

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 19, 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

Virginia's DNA database has received media attention for several "cold hits" and for linking different crimes to one perpetrator. In international news, an Australian state is expanding its police DNA collection powers, and England may eliminate the "double jeopardy" statute for certain crimes when DNA evidence is available.

Minnesota will be building a new crime lab in St. Paul, and the California Governor is proposing to further enhance DNA backlog funding as well as to build a new crime lab in Los Angeles. The Governor of Colorado line-item vetoed a budget bill provision requiring a study of sex offender DNA testing costs. Police in England will also be receiving more federal funding for DNA analysis.

The capital punishment debate was covered by media around the country. In particular, a newly established National Committee to Prevent Wrongful Executions received a great deal of attention. A New York bill would establish assurances for post conviction DNA testing, as well as allow for indictments of "John Doe's" based solely on DNA profiles and establishes a DNA testing fund.

STATE LEGISLATION

Forensic DNA

1. Colorado HB 1451 – Provision requiring the Colorado Bureau of Investigation to study and report to the Legislature on the cost of genetic testing for sex offenders, the amount of funds in the sex offender identification fund, and how to have better success in collecting testing fees from offenders. The provision was vetoed by the Governor.

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2. Louisiana HCR 35 – Resolution urging the Governor to stay all executions where the identity of the offender was an issue at the trial and the DNA of the offender was not obtained for comparative testing.
3. New York AB 11051 – Allows indictments based on DNA profile alone if the offenders identity is not known. Requires designated offenders to submit DNA samples within 120 days of sentencing. Strengthens access to post conviction DNA testing. Establishes the “Assistance to Police and Crime Labs: DNA Evidence Fund.” Establishes the “Innocent Project Program.”

Genetic Privacy

4. New York AB 3435 – Prohibits insurance discrimination based on genetic characteristics.

Paternity

5. Ohio HB 242 – Would allow a man to stop paying child support if a paternity test proves that the man is not the father. However, if the court can prove that the man knew he was not the genetic father prior but had allowed himself to be presumed to be the father, then child support would still be required.

NEWS ARTICLES

Forensic DNA

1. “The Problem of The Innocent.” National Review, May 22, 2000.
Written by William F. Buckley. The article reviews recent significant events in the debate over the death penalty – including the enlistment of George Will and the Illinois moratorium. Wonders whether DNA will protect the innocent in the future, and if that is enough reassurance needed to continue with capital punishment.
2. “On executions, Illinois sets example for Georgia.” The Atlanta Journal and Constitution, May 17, 2000.
Texas Governor George Bush is unfavorably compared to Illinois Governor Ryan – based on Bush’s reluctance to review capital punishment cases. Urges Georgia’s Governor to mimic Ryan’s example and at a minimum include post conviction DNA testing on next year’s legislative agenda.

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3. "Prosecutor weighs charges in serial slayings case." The Associated Press State & Local, May 16, 2000.
DNA evidence is playing a pivotal role in linking the suspected serial killer in Spokane, Washington to unsolved murders.
4. "Baltimore officer arrested for bank robberies that netted thousands." The Associated Press State & Local Wire, May 16, 2000.
Suspect is tied to at least robbery through DNA evidence collected from leather gloves that were left behind at the crime scene.
5. "DNA tests in anti-mugging drive." The Independent (London), May 16, 2000.
Scotland Yard will be focusing more on DNA tests to combat street mugging, which has risen over one-third in the last year. Detectives will attempt to collect samples from evidence such as discarded handbags.
6. "California and the West; Davis' revised budget rises to \$98.4 billion." Los Angeles Times, May 16, 2000.
Among Gov. Davis' expanded plans for spending California's surplus of over \$12 billion is an extra \$50 million to speed the DNA analysis of 18,000 rape kits. Also proposed is a \$96 million crime lab for Los Angeles city and county law enforcement.
7. "No time like the present for DNA." The Ottawa Sun, May 16, 2000.
Canadian Solicitor General is criticizing Canada's new federal law on DNA collection because: 1) it only applies to offenders convicted of more than one murder; 2) for all other crimes a court order will be required to collect DNA samples; and 3) samples are taken from offenders at the time of conviction rather than the time of arrest.
8. "Death penalty advocates join call for moratorium." USA Today, May 16, 2000.
Article provides an overview of the ongoing death penalty debate. Mentions federal legislation that would require states and the federal government to make DNA testing available to convicts
9. "Tas to give police wide DNA powers." AAP Newsfeed, May 15, 200.
Under pending legislation, Tasmanian (Australia) police would be permitted to join Australia's national DNA database. It would also allow state police to collect samples from persons who are considered suspects, rather than after the suspect has been arrested and charged. Persons may apply to have their sample expunged if they are no longer a suspect.

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10. "New group fights unjust executions." The Commercial Appeal (Memphis, TN), May 15, 2000.

The National Committee to Prevent Wrongful Executions has been established to study issues related to capital punishment cases. One of the reported issues will be "determining whether eyewitness identifications and other evidence match the scientific evidence available today through DNA tests." The committee is an initiative from a project at Georgetown University and committee members include several prominent political and legal figures including former FBI chief Sessions, former IACP president, former White House counsel, and former US Attorneys and state justices. And Ann Landers.

11. "Labour and Tories vie to abolish 'double jeopardy' rule." Financial Times (London), May 15, 2000.

