

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 9, 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

USA Today ran an article on the front page thoroughly discussing law enforcement's use of DNA and related state legislature activities. Nevada has solved a 23 year old murder with a "cold hit," and Washington has convicted the first person based solely on DNA evidence. In another case, scientists are using DNA extracted from lice to establish the identity of the attacker in a rape/murder case.

New York City may be getting its own DNA lab, and a Michigan legislator is trying to get an additional \$50,000 in the state budget for DNA analysis. Misconduct at a state lab in Washington may force serial killer investigators to use a private lab. Some cities in California may begin contracting out for analysis if the local sheriff decides to impose a fee.

Governor Bush's decision to grant a death row inmate a reprieve in order for DNA testing to be conducted was covered by newspapers throughout the US. Many of these articles paid close attention to inmate access to post conviction DNA testing. The Governor of Virginia granted an inmate a similar reprieve, and the Oklahoma Governor signed a post conviction bill this week. Meanwhile a federal appeals court rejected a request for post conviction DNA testing. San Diego prosecutors will voluntarily review old cases to see if DNA testing is warranted.

STATE LEGISLATION

No relevant state legislation this week.

NEWS ARTICLES

Forensic DNA

1. "DNA and the death penalty." US News & World Report, June 12, 2000.
Discusses decision by Gov. Bush to grant a reprieve for a Texas inmate who believes DNA testing will exonerate him. Death penalty opponents say DNA testing will more accurately document guilt or innocence. Victims' rights groups worry that opening the doors to post conviction DNA testing will lead to unnecessary delays and years of retesting. Reports that four states currently have laws that make post conviction testing easier (Illinois, Minnesota, New York, Washington).

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2. "Death Sentence Upheld on Appeal; Va. Man Sought DNA Test in Rape, Murder of Girlfriend." The Washington Post, June 7, 2000.
The 4th US Circuit Court of Appeals unanimously voted to uphold the death sentence for an inmate who believes access to DNA testing could exonerate him. The victim's bloody fingernail was preserved but never tested. The court's opinion said the inmate failed to show there was "good cause" for retesting. Defense may soon seek relief for DNA testing from Virginia Governor Gilmore.
3. "Sens. Leahy, Smith, Collins Relaunch Bipartisan Innocence Protection Act." US Newswire, June 7, 2000.
The "Innocence Protection Act" which, among other things, would provide for access to post conviction DNA testing, has been reintroduced by Sen. Leahy (D-VT), along with cosponsors Collins (R-ME), and Smith (R-OR), and Feingold (D-WI), among others. Both the House and Senate will hold hearings on the issue this month [Senate Judiciary Committee hearing is scheduled for 6/13].
4. "Bill allows DNA tests in Oklahoma." The Associated Press State & Local Wire, June 6, 2000.
Oklahoma post conviction bill was signed by the Governor on June 6, who hailed the legislation as essential. The new law will permit the Oklahoma Indigent Defense System to investigate and screen claims that DNA evidence will prove "factual innocence" of certain inmates. In addition to freeing the innocent, supporters hope it will allow law enforcement to find the truly guilty party.
5. "Former 'Star Search' comedian gets up to 40 years for rape." The Associated Press State & Local Wire, June 6, 2000.
Former "Star Search" comedian has been convicted of a Nebraska rape in a case that hinged mainly on DNA evidence. Man faces sentencing in another rape conviction in Oklahoma and Iowa, and is a suspect of similar crimes in California, Illinois, and Wisconsin.
6. "Peter Neufeld, Innocence Project, talks about critical role DNA testing can play in criminal cases." National Public Radio, June 6, 2000.
Interview with Peter Neufeld on NPR. Says that he is not in favor of destroying DNA samples – "once a person has been convicted of a crime, it's perfectly appropriate for the state to retain that DNA sample" because the sample could help identify the person if he commits another crime after being released. But is concerned with the idea of collecting and keeping samples from arrestees, because of the problem of racial profiling.
7. "BUDGET: BEST OF BOTH WORLDS / TAXES CUT, SERVICES EXPANDED." Newsday (New York, NY), June 6, 2000.
New York City Mayor Guiliani and Council Speaker Peter Vallone have agreed to a \$37.6 billion city budget. Included is an agreement to the Mayor's proposal to create a DNA crime-detection laboratory. Both men warned that the legislature could derail the agreement if it insists on large cost-of-living increases for city retirees' pensions.
8. "A New DNA Tool In Rape Trial / Nassau Judge Is Asked To Allow Test Results." Newsday (New York, NY), June 6, 2000.
Prosecutors in Nassau County, New York are preparing to use mitochondrial DNA to establish the identity of a suspected rapist. If the judge permits the evidence to be submitted, it will be the first time on Long Island that mitochondrial DNA is used as a prosecution tool. Mitochondrial DNA has been admitted in cases in 14 states.

