

## 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 22, 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

A US House of Representatives panel has given approval to a bill that would help states eliminate the DNA backlog. DNA evidence continues to play a significant role in court cases by supplying prosecutors with sufficient evidence to charge suspects, and in exonerating the innocent. DNA continues to solve both old crimes and provide important links for new crimes.

Post conviction DNA analysis stories continue to steal most of the headlines around the country. Reports seem to indicate that Congressional Democrats and Republicans are polarized on how much access to allow, and a compromise on any federal legislation may be very difficult to forge. A bill in Illinois that would require certain DNA evidence to be kept indefinitely may soon be signed by the Governor.

A US Senator has introduced legislation to abolish the federal statute of limitations, and prosecutors in Queens, New York have indicted a "John Doe" based on a genetic profile

### STATE LEGISLATION

#### Forensic

1. Delaware HB 665 – requires the Chief Medical Examiner to notify FBI CODIS personnel when a person's conviction has been reversed or dismissed.

#### Genetic Privacy

2. Louisiana HCR 3B – urges the state congressional delegation to support federal legislation prohibiting insurers to discriminate based on genetic information.
3. New York AB 11498 – physician malpractice bill that includes genetic information in the definition of protected individual patient data.
4. Rhode Island HB 8360 & SB 3303 – prohibits employers and insurance from discriminating against someone based on genetic information. Genetic information may not be considered a pre-existing condition for the purposes of health insurance.

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### **NEWS ARTICLES**

#### **Forensic DNA**

1. "Condemned Man Evidence Questioned." AP Online, June 20, 2000.  
In Texas, results from independent genetic tests have been filed in a federal court in an effort to question evidence used to convict a man in a 1993 death. The death and criminal case resulted in the Texas Legislature's enactment of tough sexual predator legislation called "Ashley's Laws." One of five hairs found in the offender's car, and used to link the man to the victim at trial, was found to not belong to the victim at all. The prosecution and defense are discussing how the other hairs might be tested. The prosecution believes the results are irrelevant since the hairs were not the basis for conviction.
2. "Death Penalty Hypocrisy." The Nation, June 26, 2000.  
Criticizes Texas Gov. Bush for jumping on the "DNA evidence bandwagon" while still supporting the Texas criminal justice system that routinely rejects new evidence claims. Says death penalty advocates are embracing DNA technology as a way to head off mounting criticisms of capital punishment cases. Urges support of Sen. Leahy's "Innocence Protection Act."
3. "Second arrest made in deaths of 58 migrants." The Ottawa Citizen, June 21, 2000.  
DNA samples from 58 dead immigrants -- found in an unventilated truck at an English port -- will be sent to China in an attempt to establish their identities.
4. "Gilmore Reviews Double Slaying." The Washington Post, June 21, 2000.  
Virginia Gov. Gilmore (R) has asked to review DNA and other forensic evidence from the case of a man convicted to die. The man pleaded guilty to the slaying, but has been characterized as mentally ill. Gilmore is a former trial lawyer and recently ordered new DNA tests for another man sentenced to death, for which the test results are still pending.
5. "3 ex-death row inmates can sue state after pardons by Gov. Ryan." Chicago Tribune, June 20, 2000.  
Illinois Gov. Ryan has pardoned three former death row inmates, which now gives them an opportunity to seek compensation from the state for their time served. One of the three men was cleared through DNA technology.
6. "Ark. man avoids trial by a hair, goes free." The Commercial Appeal (Memphis, TN), June 20, 2000.  
Charges are dismissed in an Arkansas murder case after the FBI was unable to extract DNA evidence from a strand of hair that the prosecution believed would link the man to the murder victim. Prosecutors still believe the right man was charged, but had no physical evidence to link him to the victim. The trial was delayed when it was discovered that the original DNA tests had been conducted on the wrong hairs, and the strand in question was still at the state crime lab.
7. "Trial hinges on forensics." The Detroit News, June 20, 2000.  
The prosecution has found microscopic specks of blood on a man's shirt which they say proves he killed his wife. The defense will testify that no DNA was detected on the shirt and that analysts "bungled" forensic evidence.

