

DNA LEGISLATION & NEWS

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Tim Schellberg tims@smithallinglane.com and Lisa Hurst lhurst@smithallinglane.com of Smith Alling Lane, P.S. provide nationwide governmental affair services to PE Biosystems. As part of the firm's representation weekly reports are generated which identify recent state and federal legislation and news articles. PE Biosystems has authorized Smith Alling Lane to make these reports available to anyone that requests them through this web site.

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The May 12, 2000 DNA legislative and media report is listed below.

These reports are prepared by Tim Schellberg and Lisa Hurst of Smith Alling Lane (253) 627-1091, on behalf of PE Biosystems. Text of legislation can be obtained by following the appropriate state-link at this site: <http://www.ncsl.org/public/sitesleg.htm>. Please see the appropriate media website for the newspaper articles.

COMMENTS

New York's Governor Pataki and Mayor Giuliani have been in the press touting the abilities of forensic DNA analysis. Both call for expanded databases and increased funding. USA Today featured CODIS in an article and plans additional coverage in the coming weeks. States throughout the US have success in solving old murder cases using new DNA technology. Meanwhile, Canada prepares to initiate its offender database with samples from 2,000 inmates.

Erie County (New York) will be getting additional funds for DNA analysis and the California Attorney General continues to seek an additional \$5.4 for DNA processing.

Post conviction DNA testing continues to be a popular topic in the news media. This week, New York Governor Pataki called for an oversight panel and former Virginia Governor Wilder wrote an editorial.

A Wisconsin statute of limitations bill appears to be dead, and New York Mayor Giuliani recommends that states eliminate statutes of limitations for sex and assault.

STATE LEGISLATION

Agriculture

1. Florida HB 9189 – Resolution in support of biotechnology and genetically altered crops.

NEWS ARTICLES

Forensic DNA

1. "Legal Genes." People, May 15, 2000.
Question and Answer format with Barry Scheck on the role of DNA in freeing the wrongfully convicted. Scheck voices support for Congress's "Innocence Protection Act" which would guarantee access to post conviction DNA analysis.

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2. "Children's DNA Safety Kit To Be Available in Canada." CTV Television (Canada), May 9, 2000.
Canadian talk show questions if saving a child's DNA is necessary. National Center for Missing and Exploited Children says that fingerprints taken by groups in malls and fairs are not legible enough for identification purposes 80% of the time.
3. "Safer Streets Through DNA." The New York Post, May 9, 2000.
New York Governor Pataki proposes establishing a legal panel to examine convictions that have been overturned because of DNA evidence and to monitor cases of inmates who claim that DNA tests would clear them. Author suggests that the Legislature should enact Pataki's proposal to eliminate the statute of limitations for certain crimes. Suggests that ACLU "hand-wringing" over the expansion of DNA testing is misplaced.
4. "Victims: Use DNA to nab more criminals. Fewer than half of states are part of FBI's database." USA Today, May 9, 2000.
Crime victims told attendees at the DNA conference that DNA testing should be used more often. Only 24 states are currently part of CODIS. \$15 million in federal funds will be used this year to analyze 250,000 samples which is approximately a third of the backlog. CODIS currently has 280,000 profiles online and has made 851 matches since 1992 (almost half of the 851 has been since 1998). Cases aided by the database have jumped 15% since December of last year.
5. "Preventing Fatal Errors." Chicago Tribune, May 9, 2000.
Editorial criticizing errors in death penalty cases and focusing on post conviction access to DNA testing. Supports the federal Innocence Protection Act. Suggests that prosecutors are more concerned with losing a conviction than with executing an innocent person.
6. "Pataki administration reports index crime down 7 percent." The Associated Press State & Local Wire, May 8, 2000.
Pataki gives credit to DNA analysis as a contributing reason to the decline, and used the release of the statistics to push for legislation to use DNA testing for all offenders.
7. "Parents, children show up to have DNA sampling." St. Louis Post-Dispatch, May 8, 2000.
St. Louis area car dealers pay expenses for collecting DNA samples from children as part of National Child Safety Week. The program was endorsed by John Walsh from "America's Most Wanted." Some parents also take samples of their own DNA for safekeeping.
8. "Assembly should amend law to allow post-trial evidence." The Richmond Times Dispatch, May 7, 2000.
Editorial from former Virginia Governor, L. Douglas Wilder. Criticizes Virginia Assembly for not discarding the state's 21-day rule which disallows any new evidence once 21 days have elapsed from the date of sentencing. Mentions the ability for DNA to exonerate inmates and to give assurances that the right person is in jail.