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9. "Childhood Friend 'Trapped By DNA Test'." Press Association Newsfile, June 6, 2000.
Saliva found on the body of a rape/murder victim has been matched to the DNA of her childhood friend. Likelihood of 1 in 1 billion that someone else would fit the same profile.
10. "As police rely more on DNA, states take a closer look." USA Today, June 6, 2000.
Overview of law enforcement use of DNA evidence and DNA databases. In 2000, 6 states have enacted laws expanding DNA databases, and 11 states have rejected or declined to act on such expansions. One-third of all states test burglars and seven test all felons. ACLU says possibilities for abuse are endless. An attorney in Boston is preparing to challenge the police's ability to collect DNA from discarded items. Explains the unusual alliance against DNA testing of liberal privacy advocates and conservative anti-government foes.
11. "Prince George's Opens DNA Lab; Defense Lawyers Express Concerns Over Access, Integrity of Testing." The Washington Post, June 6, 2000.
A \$1.3 million federally funded DNA lab has opened in Maryland, but defense attorneys questions whether they will be granted the same access to the facility as police and prosecutors. The lab manager wants to establish an arrangement to allow requests from the defense to witness something being tested.
12. "Hamilton County coroner to create "cold case squad" to review old crimes." The Associated Press State & Local Wire, June 5, 2000.
A "cold case squad" in Hamilton County, Ohio is being created to review over 350 pieces of evidence from unsolved cases. Most of the evidence is connected to rape cases. A letter will be sent to local agencies asking for assistance in determining which pieces of evidence might be the most useful.
13. "Scientist who studied Yates' DNA placed on leave." The Associated Press State & Local Wire, June 5, 2000.
A Washington DNA analyst who tested DNA evidence leading to the arrest of suspected serial killer Robert Lee Yates recently admitted to lying in a rape trial and has been placed on leave. Some of DNA in the Yates case will have to be retested. Yates' lawyer intends to "follow up on this." Investigators, who have over 300 pieces of DNA evidence related to the case to test, will not be able to use the Seattle crime lab and may have to send DNA evidence to private labs for testing.
14. "Senator proposes DNA indictments." The Associated Press State & Local Wire, June 5, 2000.
A Michigan state senator has introduced a bill that would allow "John Doe" indictments based solely on a genetic profile. The bill would also extend the statute of limitations in rape cases from 6 to 10 years. The senator also plans to continue efforts to allocate an additional \$50,000 to the state crime lab for analysis of backlogged DNA samples.
15. "Defense drops bid to keep blood-stained shirt out of Fletcher trial." The Associated Press State & Local Wire, June 5, 2000.
Defense for a Michigan murder suspect had been fighting the prosecution's bid to admit a blood stained shirt as evidence. Now that the DNA tests have proved inconclusive because the blood on the shirt was too fine to be tested, the defense has reversed and is fighting have the evidence included.

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16. "Police DNA laboratory built with FBI help opens in Hungary." BBC Worldwide Monitoring, June 5, 2000.
A crime lab has recently opened in Budapest, Hungary that was built with the assistance of the FBI. The lab will test DNA for criminal investigations.
17. "Scientists trap bugs at crime scenes to catch rapists, murderers." The Ottawa Citizen, June 5, 2000.
Scientists are perfecting methods for extracting DNA from blood found in insects crawling around at a crime scene. In a pending court case, the prosecution is expected to enter DNA evidence from a blood-engorged pubic crab-louse found on the victim that matches the DNA of a lice-ridden suspect. It is believed the same analysis could work with fleas, bed bugs, maggots, mosquitoes and other parasitic insects that could be passed from an attacker to the victim. Such analysis could similarly be used in cases where a person is presumed dead but no body has been found.
18. "San Diego to seek old cases for DNA tests." United Press International, June 5, 2000.
The San Diego County (CA) district attorney's office will be reviewing old cases to see if DNA testing could prove a convicted person's innocence. The initiative is thought to be the first of its kind to not require inmates to get a lawyer to seek DNA testing through a court order. The Deputy District Attorney estimates that the number of cases that would warrant DNA testing after being reviewed would likely be in the teens. Some prosecutors are criticizing the program, saying the funds would be better used in still unsolved cases.
19. "Sheriff says cities likely to share budget pains." Ventura County Star (CA), June 4, 2000.
Due to department cutbacks, the Ventura County (CA) Sheriffs Office may soon start charging its contracted cities a fee for DNA tests. DNA tests had previously been conducted for free. A local police chief indicated that if the sheriff starts imposing fees, the city may begin to go out for public bids for certain services.
20. "Lawyers hashing out DNA test details." The Dallas Morning News, June 3, 2000.
The prosecution and defense for Ricky McGinn – who was recently granted a 30-day reprieve from Texas Governor Bush – have begun negotiating on how best to get DNA tests completed quickly and accurately. A problem is that the most respected labs have the longest backlogs. Even if the new analysis does not test positive against McGinn, defense is not sure how they would proceed since a federal appeals court has already ruled that DNA retesting did not constitute new evidence. A pubic hair is the DNA in question – the victim's blood was found in McGinn's car, on an ax handle in another car, and on his clothes. McGinn, who has also been accused of several other sexual assaults, would not face the death penalty for the murder conviction if he is cleared of the rape charges.
21. "DNA Links Suspect to 1977 Murder." The San Francisco Chronicle, June 3, 2000.
Police in Reno, Nevada have gotten a "cold hit" for on a murder unsolved for 23 years. The suspect's DNA profile matched DNA taken from the victim's clothing. A parole officer convinced the suspect (who had been jailed for 7 years for a 1969 sex offense) to voluntarily submit a DNA sample in 1997. Due to backlogs, the sample was only recently analyzed and entered in the database.

