

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 June 2, 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

Newspapers in Ohio and Michigan ran articles on the forensic DNA backlog problems facing their respective states. NPR also did an extensive piece on DNA backlog problems, focusing on New York. Meanwhile, a state government of Australia has finally introduced legislation to allow police to take DNA samples from criminals, suspects, and volunteers. England may consider rethinking its rule to destroy samples from persons no longer under investigation, due to a court decision overturning a murder conviction.

Michigan lawmakers are considering a statute of limitations exemption for rapes, and could consider including other felonies as well. However, rape counselors in Massachusetts say reopening cold rape cases is too painful for some victims.

Texas Gov. G. Bush continued to feel the heat from death penalty opponents and has said that he now favors DNA testing for death row inmates. Louisiana legislators are considering options for a post conviction testing bill and are hearing from supporters and opponents. Oklahoma may appropriate funding for its indigent defense system to pay for inmate DNA testing.

STATE LEGISLATION

Genetic Privacy

1. New York AB 11155 – prohibits employment and insurance discrimination based on DNA or other genetic test results.

Paternity

2. New York AB 11160 – allows for posthumous genetic tests for paternity cases, in some instances.

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NEWS ARTICLES

Forensic DNA

1. "Forensic scientists respond to public scrutiny." The Lawyers Weekly (Canada), June 2, 2000.
Article discusses the need for standards protocols for collection, analysis, labeling, etc. of forensic evidence. In particular, the article discusses the mishandling of a DNA case in Canada. Criticizes Canada for not providing departments to send employees to important forensic conferences and seminars. Points out that the US was awakened to the importance of greater accountability and standardization during the OJ Simpson case.
2. "DNA laws to be introduced today." AAP Newsfeed, May 31, 2000.
The New South Wales, Australia government is introducing legislation to give police the power to take DNA samples from suspects and criminals, and to accept samples from volunteers. Local police expect the resulting database to solve a great amount of crimes. Only the samples taken from persons convicted of serious crimes would remain on file.
3. "DNA test may reveal fate of Jesse James." Calgary Herald, May 31, 2000.
The Texas grave historians believe to belong to Jesse James was exhumed in order for DNA tests to be run on the remains. The DNA results will be compared to those taken from acknowledged ancestors of the outlaw for verification.
4. "DNA Tested in Sex Abuse Case Against Ex-Fairfax Principal." The Washington Post, May 31, 2000.
A blood sample has been obtained from a woman's childhood nightgown to see if it matches the DNA of a school principal in Virginia. The physical evidence may finally be enough to convict the man who is accused of repeatedly raping the woman when she was a child.
5. "Death row inmate's plea for DNA retest denied." The Associated Press State & Local Wire, May 31, 2000.
The Texas Court of Criminal Appeals rejected death row inmate McGinn's request for DNA retesting. The appeal was denied because it did not present new facts, new law or proof of innocence. McGinn's lawyers say that some of the evidence was not collected properly and wasn't tested because the DNA technology available at the time was not good.
6. "Michigan lags in catching rapists." The Detroit News, May 30, 2000.
State police have run only 500 tests on blood samples collected from 15,000 since 1991. Police say the backlog is due to staff and money shortages, as well as having to redo some analysis with new testing technology. Article says that Michigan has "launched an aggressive plan to chisel away at the backlog to catch up with states like Florida." Calls Florida a "pacesetter."
7. "UK expert tells Australia of DNA benefits." AAP Newsfeed, May 30, 2000.
A Detective from the UK tells Australian police that DNA collections have helped reduce crime by 40% in some areas of UK. Tasmania and New South Wales (Australia) are considering enacting DNA collection laws this year, and Victoria and the Northern Territory already have such laws.

