

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 Applied Biosystems. As part of the firm's representation weekly reports are generated which identify recent state and federal legislation and news articles. Applied 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 August 11, 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 US House Judiciary Chair has introduced a bill that provides \$15 million a year for 3 years for offender DNA analysis and \$25 million a year for 3 years for casework. The bill also authorizes collection of DNA samples from certain federal, military and DC offenders for inclusion in CODIS. Additionally, the bill authorizes post conviction DNA analysis in certain circumstances, but only for 30 months after the bill has been enacted.

A new US Senate bill (introduced by Sen. Schumer, D-NY) provides \$25 million a year for DNA casework and establishes procedures for post conviction access to DNA analysis.

The California legislature is preparing to consider a package of DNA proposals covering the topics of post conviction testing, statute of limitations, and suspect sample files. The California Attorney General is currently opposed to the post conviction legislation, but negotiations are underway.

San Francisco County has joined Ventura, Orange and San Diego Counties in allowing inmates access to post conviction DNA testing. The Louisiana Governor has appointed a commission to review post conviction DNA testing policies. In South Dakota, the senate sponsor of post conviction DNA legislation that was defeated this year says he will try again next year.

A New York district attorney has indicted a "John Doe" for 6 murders, based on a DNA profile.

Notable cases using DNA evidence include a conviction in Baltimore, MD, an exoneration and subsequent conviction in New York, an exoneration in Birmingham, AL, and all sides are awaiting test results in an Oklahoma City case where over 200 people have already submitted samples.

STATE LEGISLATION

Genetic Privacy

1. Massachusetts HB 5416 – provides for genetic test information privacy and prohibits health insurance and employers from using genetic evidence to discriminate.

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NEWS ARTICLES

Forensic DNA

1. "Metro Briefing." The New York Times, August 9, 2000.
A 17-count criminal indictment has been filed by the Suffolk County district attorney against a "John Doe" who has been linked to six rapes by DNA evidence. Authorities sought the indictment before the statute of limitations ran out.
2. "Panel named to study DNA tests." The Advocate (Baton Rouge, LA), August 8, 2000.
The Louisiana Governor has appointed a "Post Conviction DNA Testing Advisory Commission" to study the state's policy for allowing post conviction DNA testing and to possibly recommend new policy. The Commission will include the head of the State Police, secretary of the Department of Corrections, six legislators, two judges, two district attorneys and others. The Governor established the commission through an executive order. The State Senate Judiciary Committee held hearings on the issue this year, but did not recommend any new state laws.
3. "After the execution, a DNA test." The Christian Science Monitor, August 8, 2000.
Coverage of the post-execution DNA test for a Georgia man executed in 1996. Tests are being for by the Atlanta Journal and Constitution, Boston Globe, Macon Telegraph and CBS News. The district attorney where the man was executed maintains that the results will be disappointing for the media – "The right man was executed."
4. "Date Delayed For Hearing on DNA Testing Bill." The San Francisco Chronicle, August 8, 2000.
A hearing for a California bill that would allow post conviction DNA analysis for anyone convicted of a crime has been rescheduled from August 8 to August 23. (See article #'s 8, 9 &10 for further details on the bill.)
5. "Twin brothers want DNA tests behind them." The Associated Press State & Local Wire, August 7, 2000.
Twin brothers in Oklahoma City are awaiting DNA test results that they hope will eliminate them as possible suspects in a murder investigation. So far, 200 people have submitted DNA samples to police for analysis, but the brothers are the first for whom authorities returned search warrants against in order to force them to provide a sample.
6. "Bush campaign seems unaffected by death penalty debate." The Associated Press State & Local Wire, August 7, 2000.
Despite recent DNA exonerations and the national spotlight on death penalty, Texas Gov. Bush has maintained his strong support for the death penalty and has not seemed to suffer politically for that stance.
7. "DNA testing exonerates man in rape case." The Associated Press State & Local Wire, August 7, 2000.
Prosecutors in Birmingham, Alabama have requested that charges be dismissed against a man accused of kidnapping and raping a woman in 1998. The victim picked the suspect out of a line-up, but the suspect has always maintained his innocence. Defense lawyer: "The observation to be made from all of this is DNA is very, very credible, and it exonerates as well as convicts people."