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8. "News Briefing With Senate Majority Leader Trent Lott (R-MS)." Federal News Service, June 20, 2000.  
Senator Lott responds that he is a co-sponsor of Senator Hatch's post conviction DNA analysis bill, but makes no commitment that the legislation will pass this year. He says the bill could pass this year, but that the Judiciary Committee will have to look at the measure again, and Lott would like to hear from other senators as well.
9. "'John Doe' Rapist Indicted On DNA." Newsday (New York, NY), June 20, 2000.  
An unidentified rapist in Queens, NY has been indicted as "John Doe" based on a genetic profile. The man is believed to have raped at least three women. This is the first "John Doe" indictment in Queens, and the second for New York City (Manhattan indicted a "John Doe" earlier this year.) Such indictments are pursued in order to avoid the statute of limitations.
10. "DNA kits offering indelible IDs." St. Petersburg Times, June 20, 2000.  
Kids-DNA, Inc. of Palm Harbor, FL is selling DNA identification kits to parents. DNA samples are collected by mouth swab kits sold for \$18.95 and can be analyzed for \$200, although most parents opt out of the analysis. Approximately 40 hospitals throughout Florida already provide free DNA samples to parents when their children are born. Parents are encouraged to keep the samples in the event that a child is kidnapped or otherwise is missing.
11. "DNA tests apparently rule out third trial of principal." Associated Press State & Local Wire, June 19, 2000.  
A former high school principal in Virginia will not be charged for sex abuse after a woman's childhood nightgown – which showed traces of semen – was not a match to the suspect's DNA. The man admits he has a "psychosexual disorder", and through a legal loophole, has been able to collect disability from the state by claiming his disorder makes him unable to supervise women without sexually harassing them.
12. "Calves' DNA tests put Mansfield man in jail in cattle-rustling case." The Advocate (Baton Rouge, LA), June 19, 2000.  
A Louisiana man has been charged with stealing cattle after DNA tests performed on three unbranded calves proved that they were fathered by bulls from another ranch. The investigation began after a rancher claimed that over a 2-3 month period, 35 steers and heifers had gone missing from his property.
13. "Nebraska Democrats Call For Repeal Of Freedom To Farm." The Bulletin's Frontrunner, June 19, 2000.  
Nebraska's Democratic Party is reported to have endorsed state funds for DNA testing in capital crime cases. No additional details were available.
14. "BOMBSHELL." CBS -- 48 Hours, June 19, 2000.  
Charges against two men accused of murder may be dropped now that DNA evidence from the victim has been found on a sweatshirt belonging to another man – currently in prison for burglary. Prosecutors still believe the other men were somehow involved in the crime.

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15. "Race, DNA and the police." St. Louis Post-Dispatch, June 19, 2000.  
DNA testing that exonerated an African-American Army Captain from rape charges is bringing into question the complex relationship between race and the criminal justice system. The article wonders whether the man would have been convicted of a crime he did not commit if DNA evidence had not available or otherwise conclusive.
16. "Ryan to plug DNA testing, competence." Chicago Daily Law Bulletin, June 19, 2000.  
Illinois Gov. Ryan told the US House of Representatives Judiciary Committee that he supports the "Innocence Protection Act" that would allow for expanded DNA post conviction testing. Last year, Illinois enacted a law to supply \$20 million per year for lawyers handling capital cases to help pay for forensic tests, experts, etc.
17. "Putting DNA Evidence To The Test." Newsday (New York, NY), June 18, 2000.  
Backers of post conviction DNA testing are divided on what the criteria should be for allowing access to such tests. New York Attorney General indicated that he would lean towards Sen. Leahy's broader bill, while California's Deputy Attorney General was looking for a narrower legislative fix as proposed by Sen. Hatch. The two bills are very far apart politically – Leahy his reported to have "derided" Hatch's proposal, and Hatch has "rejected" Leahy's proposal.
18. "Murder trial may be delayed defense to fight DNA evidence." Sacramento Bee, June 17, 2000.  
A judge in a California rape/murder case has ruled that the defense may attempt to discredit DNA evidence that the prosecution is using to link the suspect to the crime. One of the defense's DNA experts also worked as a DNA expert on the OJ Simpson defense team.
19. "Bill Would Preserve Murder Evidence Forever." APBNews.com, June 16, 2000.  
A bill requiring that evidence in murder cases be preserved forever, which passed the Illinois Legislature by an overwhelming majority in April, is awaiting signature by Governor Ryan. The bill would also require evidence to be saved for 25 years in sex offense cases and for 7 years for all other felonies. The bill arose out of concern that evidence which could be used for DNA testing was being destroyed.
20. "House Panel Approves Measure To Ease DNA Backlog." The Bulletin's Frontrunner, June 16, 2000.  
The House Judiciary Subcommittee on Crime has approved a bill introduced by the Subcommittee Chairman (Bill McCollum, FL) to address state DNA backlog problems. The bill (HR 4640) would create a 5-year grant program to give \$10 million a year to states for DNA analysis. Rep. Weiner (NY) intends to offer an amendment to require that the money be spent on analyzing DNA evidence from rape cases when the bill is considered by the full committee.
21. "Congress considers 3 bills regarding death penalty cases." The Fort Worth Star-Telegram, June 16, 2000.  
Congress is considering a number of measures to expand access to post conviction DNA testing, but many Texas officials want Washington to mind its own business. Several US Senators have harshly criticized Texas for its "conveyor belt of death." But Texas officials reply that, if indeed there is a problem with their criminal justice system, "we can fix it without the say-so of Congress." However, the Chairman of the Texas Senate Jurisprudence Committee (Rodney Ellis) is offering a bill for next session to address post conviction issues, and agrees that Texas may need federal help to fix the state's system.