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22. "Home-invasion investigation gets boost from arrests, DNA samples." The Vancouver Sun, June 3, 2000.
Police in Vancouver have linked suspects to a series of home invasions and assaults by using DNA samples the suspects left behind on pop cans and coffee mugs left at the crime scene.
23. "Awaiting Science's Verdict." The Washington Post, June 3, 2000.
Virginia Governor Gilmore's decision to allow DNA testing for inmate Earl Washington is called "tormenting" for the victim's family. The victim's father wrote to Gilmore earlier this year asking that the testing not be permitted.
24. "Death penalty: Two governors decide to let science sort it out. The Associated Press, June 2, 2000.
Texas Governor Bush and Virginia Governor Gilmore, both Republicans, have granted death row inmates access to DNA testing this week. Both governors insist their decisions do not indicate a softening of their support for the death penalty.
25. "DNA DATABANK READY TO GO." The London Free Press, June 2, 2000.
The Canadian DNA databank will be ready to begin running by the end of the month, but could be delayed until the Senate's amendments to the 1998 enabling legislation is passed by the House of Commons. The amendments are expected to be approved and would include: military offenders and all civilian offenders, as well as suspects if there is a court order.
26. "Man convicted of rape solely on disputed DNA evidence." The Associated Press State & Local Wire, June 1, 2000.
The first person in Washington convicted solely on DNA evidence was convicted of rape after a jury deliberated for less than one hour. The DNA evidence was disputed after the analyst admitted to lying about his initial test results. Apparently, the analyst made a mistake in the initial DNA test, and his comparison against the DNA databank came up negative. After a colleague reviewed his work and pointed out the mistake, the tests were rerun and a match was made. The analyst tried to cover up his mistake by destroying the paperwork on the first test.
27. "Hair, saliva samples taken from twin brothers." The Associated Press State & Local Wire, June 1, 2000.
Police in Oklahoma City (OK) have collected samples from over 200 persons in their quest to find murderer. Murder charges were filed in March against "John Doe" based on the genetic profile of DNA evidence found at the crime scene.
28. "DNA TEST FOR 1000 IN BID TO NET RAPIST." Daily Record, June 1, 2000.
In Scotland, more than 600 men have had DNA tests in a bid to catch a rapist. All have been declared innocent, and officers hope to test another 400 in the coming weeks.
29. "Teen who spit on trooper's sandwich gets probation." The Associated Press State & Local Wire, May 31, 2000.
An officer who found saliva on his Burger King sandwich had the sample tested. The DNA matched a teen who worked at the Burger King. The teen was given a year's probation, ordered to write an apology to the officer, and is prohibited from working in any food preparation job. If committed by an adult, the offense would have been a class D felony – battery by body waste on a police officer.

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Genetic Privacy

30. "As gene map nears, big questions." The Christian Science Monitor, June 7, 2000.

The announcement of the decoding of the human genome will bring significant ethical and theological questions. The legal profession is already facing questions of patenting and privacy, and the medical and insurance industry will face plenty of ethical problems as well. Individuals will also have to decide whether they are interested in knowing their genetic profile, and if diagnosed with a fatal genetic flaw, how will they live their life?

Paternity

31. "PA State Sen. O'Pake's DNA Bill." PR Newswire, June 5, 2000.

The Pennsylvania state senate has approved a measure that permit paternity testing of children born of affairs during marriage. Tests could be ordered by the court up to the child's first birthday. Current Pennsylvania law stipulates that the husband is the presumed father of his wife's child unless the man can prove he was impotent, sterile or that it was physically impossible for the couple to have been together at the time of conception.