

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 September 8, 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 Applied 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

Expansion of DNA databases in New Jersey and South Carolina was discussed, plus a series of articles ran in a Virginia newspaper on the state's successful DNA program. A State Supreme Court decision in Vermont allows DNA samples to be taken from suspected rapists without a warrant.

In Canada, a political party and the Ontario Solicitor General are each seeking significant expansion of the country's DNA database. England's Prime Minister is proposing fully fund the collection of DNA samples from over 3 million arrestees in the country – but is running into opposition. Australia is also seeking to expand and otherwise modify its DNA database laws.

Law enforcement is beginning to develop DNA databases to help nab fish poachers, "tree rustlers", and criminals with cats.

A Wisconsin legislator is pledging to reintroduce a bill to extend the statute of limitations for certain sex crimes.

The California Legislature has enacted a post conviction bill, and Virginia's DNA task force is considering post conviction options.

California also now has a missing persons DNA database, assuming the Governor signs the bill.

STATE LEGISLATION

No new state legislation.

NEWS ARTICLES

Forensic DNA

1. "Crime, taxes top Alliance platform party retreats to plot beat-the-liberals election plan." The Ottawa Sun, September 6, 2000.
The conservative Alliance party in Canada is adopting a tough law-and-order platform for the coming elections which includes a provision to have all federal prisoners included on the country's DNA database.

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2. "DNA test pending on rape suspect." September 5, 2000, The Associated Press State & Local Wire. Chester, South Carolina is using DNA tests for the first time in attempting to solve a rape case. The prime suspect has already submitted a sample, and the police are awaiting test results.
3. "Thanks to Megan's Law, state's DNA database grows." September 5, 2000, The Associated Press State & Local Wire.
New Jersey now has 5000 DNA samples from sex offenders in its database. ACLU associate director Steinhardt says "the slippery slope here is that this is being broadened to other violent crimes..." The New Jersey legislature passed a bill this year to expand DNA collection requirements to include murder, assault and "related charges" but the Governor has not yet signed the bill.
4. "DNA database would look for links between the missing and the found." September 5, 2000, The Associated Press State & Local Wire.
The California legislature has passed a bill (not yet signed by the Governor) that allows the Department of Justice to establish a missing persons database. The database will take DNA samples from relatives of missing persons for comparison against the state's inventory of over 2000 unidentified remains. The cost of analysis would be covered by raising death certificate fees by \$2 to a total of \$10, which is expected to bring in \$3 million a year. The families of missing children were on hand at the press conference to publicly donate the first samples for the database.
5. "US laboratories to be used to investigate Greek crime." Agence France Presse, September 5, 2000. Greece and the US will be signing a cooperative agreement that will allow US laboratories to be used in investigation into Greek terrorist attacks and other crimes. US labs will test evidence that includes blood, hair and other DNA samples. The US State Department recently ranked Greece at the same level as Columbia for anti-US attacks.
6. "Public defenders may fight Vermont court's DNA decision." USA Today, September 5, 2000. Finding that taking a mouth swab is not unacceptably intrusive, the Vermont Supreme Court recently ruled that police can take DNA samples from potential rape suspects without a warrant. The decision, which came from one of the country's most liberal courts, may be appealed to the Supreme Court by the public defenders. Though the Vermont decision only affects police operations within that state, a Supreme Court ruling could have national applications.
7. "Lawmakers Look For Ways To Help Protect Innocent" Daily Press, September 4, 2000. Reviews the Virginia DNA task force that was established in May 2000 to review state DNA laws, particularly as they pertain to post conviction testing. The task force is considering two ideas which have become popular: 1) allow courts to decide if post conviction testing is appropriate, and if DNA tests exonerate the victim should be sent to the Governor; or 2) change the appeals process to grant an exemption to DNA evidence in the 21-day rule for new evidence. The task force has strong support from the Governor and lawmakers.
8. "DNA data bank to help catch timber rustlers" The Gazette (Montreal), September 4, 2000. The British Columbia Forest Service has developed a DNA database of yellow and red cedar trees in its protected forestlands. The data will be used to help the RCMP catch "tree rustlers," much in the same way police use DNA to solve rapes – a sample would be collected from suspect timber and matched against the database.