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9. "Forensic scientists fight bias." The Sunday Star-Times (Auckland), May 7, 2000.
New Zealand takes steps to "immunise" its forensic scientists from subconscious bias." Suggests avoiding language such as "the offenders databank" for DNA databanks, and would bar scientists from waiting to hear a jury verdict in criminal trials.
10. "Afraid of a Shadow of a Doubt." The Washington Post, May 7, 2000.
Editorial criticizes the case in Virginia that denied DNA testing of evidence to an inmate on death row and then allowed the state to destroy the evidence.
11. "Lawmakers divvy up millions from pork barrel." The Buffalo News, May 6, 2000.
New York's state budget for 2000-2001 has recently been approved and contains \$200,000 for Erie County to speed up processing of DNA samples.
12. "Prosecutors back DNA tests in rape case." The Associated Press State & Local Wire, May 5, 2000.
Prosecutors in Kentucky have agreed to allow more DNA testing for a man who was convicted of rape in 1993. The Innocence Project is asking for a new trial after it discovered one of 7 hairs was found to not belong to the inmate. The prosecution says it already knew 2 of the hairs did not belong to the inmate, but that the other five hairs will have to be tested before a new trial is granted. The state will pay for the DNA tests.
13. "Time of the DNA police." The Express, May 5, 2000.
The Forensic Science Service in London now holds more than 750,000 samples taken from suspects "charged, reported, cautioned or convicted of a recordable offence." Scientists have 600 successful hits per week and there is more than a 40% chance that DNA evidence found at a crime scene will be matched in the database. Area police are now beginning to reopen cold cases to see if DNA analysis of evidence can catch the perpetrator.
14. "Did Britain kill Napoleon with Poison?" The Express, May 5, 2000.
DNA from Napoleon's hair has been analyzed by the FBI and Britain's Harwell Nuclear Centre, and is said to conclusively prove that Napoleon was killed with arsenic.
15. "State challenges judge's order to release felon." The Indianapolis Star, May 5, 2000.
Prosecutors in Indiana are asking a judge to reopen a case in which a judge ordered a convicted murderer to be freed based on DNA evidence. Inmate had been convicted of raping and murdering the victim, but DNA evidence concluded that he had not committed rape. Therefore, the judge concluded that it was less likely that he had murdered her as well. Prosecution seeks DNA tests on the remaining blood and semen in evidence.
16. "Judge allows DNA tests in Francke death case." The Associated Press State & Local Wire, May 4, 2000.
Inmate in Oregon is challenging his 1991 murder conviction and a judge has granted him access to DNA testing. Prosecutors expect that the tests will reveal nothing because any foreign DNA would have been mingled with the large amounts of blood from the victim, and there was little evidence of a struggle so there is not likely to be DNA evidence from fingernail scrapings.

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17. "Wrangling tangles bill on statute of limitations on sex offenses." The Associated Press State & Local Wire, May 4, 2000.
A Wisconsin bill addressing the statute of limitations and allowing access to post-conviction DNA testing appears to have fallen victim to partisan politics. The Republican-led House passed the bill unanimously earlier this year, but the Democrat-controlled Senate altered the language and a compromise agreement could not be reached. Unless an extraordinary session is called to finish this issue, the bill will not be enacted this year.
18. "Senate puts stalling aside, approves state parks bill." The Associated Press State & Local Wire, May 4, 2000.
The Alabama Senate has passed a bill that would give \$1 million each to two men who were imprisoned for over 13 years until DNA evidence proved that they were wrongfully convicted. The House would need to pass the bill in the remaining three days of the 2000 session in order for the men to get the money.
19. "Rolex robber snared by hair." Daily Mail (London), May 4, 2000.
Teenager who ripped a watch from a lady's wrist was caught by DNA evidence gathered from a clump of his hair that was pulled out by the victim's sister. The DNA profile was matched in Britain's database to a teenager with an "appalling criminal record."
20. "Police use DNA to trace rioters." The Independent (London), May 4, 2000.
Police in London are using DNA evidence to identify rioters who cut themselves on glass while entering buildings. DNA profiles are being matched against the database and police hope to identify some of the protestors.
21. "Hospital submitted no DNA so rape count is dropped." The New York Times, May 4, 2000.
In New York, rape charges against a serial sex offender have been dropped because the hospital physician did not take a full array of forensic samples from the victim, and the two samples that were taken were not submitted for genetic checks.
22. "It's a crime the way labs are backlogged." The Press-Enterprise (Riverside, CA), May 4, 2000.
Points out that many crimes are going unsolved due to the inability to process all of the DNA samples. In California, DNA taken from a man upon his parole in 1996 was only recently matched to a 1992 murder. The writer blames the partisan bickering in previous years between a Republican Attorney General and the Democrat controlled Legislature for the funding bottleneck, but points out that the current AG Lockyer (a Democrat) has finally been able to add \$4.5 million to the crime lab's \$10 million budget, and is asking for an additional \$5.4 to further speed DNA processing.
23. "Prisoners to be forced to give DNA crime samples." The Vancouver Sun, May 4, 2000.
A new law expected to be proclaimed next month in Canada will require over 2,000 criminals to give DNA samples (called the DNA Identification Act). Samples will be taken from those prisoners designated "dangerous offenders," and those who have been convicted of more than one murder or sex offence. The legislation was passed in 1998 but has yet to come into force. In the meantime, it has already been amended to include the military justice system.