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8. "Prosecution turns to DNA; analysts doubt its impact." The Baltimore Sun, May 30, 2000.
Case against Baltimore Ravens athlete is relying on the strength of DNA evidence. Analysts say DNA evidence may not be significant because defendants already admit to being at the crime scene. Forensic expert Henry Lee – of the OJ Simpson case notoriety -- is a potential witness for the prosecution.
9. "Rape victim: Change laws so criminals can't elude arrest." The Detroit News, May 30, 2000.
Discusses the idea of eliminating the statute of limitations for rape cases when DNA evidence is available – focuses on Michigan. Public defender's office says the ability to charge suspects several years after a crime has been committed would make it extremely difficult to defend innocent people. A Michigan bill is being considered, and the Senate committee chairman would like to add all felonies involving DNA evidence to the statute of limitations exemption.
10. "Finland Authorities test DNA of immigrant family members." Nordic Business Report, May 30, 2000.
Finnish authorities are running DNA tests on a group of Somalians trying to immigrate in order to determine whether they are relatives of Somalians currently living in Finland. There are similar plans to test Iraqis this fall.
11. "All the evidence suggests that we should change our minds over DNA." The Times (London), May 30, 2000.
A Court of Appeal in London has overturned a murder conviction because the suspect was linked to the murder from DNA taken in conjunction with an unrelated drug case that had been dropped. By law the DNA samples should have been destroyed when the drug case was dropped. Now England is considering changing the rule to allow such samples to be kept – argument is that "not proven" guilty is not necessarily the same thing as being innocent.
12. "DNA testing worries rape crisis counselors." The Associated Press State & Local Wire, May 29, 2000.
Massachusetts police are reopening some "cold" rape cases in hopes of finding the perpetrators, but some rape counselors say that reopening the cases could unnecessarily upset the victims who have "healed" and want to put the trauma behind them. The state's database is expected to be available in a few weeks.
13. "Group wants families to keep DNA documented." The Associated Press State & Local Wire, May 29, 2000.
A nonprofit group called the Wyoming Cops Association is beginning a project that will create DNA samples of children by using cheek swabs. Samples are sealed and given to parents for safekeeping. The group is targetting teens, who are at a higher risk for turning up missing. The project may cost up to \$50,000 and has already raised at least \$21,000.
14. "Missouri Proposal To Include Personal Information On Driver's Licenses Prompts Controversy." National Public Radio, May 29, 2000.
Missouri is reportedly considering establishing a new drivers license that would contain a variety of personal information, possibly including DNA information. Demand for such a card is said to be coming from both the public and private sector as drivers licenses are increasingly being used for more than just establishing a person's qualifications to drive.

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15. "A Life or Death Gamble." Newsweek, May 29, 2000.
Discusses the need for DNA testing for death row inmates. Points out that 26% of the FBI's first 18,000 DNA analysis cases for rape or rape-murder charges excluded the main suspect. Article focuses on the McGinn case in Texas and Gov. G. Bush's reluctance to stop executions for Dna
16. "Use of DNA information becomes an issue of privacy." The Plain Dealer, May 28, 2000.
Article discusses debates that occur at the National Commission on the Future of DNA Evidence. ACLU and defense attorneys worry that DNA databases may someday be used to run genetic tests on inmates for health information, and argue that DNA samples should be destroyed after a person has completed his/her sentence. Defense attorneys also want more guarantees to access to post conviction DNA testing. Prosecutors claim that many post conviction analysis requests are frivolous and only serve to clog the system. The Commissions final report is due at the end of the year.
17. "A deluge of DNA testing." The Plain Dealer, May 28, 2000.
Ohio has entered only 1000 samples into its DNA database and has 29,000 more awaiting analysis. With the \$1.3 million Ohio has applied for from NIJ, the backlog could be cleared out by next March.
18. "Texas has never executed the innocent, Bush asserts." The Des Moines Register, May 27, 2000.
Texas Gov. G. Bush restates that Texas has never executed innocent people, but says that he now favors DNA testing for death row inmates to "erase all doubts." Texas defense attorneys applaud Bush's remarks but wonder why he has not called for corresponding legislation.
19. "DNA testing talk is good move." Saturday State-Times/Morning Advocate (Baton Rouge, LA.), May 27, 2000.
Supports Louisiana Governor's decision to appoint a study group to look into DNA post conviction DNA issues. Argues that if juries can make a mistake in the acquittal of OJ Simpson – as many Americans believe – then juries could also make mistakes in condemning the innocent. Says that making inmates pay for tests would put the poor at a disadvantage, and asks what price is too high for the state to pay in order to make sure an innocent person is not being executed.
20. "Judicial Reforms in Albany." The New York Times, May 26, 2000.
Governor Pataki's proposal to lift the statute of limitations for all class B violent felonies is too broad – should consider lifting the statute only rape and certain other violent offenses in which DNA evidence is likely to be present.
21. "Lawyers push for inmates' right to DNA testing." The Times-Picayune, May 26, 2000.
A group of defense lawyers in Louisiana are pushing for post conviction DNA testing legislation, but prosecutors say that any such legislation should be written very narrowly to avoid abuse and unnecessary delays. The House and Senate chambers have both heard testimony, but there is no legislation that is currently viable for enactment this year.

