

DNA LEGISLATION & NEWS

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The June 16, 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

The New York Legislature has introduced a bill that would require DNA samples for felony and misdemeanor convictions. A New York judge recently ruled that the current DNA law is constitutional. In Texas, notable officials are asking for authority to collect DNA samples upon arrest.

DNA testing has cleared an Army Captain of rape in North Carolina, and samples taken from an envelope could help convict a man in a federal court. Across the ocean, police in England are being asked why certain DNA samples were not properly expunged from the database, and the Parliament may consider softening the double jeopardy rule soon.

The US Senate Judiciary Committee held a hearing on post conviction DNA testing, and the Chairman is expected to release a bill shortly that could tie federal funding for state backlogs to post conviction DNA access. The Chairman's bill is expected to be much narrower than that proposed by Senator Leahy. For witness testimony and statements from the chairman, visit: www.senate.gov/~judiciary/wl6132000.htm A Texas legislator has announced that he will introduce a post conviction bill, and also indicated that Texas should take a lead role in criminal DNA databases.

A Michigan bill has been introduced to allow indictments based on DNA profiles and to extend the statute of limitations.

Governor Pataki has suggested New York begin a Missing Persons DNA Database, and corresponding legislation has been introduced.

STATE LEGISLATION

Forensic

1. Michigan SB 1309 – Allows indictments to proceed based on DNA profiles when an offender's identity is unknown.
2. New York SB 7982 – Expands DNA database to include all persons convicted of any misdemeanor or felony listed under the penal code. Failure to provide a DNA sample would be a class E felony and deemed a violation of probation or parole. Bill would be retroactive to include persons whose sentence has not been completed.

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3. New York SB 8085 – Creates a DNA review subcommittee for post conviction DNA analysis appeals.
4. New York SB 8163 – Establishes a DNA database for missing persons. Medical examiners and coroners are required to submit DNA samples for unidentified bodies. DNA samples from relatives for inclusion in the database are authorized but not required.

Genetic Privacy

5. Louisiana HCR 92 – Urges the Louisiana congressional delegation to support federal legislation that would prohibit insurance from discriminating based on genetic information.
6. New York AB 11242 – Clarifies personal privacy rights and that health information (including genetic information) may not be disclosed to third parties without the patient's consent.
7. Washington Initiative 730 – Voter initiative for 2000 ballot to establish consumer privacy rights. Prohibits financial institutions and insurance from disclosing "personal information" which is defined to include genetic information.

NEWS ARTICLES

Forensic DNA

1. "Bills seek to widen DNA use on appeal." The Atlanta Journal and Constitution, June 14, 2000.
The US Senate Judiciary Chairman, Orrin Hatch, is introducing a bill (with 13 cosponsors) that would authorize post conviction DNA analysis for cases where the identity of the suspect was in question and DNA evidence could exonerate the defendant. The legislation would only apply to federal cases, but would require states to adopt similar standards in order to be eligible for \$60 million in DNA backlog funding that the bill would authorize as grants.
2. "THE 2000 CAMPAIGN." The New York Times, June 14, 2000.
Vice President Gore states that DNA evidence testing "brings into focus the new ways that mistaken convictions can be uncovered," but still does not support a federal moratorium on the death penalty.
3. "Pataki proposes DNA databank for missing persons." The Associated Press State & Local Wire, June 13, 2000.
New York Governor Pataki has proposed a "Missing Persons DNA Databank" from unidentified and missing persons. Current law already requires a fingerprint databank of missing and unidentified persons – in 1999, 615 of 1,047 fingerprints of unidentified persons were matched and identified. The New York Senate hopes to pass the bill this year.

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4. "Post-conviction DNA testing bill unveiled by Hatch." The Associated Press State & Local Wire, June 13, 2000.

Coverage of US Senator Hatch's introduction of a post conviction DNA testing bill. Hatch says, "it is indisputable that advanced DNA testing lends support and credibility to the accuracy and integrity of capital verdicts." Critics of post conviction testing say it is costly (estimated at \$2000 each) and the backlog can needlessly delay justice for victims. The bill was announced in conjunction with a Senate hearing on post conviction DNA testing, at which the testimony focused on what the threshold should be for granting requests. The Leahy bill was criticized as "test first and ask questions later."

5. "Oklahoma AG, former prisoner testify in Washington." The Associated Press State & Local Wire, June 13, 2000.

