the supervision of~~
36 ~~parolees and probationers, a county probation department shall secure a blood~~
37 ~~sample sufficient for deoxyribonucleic acid testing and extraction.~~ The
38 county probation department shall transmit the sample to the department of
39 public safety. ~~A person who is accepted for interstate probation supervision~~
40 ~~by this state shall pay for the costs of the testing.~~

41 D. WITHIN THIRTY DAYS AFTER THE ARRIVAL OF A PERSON WHO IS ACCEPTED
42 UNDER THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND
43 PROBATIONERS, A COUNTY PROBATION DEPARTMENT SHALL SECURE A BLOOD SAMPLE
44 SUFFICIENT FOR DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION FROM THE PERSON
45 IF THE PERSON WAS CONVICTED OF AN OFFENSE LISTED IN THIS SECTION OR AN

1 ATTEMPT TO COMMIT AN OFFENSE LISTED IN THIS SECTION AND WAS SENTENCED TO A
2 TERM OF PROBATION. THE COUNTY PROBATION DEPARTMENT SHALL TRANSMIT THE SAMPLE
3 TO THE DEPARTMENT OF PUBLIC SAFETY. A PERSON WHO IS ACCEPTED FOR INTERSTATE
4 PROBATION SUPERVISION BY THIS STATE SHALL PAY THE COST OF TESTING.

5 ~~D. E. Except as provided in subsection E of this section,~~ Before THE
6 release of a ~~person who~~ COMMITTED YOUTH AS DEFINED IN SECTION 41-2801, THE
7 DEPARTMENT OF JUVENILE CORRECTIONS SHALL SECURE A BLOOD SAMPLE SUFFICIENT FOR
8 DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION FROM THE YOUTH IF THE YOUTH was
9 adjudicated delinquent ~~of a sexual~~ FOR AN offense LISTED IN THIS SECTION or
10 an attempt to commit ~~a sexual offense as provided in section 13-1403,~~
11 ~~13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417 or 13-3608 or~~
12 ~~who was adjudicated delinquent for a violation of section 13-3821, 13-3822 or~~
13 ~~13-3824~~ AN OFFENSE LISTED IN THIS SECTION and ~~who~~ was committed to a secure
14 care facility, ~~the department of juvenile corrections shall secure a blood~~
15 ~~sample sufficient for deoxyribonucleic acid testing and extraction.~~ The
16 department of juvenile corrections shall transmit the sample to the
17 department of public safety.

18 F. IF A JUVENILE IS ACCEPTED BY THE ARIZONA DEPARTMENT OF JUVENILE
19 CORRECTIONS PURSUANT TO THE INTERSTATE COMPACT ON JUVENILES AND IS
20 ADJUDICATED FOR AN OFFENSE LISTED IN THIS SECTION, THE COMPACT ADMINISTRATOR
21 SHALL REQUEST THAT THE SENDING STATE IMPOSE AS A CONDITION OF SUPERVISION
22 THAT THE JUVENILE SUBMIT A BLOOD SAMPLE SUFFICIENT FOR DEOXYRIBONUCLEIC ACID
23 TESTING WITHIN THIRTY DAYS OF ARRIVAL IN THIS STATE. IF THE SENDING STATE
24 DOES NOT IMPOSE THAT CONDITION, THE DEPARTMENT OF JUVENILE CORRECTIONS SHALL
25 REQUEST A BLOOD SAMPLE SUFFICIENT FOR DEOXYRIBONUCLEIC ACID TESTING WITHIN
26 THIRTY DAYS OF THE JUVENILE'S ARRIVAL IN THIS STATE. THE DEPARTMENT OF
27 JUVENILE CORRECTIONS SHALL TRANSMIT THE SAMPLE TO THE DEPARTMENT OF PUBLIC
28 SAFETY.

29 ~~E. G. A blood sample shall not be secured pursuant to subsection~~
30 NOTWITHSTANDING SUBSECTIONS A, ~~B, C or~~ THROUGH F of this section, THE
31 DEPARTMENT OF PUBLIC SAFETY SHALL NOT SECURE A BLOOD SAMPLE if the scientific
32 criminal analysis section of the department ~~of public safety~~ has previously
33 made a deoxyribonucleic acid analysis of the person's blood pursuant to this
34 section and maintains a report of the results.