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8. "Proposed DNA testing legislation at-a-glance." The Associated Press State & Local Wire, August 7, 2000.
The California legislature is considering three DNA testing bills which have been linked to one another – if one fails, they all fail. The bills are: a post conviction bill allowing all inmates access to DNA analysis, an extension of the statute of limitations for cases where DNA is involved, and a bill that creates a special file to hold DNA samples from suspects (a suspect's sample would be purged after two years.) The legislature is also considering a bill (not linked to the others) that would allow relatives of missing persons to submit samples for a database.
9. "Attorney General concerned over scope of DNA testing bill." The Associated Press State & Local Wire, August 7, 2000.
California's Attorney General has voiced opposition to the current version of a post conviction DNA testing bill being considered by the state legislature on the grounds that it would help the guilty tie-up the system and would cost millions of dollars. The AG's office has been negotiating with bill supporters to reach an agreement on mutually acceptable language. The bill currently limits tests to cases where a criminal's identity is at stake; where there is DNA evidence available to be tested; and where either the DNA sample or the test wasn't available at the time of trial. In addition, the bill's sponsor has agreed to amend the bill at Lockyer's request to limit tests to those currently imprisoned.
10. "Going Too Far With DNA." The San Francisco Chronicle, August 7, 2000.
Editorial supports post conviction access to DNA testing, but agrees with California AG Lockyer that the Legislature's proposal is so broad as to invite abuses, and would cost a significant amount of money. Recommends that the measure needs considerable "streamlining" in order to make it workable.
11. "FORENSICS YOU CAN RUN BUT NOT HIDE FROM DNA PROFILING." The Virginian-Pilot (Norfolk, VA), August 7, 2000.
Article discusses the possible future of DNA applications where physical and behavioral characteristics could potentially be discerned through forensic DNA evidence. Questions whether society's is best served by the maintenance of large law enforcement DNA databases. Article seems to suggest that such DNA applications would be good for public safety needs, but ought to be carefully overseen.
12. "Convicted mother says DNA would prove her innocence." The Associated Press State & Local Wire, August 6, 2000.
A South Dakota woman convicted of killing her 3-year-old daughter wants access to post conviction testing, but she has already lost her appeals to the Circuit Court and State Supreme Courts. A post conviction DNA testing bill was passed by the State Senate this year but was defeated by the House. The Senate sponsor of the bill plans to reintroduce it again next year. The state Attorney General supports post conviction access to DNA testing in cases where there is a single eye-witness or where a DNA sample is left at the scene that would conclusively establish guilt or innocence.

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13. "Man Cleared by DNA Tests Led Police to Murder Suspect." The New York Times, August 6, 2000.
DNA testing has exonerated one homeless man and led to the arrest of another. New York City police collected DNA samples from approximately 30 men in an effort to find the culprit of six murders. When DNA tests exonerated one of the suspects, the man tipped police on another homeless man who had made incriminating statements. While at the station, this man spit on the floor and his saliva was collected, analyzed and matched to the crime scene evidence.
14. "San Francisco to offer free DNA testing to inmates." The Associated Press State & Local Wire, August 4, 2000.
The San Francisco (CA) county district attorney's office has announced that it will offer free DNA testing to inmates convicted before 1997 of murder, manslaughter or sexual assault. San Francisco is now the fourth California county to offer such tests to certain inmates – other counties include Ventura, Orange and San Diego.
15. "Baltimore man gets 10-year sentence for 1996 murder." The Capital (Annapolis, MD), August 4, 2000.
A man in Baltimore (MD) has plead guilty to a 1996 murder. Originally, the man plead innocent to the charges and the case ended with a hung-jury that dead-locked 11-1 in favor of acquittal. Jurors from the first trial said that the DNA evidence linking the man to the crime was not persuasive; however, new tests on certain blood samples and saliva samples found at the crime scene "all but eliminated every human but Brooks [the suspect]."
16. "JANET RENO HOLDS NEWS BRIEFING." FDHC Political Transcripts, August 3, 2000.
US Attorney General Reno was questioned on her position of post conviction DNA testing and whether she supports post conviction proposals currently before Congress. Reno indicated that the Justice Department is working closely with both Sen. Leahy (bill sponsor) and Sen. Hatch (Judiciary Chair) to come up with the best proposal. Reno commented that caution must be followed because there will be some cases where the DNA test results will not be conclusive to someone's guilt or innocence.

Genetic Privacy

17. "Talks on genetic discrimination not before time." AAP Newsfeed, August 9, 2000.
Australia's Attorney General and Health Minister are formally meeting to discuss the role of genetic information in the law. The discussion was scheduled amidst "a storm of enticements" from insurance companies to reward people who undergo genetic testing with lower premiums. The Australian Medical Association and the Investment and Financial Services Association want the practice banned.
18. "Estonia government backs building of human genetic database." Agence France Presse, August 8, 2000.
A draft law in Estonia would create the "Estonian Human Gene Heredity Project" that would record in a database the genetic information of all Estonians agreeing to participate in the project. The program is intended to spur biotech development in the country and pharmaceutical companies would eventually use the information for R&D. The government anticipates that 1 million residents of the 1.4 million population would participate in the program.

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19. "Will HMOs cover genetic treatment?" Scripps Howard News Service, August 8, 2000.
Article ponders the following questions: Will insurance balk at genetic treatments because of the experimental nature and the possibility of huge pricetags? Will the costs bring escalating premiums and force middle- and lower-income people to drop their insurance? Could results of genetic testing be used as a weapon that prevents people predisposed for an illness from obtaining coverage?
20. "Ban On Use Of Genetic Data By Employers, Insurers Is Irrational." Seattle Post-Intelligencer, August 6, 2000.
Article argues that genetic discrimination is both "rational and inevitable." Argues that analogies drawn between racial discrimination and genetic discrimination are off-base – "The point of laws against racial bias is to outlaw irrational discrimination based on irrelevant characteristics. The point of laws against **genetic** discrimination is to outlaw rational bias based on relevant information. The two principles aren't merely different; they're opposite."

CONGRESSIONAL RECORD

1. US Senate – Senator Leahy (D-VT) speaks on the Innocent Protection Act.
2. US House of Representatives – Introduction of HR 5000 which provides for post conviction DNA access as well as DNA backlog funding and collection of samples from certain federal, military and DC offenders.
3. US House of Representatives – Rep. Sensenbrenner (R-WI) introduces the "Scientific Certainty in Sentencing Act" which would allow for post conviction access to DNA testing.
4. US Senate – Introduction of S. 2859 which would authorize funding for DNA backlogs and would require DNA sample collection from certain federal, military and DC offenders.