

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 26, 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

Massachusetts is proposing additional funding for crime lab equipment purchases - to include DNA equipment, and a Nebraska Senator is suggesting that the state pay for post conviction DNA testing. An Australian state is adding \$2.3 million to its budget for DNA lab upgrades.

Police and prosecutors around the nation continue to have success in solving old crimes through DNA analysis – except for a setback in Florida where a mistrial was called after the jury could not agree on the significance of DNA evidence. In England, police are adding their own profiles to databases in order to prevent contamination of crime scene evidence.

Post conviction DNA testing and the death penalty were popular topics once again. The New Hampshire Governor cited DNA tests as a reason for vetoing a bill that would have abolished the state's death penalty, and ABC News ran a death penalty story that focused on the use of DNA for exonerations.

STATE LEGISLATION

Forensic DNA

1. Massachusetts HB 5101 – 2001 Appropriations bill – “\$1 million for one-time equipment purchases and capital expenditures for the state police crime laboratory, including the DNA”
2. Massachusetts SB 2200 -- \$387,000 in federal funds for Boston Crime Lab Forensic DNA improvements.

Genetic Privacy

3. New Hampshire HB 1589 – clarifies informed consent for genetic testing and establishes a committee regarding the use of medical testing and insurance policies.
4. New York SB 7878 – Personal privacy bill – protected health information includes “genetic structure.”

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NEWS ARTICLES

Forensic DNA

1. No Title. The Associated Press State & Local Wire, May 23, 2000.
Montana Secretary of State, who is running for Governor, has said that post conviction DNA tests should be allowed if results could overturn a conviction. Argues that such a policy would improve the criminal justice system and would ensure the rights of both victims and the accused.
2. "Police boost in NSW budget." AAP Newsfeed, May 23, 2000.
Budget for New South Wales, Australia, includes \$2.3 million for upgrading forensic labs in preparation of pending DNA legislation.
3. "Excerpt from "Nightline" on rethinking the death penalty." ABC News, May 23, 2000.
News show covers the death penalty debate, and reports that most of the fuel behind the debate is due to DNA tests which have exonerated numerous inmates. Coverage ends by saying that inmates are having requests for testing blocked due to state laws that make introducing new evidence after convictions very difficult, and because prosecutors do not like admitting they've made mistakes.
4. "Mail Room Rapist Caught Napping, Cops Say." APBnews.com, May 23, 2000.
Man in Texas arrested for rape is thought to be a serial rapist and has been linked by DNA to nearly a dozen rapes since 1995. The serial rapist's spree was halted for two years, which coincides with a period the suspect spent in jail for probation violation on a credit card fraud conviction.
5. "Murder set DNA sample precedent." Calgary Herald, May 23, 2000.
Discovery Channel is planning a documentary on a Canadian murder case that was broken by an undercover operation through which the RCMP collected DNA without the suspect's knowledge consent. Such operations no longer need to be undertaken -- Canadian police can now obtain blood samples through a warrant
6. "Change of heart." The Guardian (London), May 22, 2000.
England's Law Commission has endorsed a proposal to do away with the "double jeopardy" rule for certain cases. Under the proposal, certain carefully selected cases could be sent to the High Court for a decision on re-trial in cases where the accused has already been acquitted. The accused would have the right of appeal. The Tory party and several media outlets are arguing that the policy be implemented immediately, despite voicing protest a few years ago when the same recommendation was made.
7. "DNA leads to guilty verdict for rapist." Milwaukee Journal Sentinel, May 22, 2000.
A 1997 rape is finally solved through DNA in Wisconsin. Victim could not identify attackers, so reliance on DNA evidence was the key to conviction. One of the rapists was finally nabbed when his DNA was submitted to the state's database after he had been found delinquent as a juvenile for sexual assault. The other rapist's DNA sample when matched against crime scene evidence was determined to have a one in 1.24 quintillion chance of belonging to someone else.