The conservative Tory party in England is vowing to throw out the "double jeopardy" rule if their party is re-elected. The rule, which prohibits anyone from being tried twice for the same time, would be scrapped in cases where significant new evidence - such as DNA identification - comes to light in cases of serious violence, sexual offences or major property crime. There is a growing amount of legal and political support for such a move.

12. "Doubting death row the National Committee to Prevent Wrongful Executions asks; All the right question." Pittsburgh Post-Gazette, May 15, 2000.

Committee member and form FBI Director William Sessions said that in his opinion the main question regarding the appropriate use of the death penalty involves the use of DNA evidence. "There are 3,500 people now on death row," Sessions said, "and many have been there for years, long before DNA evidence was available. As a prosecutor and a judge and an FBI director, I want to be sure we've got the right people. And now we can be."

13. "Countdown to the year 2001 -- 231 Days to go." The Courier-Journal (Louisville, KY), May 14, 2000.

Remains from the "Tomb of the Unknown Soldier" at Arlington Cemetery have been removed for DNA analysis in an effort to identify the serviceman.

14. "3 Unsolved Slayings Linked By DNA Evidence." Daily Press, May 14, 2000.

Virginia's DNA database has linked three unsolved rape crimes to the same offender, but has not rendered a suspect. A victim's relative has been supporting the creation of DNA databases, but criticizes that they've "been too slow in coming."

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15. "Here's what the session did for you and to you." Star Tribune (Minneapolis, MN), May 14, 2000.
The Minnesota legislature has approved a \$58 million building for the Bureau of Criminal Apprehension with a high-tech lab for St. Paul's East Side. Lab will participate in DNA analysis.
16. "Campaign 2000; Some Texas executions leave doubts despite Bush claim, ambiguities linger." The Boston Globe, May 13, 2000
Criticizes Gov. George Bush's categorical claim that none of the executed prisoners in Texas have been innocent. Describes how DNA evidence has exposed flaws in the criminal justice system. Mentions federal legislation that would guarantee inmates a chance to have DNA testing.
17. "New fight to clear Boston Strangler; DNA may give vital clue." Daily Record, May 13, 2000.
The family of the Boston Strangler's last victim and the family of the man convicted of the crime have joined forces to prove – through DNA evidence – that the wrong man was convicted. The conviction was based on a confession that some believe to have been coerced.
18. "Prosecutors hope DNA evidence will convict man in 24-year-old murder." The Associated Press State & Local Wire, May 12, 2000.
Vermont prosecutors believe they have solved a murder committed in 1976 based on analysis of DNA evidence from the crime scene. Hairs were collected from suspects in 1976 but an absolute match could not be concluded. New technology has now concluded that DNA from the crime scene is a perfect match with the hairs collected from one of the suspects.
19. "DNA samples may be handed back to volunteers, say police." AAP Newsfeed, May 12, 2000.
DNA samples collected from town volunteers in an Australian "DNA dragnetting" case may be returned to the owners so that they may personally dispose of them. Samples are to be destroyed, in any case. The "DNA dragnetting" is credited with flushing out a man who has been arrested and charged with the sexual assault of a 93 year-old woman.

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20. "Police to double DNA samples in futuristic crime fight." Birmingham Post, May 11, 2000.
Police in West Midlands (England) will be spending 2 million pounds to add more DNA profiles to the database. Last year, West Midlands added over 12,000 profiles. The Home Office is offering a total of 37 million pounds for assistance to police units around the country to increase the number of criminals whose profile is kept on the database.
21. "DNA tests free innocent man after 10 years." The Patriot Ledger (Quincy, MA), May 11, 2000.
After 10 years in a Massachusetts prison, a man convicted of aggravated rape and armed robbery has been freed based on DNA testing that shows he was not the perpetrator. The District Attorney did not fight his request for release.
22. "Years after two rapes, suspect pinpointed." The Richmond Times-Dispatch, May 8, 2000.
DNA samples from the rape of two women have been compared against Virginia's DNA database for 7 years with no matches until recently. The suspect was still in prison for a 1970 murder when Virginia began collecting DNA samples for an offender database. However, the sample was part of a backlog and was only recently added to the database. Other recent "cold hits" in Virginia – both for burglary – came from sweat retrieved from a sock left behind, and from blood left behind after the offender cut himself on broken glass. Virginia is currently averaging 4 "cold hits" per week.

Genetic Privacy

23. "Who's in charge? A question for the next president." Austin American-Statesman, May 15, 2000.
Argues that the "biotech revolution" raises many ethical and moral questions on which the nation will need strong leadership in the coming years. Suggests that the candidates should be addressing these issues, but believes their avoidance of such issues is understandable.

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24. "Prepared testimony of John T. Spotila Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget." Federal News Service, May 15, 2000.

Testimony of HR 4049 "The Privacy Commission Act." Administration official acknowledged the need for laws and/or regulations protecting individual privacy – including privacy of genetic information and protections against potential discrimination – but did not support the bill's intent to establish a Commission to study privacy. Suggested that the Commission is simply a delay tactic for needed consumer protection legislation.

25. "A privacy interest." The Christian Science Monitor, May 11, 2000.

Discusses whether genetic test medical information should be forcibly disclosed to relatives. Suggests that although courts and legislators have decided that felons are not entitled to a "privacy interest" for DNA samples, they may find the opposite for medical DNA information.

Paternity

26. "Senate passes paternity bill." The Associated Press State & Local Wire, May 16, 2000.

The Ohio Senate has passed legislation that would allow men to be relieved from child support orders if the man has been genetically determined to not be the father of the child. The bill was adopted unanimously and is being sent back to the House for concurrence with Senate amendments.