Oklahoma Attorney General urged the US Senate Judiciary Committee to not "trample" state sovereignty by mandating DNA testing that would supplant current state judiciary processes. Senator Leahy maintained that his bill would not supplant state sovereignty.

6. "State seeks reinstatement of 1994 murder conviction; DNA issues led judge to order new trial." The Baltimore Sun, June 13, 2000.

Last year a circuit court judge ruled that the attorneys for a man sentenced to life without parole for rape and murder in Maryland bungled their handling of genetic testing issues, and therefore overturned the conviction. The original defense attorney did not challenge the DNA evidence in many ways, and also failed to investigate the defense's own DNA expert who was found to be unqualified by the trial judge. The prosecutors are now asking the appeals court to reinstate the conviction, stating that there was sufficient additional physical evidence contributing to the man's conviction.

7. "Will Capital Punishment Be a Hot-Button Campaign Issue in 2000?" CNN Crossfire, June 13, 2000.

Discusses how the capital punishment debate arose out of the use of DNA testing. Bush has already stayed one execution while DNA testing is being completed, Gore has stated his opposition to a moratorium on capital punishment, the American Medical Association has rejected a call to halt executions, and the US Senate held a hearing on post conviction DNA testing. Former Virginia Governor Allen stated that the Leahy bill was overly broad, but that DNA testing would be appropriate in some cases.

8. "Johnson County unveils 2001 budget." The Kansas City Star, June 13, 2000.

The Johnson County Administrator's proposed 2001 budget will include funding for enhanced DNA analysis at the county's crime lab. The County Commission must adopt a budget by August 24.

9. "Hatch plans bill to expand DNA testing on death row." USA Today, June 13, 2000.

US Senator Hatch, a conservative leader of the Senate and death penalty supporter, will introduce a post conviction bill that is similar, but much narrower than that proposed by Sen. Leahy. Hatch gave Leahy credit for taking a lead on the issue. Some senators have criticized Leahy's bill saying that it goes too far towards favoring defense lawyers and opponents of capital punishment. Janet Reno has not endorsed the Leahy bill, which currently has 6 cosponsors (only 1 Republican).

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10. "Notorious killer to leave Oregon for DNA testing." The Associated Press State & Local Wire, June 12, 2000.

A man convicted of killing the state prisons director in 1989 is waiting for a new trial and DNA testing. The victim's family objects to having the Oregon State Police conduct the DNA analysis, and would prefer to have a nationally renowned expert conduct the tests instead. The victim's family has criticized the state's handling of the investigation from the beginning. The defense would also prefer an outside expert for analysis -- Edward Blake of Forensic Science Associates, who has conducted testing for the Innocence Project.

11. "Local authorities choose ATF, FBI over busy state crime lab." The Associated Press State & Local Wire, June 12, 2000.

Pennsylvania jurisdictions often choose to send crime scene evidence to the ATF or FBI for analysis due to the significant backlog at state crime labs. The Bureau of Forensic Services says the only way to reduce the backlog is with more staff or equipment. The crime labs will be adding additional personnel soon, and hope to see the waiting time decrease.

12. "We have a duty to punish the guilty." The Times Union (Albany, NY), June 12, 2000.

Argues that the death penalty should not be abolished just because there is a risk that an innocent defendant might be killed. Says that death penalties are the least likely to be in error due to the substantial appeals process. Notes that US Dept. of Justice found that in one 17-month period criminals released on probation or parole committed 13,200 murders and 200,000 other violent crimes. Halting the death penalty "for fear of making a mistake is not noble. It is a copout."

13. "U.S. SENATOR TRENT LOTT (R-MS) HOLDS NEWS BRIEFING." FDHC Political Transcripts, June 12, 2000.

US Senate Majority Leader Trent Lott answers questions on his opinion on post conviction DNA testing. Lott says he needs to research the issue before taking a substantive stand, but believes DNA testing should play a role in making sure the death penalty is as accurate as possible.

14. "Fury at the police DNA database." The Observer, June 11, 2000.

England's Forensic Science Service is coming under fire for illegally maintaining DNA samples on its database from citizens who have been acquitted or for whom charges have been dropped. Sources within FSS are concerned that unless the database is cleaned up quickly, many prosecutions could be thrown out. Apparently the process for removing samples from the database is faulty and relies on a notification from local authorities that the sample should be removed.

15. "Serving Justice Within Reason, DNA Profiling a Useful Tool." The Sunday Oklahoman, June 11, 2000.