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8. "DNA A Two-Way Street." *Virginian Pilot* (Norfolk, VA), May 21, 2000.
Article applauds Virginia's DNA database for catching so many criminals, but argues that the same technology should be used to reaffirm the guilt of those in prison. Specifically criticizes the Governor on "dragging his feet" on allowing DNA testing in the case of Earl Washington, an inmate on death row who has been asking for DNA tests.
9. "Jurors deadlock on DNA evidence in old murder case." *The Associated Press State & Local Wire*, May 20, 2000.
Mistrial is declared in a Florida court when jurors could not agree on significance of DNA evidence in the trial of a man accused of kidnapping and beating to death a woman in 1989. Jury was not permitted to hear man's criminal record, which included arrests for aggravated assault and rape. Suspect's blood sample matched DNA from semen on the victim's blouse, and experts gave the sample one in a trillion odds of belonging to the suspect. Some jurors questioned the way the evidence was gathered, including missing labels on the samples, and the small amount of DNA that was recovered from the blouse.
10. "State-Funded Tests For DNA Proposed." *Omaha World-Herald*, May 20, 2000.
State Senator in Nebraska will propose legislation in 2001 that would entitle inmates to state-paid DNA tests. This proposal comes after the State Supreme Court ruled that under current law the state cannot be compelled to pay for tests for inmates who were convicted prior to when DNA technologies became available. The Court ruled that the inmate could have a DNA test if he paid for it himself.
11. "Shaheen vetoes death penalty in NH. Legislators react to veto." *The Union Leader* (Manchester, NH), May 20, 2000.
New Hampshire Governor has vetoed a bill enacted by the Legislature that would have abolished the death penalty. The Governor noted arguments that the death penalty should be discarded due to recent national cases of exoneration after DNA testing, but argued that New Hampshire recently dropped charges against a man accused of rape and murder when DNA tests were not positive. "Indeed, the advent of DNA testing reduces the likelihood that innocent people will be convicted of crimes." Neither the House nor the Senate passed the bill by veto-proof majorities.
12. "Lawyers argue over DNA at heart of serial murder trial." *The Associated Press State and Local Wire*, May 19, 2000.
Massachusetts trial of a man accused of four rapes/murders hinges largely on DNA evidence. Defense has argued that the DNA evidence is "garbage." Prosecutors say that DNA found on or near all four victims is a match to the suspect.
13. "Convicted murderer loses bid to have DNA tests done." *The Associated Press State and Local Wire*, May 19, 2000.
Nebraska Supreme Court has ruled that the state's post-conviction law (which limits introduction of new evidence to within three years after conviction) is constitutional, based on a 1993 US Supreme Court decision. The Court ruled there is no procedure in place to order the state to pay for DNA testing, but that the Court may consider the results of such a test if the inmate can find another way to finance the test. Judges recommend that the case is a policy decision for the legislature.

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14. "New DNA Technology Revives '74 Murder Case." The San Francisco Chronicle, May 19, 2000.
A suspect in Oakland, CA is arrested for a murder committed 26 years ago. The accused man has always been a top suspect, but police were only recently able to link him to the murder through DNA evidence. Authorities in California believe many more "unsolved" cases will be brought to court over the next few years with DNA evidence.
15. "Hearing Of The Crime Subcommittee Of The House Judiciary Committee." Federal News Service, May 18, 2000.
US Rep. Scott mentions the importance of DNA databases "in separating the guilty from the innocent." He applauds the FBI on getting the fingerprint database up to date, and says, "If we can only get the same thing done with DNA, I think we will have gone a long way in helping our criminal justice system." (The actual hearing was on non-criminal fingerprint background checks).
16. "Child ID kits to include DNA." Portland Press Herald, May 18, 2000.
Children in West Bath, Maine will be giving blood samples at school for inclusion in a DNA kit. Kits will be kept for analysis in an "emergency," and children (or their parents) who do not want samples taken may opt out.
17. "Police facing DNA tests for 'elimination'." Birmingham Evening Mail, May 16, 2000.
Police in West Midlands, England, are having their DNA analyzed and stored in a database to prevent crime scene contamination by confusing the evidence. System will allow for crime scene evidence that matches an officer to be quickly put aside. 4500 officers are expected to be logged into the database.
18. "Genetic science helps German customs agents nab smugglers." Deutsche Presse-Agentur, May 16, 2000.
German customs agents find smugglers' stashes and use DNA left from saliva on cigarettes and skin traces from the handles of guns to nab suspected smugglers.
19. "Does DNA show way to tackle rising crime?" Western Morning News (Plymouth), May 16, 2000.
Former police inspector in England provides commentary on the importance of DNA in solving crimes. Article mentions that the English government is "considering proposals that we should all be tested at birth to provide a national database against which future suspects can be compared."

Genetic Privacy

20. "Call for restrictions on genetic testing." Press Association Newfile, May 23, 2000.
A member of England's Parliament is introducing a bill to prevent insurance companies and mortgage lenders from accessing a person's genetic information. The bill is not likely to be enacted this year given the lack of time.
21. "Or doom and gloom?" New Scientist, May 20, 2000.
Author suggests that the emergence of genetic testing could widen the gap between rich and poor, and could even create a "genetic underclass." But Human Genome Project director argues that every person is likely to have a multitude of different problems with their genes, and calculating the risk associated with all of them will be "hopelessly complex" for insurance companies to figure out.

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22. "Technology should be a hot issue in politics." Journal of Commerce, May 18, 2000.
Bush and Gore are both avoiding technology issues, but the next few presidents are likely to be consumed with a wide range of issues that arise from currently emerging technologies. Of particular note will be ethical dilemmas that the nation could face as the human genome is decoded.

Paternity

23. "Man must pay support even though he is not boy's father." St. Louis Post-Dispatch, May 17, 2000.
Although genetic tests have proven that he is not the genetic father, a St. Louis man who has been denied a request to be relieved of child support responsibilities. Similar situations, with similar results, have arisen recently in Ohio, Texas, and Pennsylvania.