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22. "Catching criminals by DNA profiling is prompting calls for more testing but the huge backlog is raising questions about the future of this investigating tool." National Public Radio, May 25, 2000. Opens with introduction of New York's new law to collect DNA samples from parolees and some of the resistance being encountered. New York's new DNA laws from last year expand samples taken in a year from 3,000 to 30,000, plus an additional pool 100,000 for retroactive provisions. Of the 42,000 samples the state has, only 8,000 have been entered in the database. Nationwide an estimated 180,000 rape kits are backlogged and 1.5 million offenders are not in a database who legally should be. ACLU says all samples should be destroyed once DNA has been entered in a database. Also mentions statute of limitations problems.
23. "Agency gets \$250,000 for inmate tests." The Associated Press State & Local Wire, May 24, 2000. Oklahoma bill to allow for post conviction DNA testing continues to progress through the legislature. The bill would also give the Oklahoma Indigent Defense System \$250,000 to pay for such tests.
24. "Moreau opposes right to DNA tests." The Advocate (Baton Rouge, LA), May 24, 2000. East Baton Rouge, Louisiana District Attorney argued before the legislature that giving inmates easy access to DNA testing. Says that tests may not turn up evidence conclusive enough to overturn convictions, but could generate enough publicity and political pressure to free inmates. Could create a "field day for lawyers" and bottleneck the justice system.
25. "JUDGE BARS DNA EVIDENCE." The Ledger (Lakeland, FL), May 24, 2000. A Circuit Court in Florida has ruled that DNA evidence that identifies the suspect in a crime (by a 1 in 171 quadrillion chance) may not be used in court because the State Attorney's office violated rules of evidence disclosure by not telling the defense of the DNA evidence until a very late date. The State Attorney's office will seek an appeal.
26. "Federal appeals court delays the release of Indiana inmate." The Indianapolis Star, May 23, 2000. A man in Indiana whose murder conviction was overturned when DNA evidence proved he did not also rape the victim, has been ordered to remain in prison pending an appeal by the State.
27. "News of the Weird." State Journal-Register, April 7, 2000. A man in Hong Kong was convicted of robbery after his saliva was found on evidence. During the robbery he apparently took pity on one of his victims and returned \$12 of the loot, but not wanting to leave fingerprints, he removed the money from the stash with his teeth and dropped it in the victim's hand.

Genetic Privacy

28. "Nfld. to regulate genetic research." The Lawyers Weekly, June 2, 2000. Newfoundland (Canada) is proposing to regulate blood sampling and other genetic research activities undertaken for medical research. The province has a small gene pool which makes it easier for genetic researchers to trace causes of certain diseases.

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Paternity

29. "NOT THE FATHER; Judge lifts support burden from man." Morning Star (Wilmington, NC), May 25, 2000.

A District Court judge in North Carolina has ruled that a man will not have to pay more than \$30,000 in overdue child support for a child that is not his. DNA tests have proven that he could not have fathered the child. The child support agency will appeal the decision.