Urges Americans to not be afraid of forensic DNA technology. Gives examples in Oklahoma where DNA was used to free 2 men wrongfully convicted, and convict one man who had gotten away with murder for 20 years. Applauds recent state legislation to allow review of death penalty cases for potential DNA analysis, but argues that the appeals process should not be lengthened nor should the death penalty be thrown out. Oklahoma has a database of 6000 felons, and is waiting on a federal grant to input 6000 more.

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16. "States Move Toward Easing Obstacles to DNA Testing." The New York Times, June 10, 2000.
Proposals at state legislatures for better access to post conviction DNA testing have come as several inmates have been exonerated after DNA analysis. Most inmates have no statutory right to DNA analysis. New York, Illinois and Minnesota are the only states to specifically allow inmates to ask for post conviction DNA analysis. Arizona, Tennessee, Washington and Oklahoma offer a more limited access, California is considering legislation and a Texas state senator is proposing legislation for next year's session.
17. "DNA Testing Clears Army Captain In Rape, Burglary Of Woman In South St. Louis County." St. Louis Post-Dispatch, June 10, 2000.
An Army Captain in St. Louis was stopped by police on his way to the airport and arrested after a patrolman thought he matched the description of a man wanted for raping two women. All charges against the man were eventually dropped after DNA tests completely exonerated him.
18. "Texas lawmakers promise DNA legislation." The Associated Press State & Local Wire, June 9, 2000.
Legislators in Texas intend to pursue legislation that would give inmates access to post conviction DNA testing. State Senator Rodney Ellis (Democrat) will be proposing legislation for DNA testing if the suspects identity was an issue at trial. A Republican Senator who is a former prosecutor has joined Ellis in supporting the measure. At this time, Governor Bush has not indicated whether he would back the proposed bill.
19. "Allow DNA samples at arrests, officials urge." Austin American-Statesman, June 9, 2000.
The Austin Police Chief and Travis County District Attorney are urging state legislation that would allow for DNA testing at the time of arrest instead of waiting for conviction. However, they may have started too late to be successful in securing legislation in the 2001 session, given the opposition a bill such as this will encounter. Additionally, the additional cost of such sampling could be a huge stumbling block. Compares the small US DNA system to England's large DNA system. Police in England recently solved a murder using the DNA database when the offender was arrested for stealing gasoline – a crime for which DNA would not be collected in the US and would result in the murderer going free. Barry Scheck says such a system should not be pursued when significant backlogs still loom.
20. "NYPD's Forensics Lab Gets Seal of Approval." Daily News (New York, NY), June 9, 2000.
New York Police Department's \$33 million crime lab has received approval from the American Society of Crime Lab Directors. The state passed a law requiring that New York crime labs meet the Society's accreditation standards after the OJ Simpson trial brought to light how evidence is handled, and sometimes mishandled.
21. "Flush out the burglars." The Dominion (Wellington), June 9, 2000.
An editorial praising England's increased efforts to bring burglars to justice. Mentions that a new law "still to come" will allow police to take DNA samples from burglars as young as 10. The measure is hoped to stop young people from developing a lifestyle based on stealing, which the article reports tends to often lead to graduating crimes of violent offenses.