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24. "Businessman indicted on second-degree murder charge in 1963 killing." The Associated Press State & Local Wire, May 3, 2000.
DNA evidence has allowed prosecutors to charge a man with the death of a girl 37 years ago. Courts are deciding whether the man, now 52 should be tried as an adult or as a juvenile for the crime he is accused of committing at age 15.
25. "DNA -linked rape suspect denies guilt." The San Diego Union-Tribune, May 2, 2000.
DNA evidence found at a burglary crime scene eventually helped to put the offender in jail. Later, DNA evidence from an unsolved rape in 1995 was matched to the burglary DNA evidence, using CODIS. The rape victim had not gotten a good look at the rapist, and all other leads had been exhausted years ago.
26. "Police seek more money for unsolved homicides." Austin American-Statesman, May 1, 2000.
Austin police ask the city for \$500,000 in additional funding to reopen cold cases. The department's own DNA lab is expected to come online in about a year – evidence will no longer have to be sent to the state's lab for analysis where it would face lengthy turn-around times due to the state's backlog.
27. "DNA Testing Aids the Search for Truth." New York Law Journal, May 1, 2000.
Article written by New York Mayor, Rudolph Giuliani, in strong support of DNA testing. Recommends that the state legislature should allow DNA testing for all fingerprintable arrests. Points out that more than of the 70,000 cases in which DNA evidence has been used in England were burglaries and car thefts. Says that Congress and states should provide sufficient funding for backlogs, casework, and convicted offender testing. Also believes that states should enact laws to eliminate the statute of limitations for rape and sexual assault. Points out that New York City is establishing a \$126 million DNA testing facility and database.
28. "Use of deception to get rapist's confession is fair." New York Law Journal, April 21, 2000.
The Bronx Supreme Court has ruled that a detective's ruse to get a suspected serial rapist to give a blood sample that was used to link the suspect to 39 sexual attacks and robberies did not taint the resulting admission of guilt. Police told the man that he was considered a suspect in a robbery where the robber's face had been scratched – no mention of rape was made. He was asked to give a DNA sample, and if it did not match the robbery sample, he would be eliminated as a suspect. After the sample was taken he was informed of the crimes he was really suspected of, and he eventually confessed. The judge ruled, "the use of deception does not destroy the voluntariness of consent unless the deception is so fundamentally unfair as to deny due process... This is not the case here..."

Genetic Privacy

29. "Bill would protect privacy of medical patients' genetic information." The Associated Press State & Local Wire, May 9, 2000.
Pennsylvania Senate is considering a bill that could hinder insurance access to genetic test information. Insurance lobbies argue that they need the information to help them judge more precisely the health risks of those who apply for coverage, and that it is good for consumers "in the collective sense" for insurance companies to have this information.

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30. "Face-off: Is the use of biometrics an invasion of privacy?" Network World, May 8, 2000.
Article delves into privacy paranoia and "Big Brother". Suggests that Americans are beginning to live in a "surveillance society" and asks "Do we want to be instantly identified from the DNA we leave behind in a hair follicle or skin cell?"

31. "Doctors seek ethical controls on centralized databanks." AP Worldstream, May 4, 2000.
At a conference gathered by the World Health Organization and the World Medical Association, doctors say there is too much scope for abuse of centralized computer databanks with genetic information on millions of people. Of greatest concern is the project in Iceland to collect samples from all of its citizens for links to family trees and health histories.

CONGRESSIONAL RECORD

1. Senator Feingold's (Wisconsin) remarks on his introduction of the National Death Penalty Moratorium Act of 2000. Cites lack of access to post conviction testing as one of the reasons for the bill.

2. Rep. Smith (Michigan) praises the uses of biotechnology for crop development.