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22. "County examines proposed budget." The Kansas City Star, June 16, 2000.  
The Johnson County, Kansas \$420 million budget will give \$353,000 for operating costs for county DNA analysis and one full-time employee. Meanwhile, the budget eliminates a DNA chemist which was formerly paid for with an outside grant.
23. "Reno endorses DNA testing for death row inmates." Milwaukee Journal Sentinel, June 16, 2000.  
Janet Reno has said that some death row inmates had poor defense lawyers who failed to take advantage of DNA evidence that could have proved the inmate's innocence. She said she believes it is very important that people have access to DNA testing before the point that they get to death row.
24. "DNA leads to charging of inmate in 1986 murder." The Associated Press State & Local Wire, June 15, 2000.  
A man currently serving time in prison for rape and breaking and entering convictions was recently linked through DNA evidence to a 1986 murder. The inmate had been a suspect in the murder, but the investigators only recently became aware that technology was available to test the crime scene sample for DNA evidence.
25. "Appeals court explains why it barred development of new DNA evidence for death row inmate." The Associated Press State & Local Wire, June 15, 2000.  
The Texas Criminal Court of Appeals has released a rare explanation of why it rejected a convicted murderer's appeal for DNA testing (the inmate was later granted a stay by Gov. Bush for DNA testing.) The court stated that it saw the appeal as a delay tactic and indicated that the inmate should have asked for DNA testing in his 1997 appeal. The court questioned why the inmate did not ask for the testing until his 3<sup>rd</sup> appeal. The Presiding Judge wrote, "If the law is barbarous, the Legislature should repeal it or the governor should commute or pardon those who are subjected to it. In the meantime, we must follow it."
26. "Defendant ID'd by rape victim Linked by DNA to 5 attacks." Daily News (New York), June 15, 2000.  
A serial rapist has been charged in Queens, NY for raping five women over the course of a year, from October 1996 through November 1997. In addition to a rape victim ID, the prosecution has DNA evidence linking the suspect to all five crimes. One of the victims originally identified another man as her attacker.
27. "Failed Inspection Spurs Challenges." Omaha World Herald, June 15, 2000.  
A defense attorney is challenging whether Iowa Crime Lab DNA analysts are qualified to give expert testimony at trials after the state crime lab failed an accreditation inspection. Defense attorneys say the failed inspection shows a lack of quality control at the lab, but a district court judge found that lack of accreditation should not preclude court testimony. Iowa believes it is close to accreditation and is working on a list of items the accreditation inspectors want changed or documented. The state does not require that the lab be accredited.
28. "Senate Panel Stuck On DNA Testing." Chicago Tribune, June 14, 2000.  
Reports that the Senate hearing on DNA post conviction testing was only the first round in what is expected to be a long and difficult struggle to draft passable legislation. The legal issues are called difficult, "but the politics are proving fierce." Hatch says the differences between his bill and Leahy's proposal may be irreconcilable. The Oklahoma Attorney General urged the committee to wait until the National Commission on the Future of DNA Evidence releases its recommendations on post conviction access to DNA testing before making any significant changes in law.

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29. "Torricelli bill would abolish 5-year statute of limitations for rape." Gannett News Service, June 14, 2000.  
US Senator Torricelli (D-NJ) is planning to introduce legislation that would abolish the federal statute of limitations for rape. The bill will be called the "Sexual Assault Prosecution Act of 2000" and Torricelli gives credit to advances in DNA technology as a primary reason for the bill's introduction.

### **Genetic Privacy**

30. "Criteria Finalised For Evaluation Of Genetic Test Results." Hermes Database, June 20, 2000.  
The English Genetics and Insurance Committee has finalized its criteria to evaluate the use of genetic test results for insurance purposes. The committee will now begin to evaluate the tests the insurance industry is currently using in underwriting.
31. Congressional Testimony. Federal News Service, June 14, 2000.  
Testimony from the ACLU on "The Medical Financial Privacy Protection Act" before the House Banking and Financial Services Committee. Reiterates that genetic information should not be allowed as a basis from which to discriminate against people for employment or insurance.
32. Congressional Hearing. Federal News Service, June 14, 2000.  
Remarks made by the ACLU during congressional questioning encourage Congress to take a closer look at genetic privacy issues.

### **Paternity**

33. "Who's your daddy?: Quick, discreet DNA tests to establish paternity have become a boom industry." The Ottawa Citizen, June 21, 2000.  
Man in Texas has recently discovered that he fathered only 1 of 4 children conceived in his 13-year marriage. The man was tipped off when genetic tests were performed on both parents to determine the origins of one of the children's illnesses. In Britain a man whose mistress became pregnant after he had a vasectomy is attempting to prove that the fact that he has a 1 in 67,000 chance of being the child's father means that 350 British men could also have fathered the child. Over 250,000 paternity tests are performed annually in the US, and about 15,000 are performed in Britain. One company out of Houston processes 250 cases a week.