35 ~~F. H.~~ The department of public safety shall DO ALL OF THE FOLLOWING:

36 1. Conduct OR OVERSEE THROUGH MUTUAL AGREEMENT an analysis of the
37 samples that it receives. ~~and shall~~

38 2. Make and maintain a report of the results of each deoxyribonucleic
39 acid analysis.

40 3. MAINTAIN BLOOD SAMPLES FOR AT LEAST THIRTY-FIVE YEARS.

41 I. THIS SECTION APPLIES TO PERSONS WHO ARE CONVICTED OF OR ADJUDICATED
42 DELINQUENT FOR THE FOLLOWING OFFENSES:

43 1. A VIOLATION OF OR AN ATTEMPT TO VIOLATE SECTION 13-1403, 13-1404,
44 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417, 13-3608, 13-3821,
45 13-3822 OR 13-3824.

1 2. BEGINNING ON JANUARY 1, 2001, A VIOLATION OF OR AN ATTEMPT TO
2 VIOLATE TITLE 13, CHAPTER 11, SECTION 13-1507 OR SECTION 13-1508.

3 3. BEGINNING ON JANUARY 1, 2002, ANY OFFENSE INVOLVING THE DISCHARGE,
4 USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR
5 THE INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY AS PROVIDED
6 IN SECTION 13-604.

7 Sec. 3. Section 31-281, Arizona Revised Statutes, is amended to read:
8 31-281. Deoxyribonucleic acid identification; testing

9 A. A person WHO IS convicted of or adjudicated delinquent for ~~a sexual~~
10 ~~offense or attempt to commit a sexual offense as provided in section 13-1403,~~
11 ~~13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417 or 13-3608 or~~
12 ~~convicted of or adjudicated delinquent for a violation of section 13-3821,~~
13 ~~13-3822 or 13-3824~~ ANY OFFENSE LISTED IN SECTION 13-4438, SUBSECTION I and
14 any person who is accepted under the interstate compact for the supervision
15 of parolees and probationers and WHO has arrived in this state shall submit
16 to deoxyribonucleic acid testing for law enforcement identification purposes.
17 THE DEPARTMENT OF PUBLIC SAFETY SHALL MAINTAIN BOTH OF THE FOLLOWING:

18 1. Reports of the tests ~~shall be maintained by the department of~~
19 ~~public safety.~~

20 2. BLOOD SAMPLES FOR AT LEAST THIRTY-FIVE YEARS.

21 B. A person who is tested pursuant to ~~subsection A of~~ this section and
22 who has sufficient financial ability shall pay for the costs of the testing.
23 The cost to the person shall not exceed five hundred dollars. All monies
24 received pursuant to this subsection shall be transmitted to the state
25 treasurer for deposit in the Arizona deoxyribonucleic acid identification
26 system fund established by section 41-2419.

27 C. IF A JUVENILE IS ADJUDICATED DELINQUENT AND IS TESTED PURSUANT TO
28 SUBSECTION A OF THIS SECTION, THE results of ~~any tests secured pursuant to~~
29 ~~this section from a person adjudicated delinquent~~ THE TEST may be used for
30 any law enforcement identification purpose, including adult prosecutions.

31 Sec. 4. Appropriations; purpose

32 A. The sum of \$127,000 is appropriated from the general fund in fiscal
33 year 2000-2001 to the department of public safety for equipment purchases,
34 personal services, employee related expenses and other operating expenses in
35 order to implement, conduct and maintain deoxyribonucleic acid testing.

36 B. The sum of \$40,000 is appropriated from the Arizona
37 deoxyribonucleic acid identification system fund established in section
38 41-2419, Arizona Revised Statutes, in fiscal year 2000-2001 to the department
39 of public safety for equipment purchases, personal services, employee related
40 expenses and other operating expenses in order to implement, conduct and
41 maintain deoxyribonucleic acid testing.

42 C. The sum of \$60,000 is appropriated from the general fund in fiscal
43 year 2000-2001 to the department of public safety for equipment purchases,
44 personal services, employee related expenses and other operating expenses in
45 order to implement, conduct and maintain deoxyribonucleic acid testing.

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1 D. The appropriations made in subsections A, B and C of this section
2 are exempt from the provisions of section 35-190, Arizona Revised Statutes,
3 relating to lapsing of appropriations.

APPROVED BY THE GOVERNOR APRIL 24, 2000.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2000.