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22. "Give Texas prisoners more access to DNA testing." The Houston Chronicle, June 9, 2000.
Editorial written by Texas State Senator Rodney Ellis (Democrat) who will be introducing post conviction DNA testing legislation. Says that Texas should take the lead in implementing criminal DNA databases, and should also follow New York and Illinois in granting inmates access to DNA testing. Also recommends that Texas develop an Innocence Project and Commission "that would improve oversight and investigation in death penalty cases in which DNA evidence can play a leading role.
23. "COMMITTEE BACKS HAGUE ON DOUBLE JEOPARDY." The Independent (London), June 9, 2000.
An important committee in England has recently backed the suggestion to change the law to allow defendants to be tried twice for the same offense. The Home Affairs Select Committee recommended that the double jeopardy rule be relaxed for certain cases that involve a life sentence and where the public interest would be best served. DNA would be expected to play a key role in some such cases. A notorious gangster in Britain recently exploited the double jeopardy rule by admitting to two murders for which he had already been acquitted, and by another gangster who was cleared of ordering a death in 1983 but recently bragged of hiring the hitman in his autobiography. Currently, only 35 cases would be reopened under the proposal.
24. "State Briefs." San Antonio Express-News, June 9, 2000.
Texas inmate McGinn, whose execution was recently stayed by Gov. Bush while DNA tests are being conducted, should have the results of his tests completed in three weeks. However, the judge has entered a gag order to prohibit anyone from revealing the results before the next court date.
25. "Warning over DNA database." South China Morning Post, June 9, 2000.
Hong Kong legislation to create a criminal DNA database is drawing debate from legislators. Some argue that keeping the sample on file will keep the criminal from ever rehabilitating and worry that the database could be used by the Government as a social control. But other legislators defend the bill, saying that "If we assume the Government is bad government, what is the point of us making laws because bad government will do whatever it likes."
26. "New York DNA Law Survives Challenge." The Legal Intelligencer, June 8, 2000.
A New York judge has ruled that the state law allowing collection of DNA samples from thousands of prisoners and parolees convicted of violent felonies was recently ruled to be constitutional and not to be ex post facto punishment. The judge cited cases in other states where the constitutionality of collecting DNA samples from convicted criminals has been upheld, and further wrote: "Because DNA collection does not infringe upon any fundamental right, petitioner's claims regarding due process and equal protection are subject only to a 'rational basis' level of scrutiny," the judge wrote. "The unacceptably high rate of recidivism of violent felons and the applicability of DNA evidence to such crimes supplies that rational basis."
27. "Use of DNA in sex offender cases will help bring justice." University Wire, June 8, 2000.
Articles urges the Michigan senate to adopt recently introduced legislation that would allow indictments of unnamed sex offenders based on a DNA profile. The bill would also extend the statute of limitations for sex crimes to 10 years.

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28. "DNA Lab To Speed Probes By Police." The Washington Post, June 8, 2000.
A new crime lab in Maryland is expected to help officials solve crimes more quickly. The lab was funded by federal dollars – over \$600,000 in grants, and \$700,000 from federal asset forfeitures. The county (Prince Georges) will pay salary of about \$100,000 and may eventually have to pick up the \$100,000 operating tab.
29. "Put aside hatred, use logic, prosecution tells jury." The Associated Press State & Local Wire, June 7, 2000.
A federal case in Florida involving men accused of shipping arms from the US for the Irish Republican Army includes DNA evidence from a greeting card that was inside one of the boxes containing the guns.
30. "Appeal of evidence ruling puts trial on hold." The Tampa Tribune, June 7, 2000.
Prosecutors who lost key DNA evidence after a judge ruled that the evidence was not reported to the defense in a "timely manner", may now be able to have the evidence admitted. The prosecution's appeal of the judge's decision to not admit certain statements will necessarily delay the trial while the appellate court rules. Prosecutors say the delay will now give the defense ample time to review the DNA evidence, and hope to have it admitted when the trial resumes.

Genetic Privacy

31. "COMPANY URGES LEGISLATION TO PROTECT GENETIC DATA." Chicago Tribune, June 12, 2000.
At a hearing of the Joint Economic Committee held last week in Congress, Craig Venter – of the gene-mapping company Celera Genomics Inc. – said it will be impossible to keep details of people's genes secret in the future, so Congress should pass laws to make sure such information is not abused.
32. "Swedes warn against Scottish gene testing." The Sunday Herald, June 11, 2000.
Swedish scientists warn against countries allowing genetic testing services for breast cancer being offered by the company Rosgen on the basis that it would entail giving away valuable details of the country's national "gene bank." They also say that blood or tissue samples could eventually be used for biological warfare.
33. "BILL TO OUTLAW GENE BIAS STUCK IN COMMITTEE." The Buffalo News, June 9, 2000.
A bill before Congress that would bar employment and health insurance discrimination based genetic information has reportedly been tied up by Republicans in committee. Rep. Dick Gephardt is calling on Democrats to help break the logjam. The bill is supported by health organizations, but opposed by the insurance industry and the Commerce Committee Chairman has refused thus far to hold a hearing.
34. "DNA EXPERT URGES BAN ON GENETIC DISCRIMINATION." The Times-Picayune, June 8, 2000.
Craig Venter, of Celera Genomics, has warned Congress that the possibility of genetic discrimination threatens to stall advances in biotechnology. So far, 39 states prohibit, at least in part, discrimination in health insurance based on genetic tests; 15 have some ban on discrimination in employment. But many of the laws have loopholes.

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FEDERAL REGISTER

1. Department of Justice announces the July 9-10 meeting of the National Commission on the Future of DNA Evidence, to be held in Washington, DC.