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9. "Feds seek cat DNA as tool to fight crime." San Francisco Examiner, September 4, 2000.
The US Department of Justice is spending \$26,000 to develop the National Feline Genetic Database. The database would be used to identify cat blood, tissue or hairs found at crime scenes. The database is collecting 50 samples for each of the 35 breeds of cat – being able to match cat hairs found at a particular crime scene to a specific breed of cat is expected to help link criminals to a crime. No plans at this time for a dog database.
10. "Tsubouchi touts DNA test plan." The Toronto Star, September 4, 2000.
The Ontario Solicitor General (Tsubouchi) is promoting a plan to take DNA samples (mouth swabs) from anyone arrested and charged with a crime. Likens a DNA mouth swab to the process like fingerprinting – unobtrusive. He said he would press the federal government to expand their DNA laws accordingly. "Right now, if you don't collect DNA upon arrest and if you're innocent, it takes a while for you to get to the point where you are cleared after you have been charged. "If you've got a sample of DNA in a sex crime that doesn't match yours I think you will be cleared real fast," Tsubouchi said.
11. "Bush, Gore Quotes on Death Penalty." AP Online, September 3, 2000.
QUESTION: Should DNA testing be more accessible to death row prisoners and more acceptable as evidence after a conviction? George W. Bush: "Any time DNA evidence, in the context of all the evidence, is deemed to be relevant in the guilt or innocence of a person on death row, I believe we need to use it." Bush also said that states should address the issue, individually. Al Gore: Said he supports the death penalty, but "I strongly support, however, the use of new DNA techniques that can make our criminal justice system fairer and more accurate."
12. Letters to the Editor. Chicago Sun-Times, September 3, 2000.
Letter from the Director of the Illinois State Police in response to an article regarding the state's backlog of DNA analysis. He objected to the reporter's implications that lab's forensic scientists were working bankers hours. Explained the long hours scientists sometimes work, especially when an important case arises. Also mentioned that additional personnel has been requested frequently.
13. "With DNA Supremacy Comes Controversy." Daily Press, September 3, 2000.
Detailed description of how Virginia's DNA database got started and the successes they are now experiencing (by September Virginia had over 200 hits for this year). Says that Idaho, Iowa, Louisiana and New Hampshire have not yet started collecting from prisoners. The countries of Germany, Britain, Norway, Finland, Belgium, Denmark and Canada all have DNA databases now. Unfavorably compares Virginia's position in the forefront of DNA databanks to its reticence in allowing DNA for post conviction uses.
14. "Results key to state program's growth." Daily Press, September 3, 2000.
Article focuses on Paul Ferrara, Director of the Virginia Division of Forensic Science. Details Ferrara's effort to bring Virginia to its position of prominence in DNA analysis and databanks.

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15. "Crime Scene Procedures Now Involve Preserving DNA Clues." Daily Press, September 2, 2000. Discusses the different items from which investigators can now extract DNA evidence – cigarette butts, baseball cap, ski masks, gum, etc. – and the need for training on how to collect such evidence without contaminating it. Also explains that the high costs of establishing and operating DNA databases are worthwhile investments when one considers federal statistics that estimate the cost per rape to society to be \$87,000 and an average rapist commits 8 rapes before being caught. Therefore, a rapist stopped halfway through his career would result in a cost savings of \$348,000.
16. "Police snub Blair's DNA bank." The Observer, September 3, 2000. England's Prime Minister Tony Blair's recent announcement of a plan to fund collection of DNA samples from all arrestees is being jeopardized by the police force's reluctance to participate in a "brother" database that would contain samples of police for investigation elimination purposes. Police fear the samples could be used against them to investigate disciplinary matters. Civil liberties groups are arguing that the police's privacy concerns are the same as those of arrested civilians.
17. "State First: DNA Used To Convict Local Poacher." The Palm Beach Post, September 3, 2000. Officers who noticed a man dumping a bucket of fish into the water upon their approach confiscated the bucket and had DNA tests performed on the remaining slime. The results confirmed that the man had been catching snook (a fish) out of season. The man was prosecuted and convicted.
18. "Legislator calls for extension on time limits for some crimes." The Associated Press State & Local Wire, September 2, 2000. A Wisconsin state legislator (Rep. Scott Walker – R) plans to reintroduce a bill next year that would extend the statute of limitations for first and second degree sexual attacks. The extension is seen as appropriate in light of advances in DNA technologies. The Milwaukee District Attorney (Norm Gahn) helped draft the legislation, and it was supported by the state Attorney General. This year's bill passed the Assembly but "clashed" with a competing version in the Senate.
19. "National Roundup: New doubts over DNA register." The Guardian (London), September 2, 2000. Prime Minister Tony Blair's proposal to spend pounds 109 million to collect samples from an estimated 3 million people who have been arrested for crimes is being questioned by the human genetics commission. The commission, which was established to advise ministers, questioned "whether it was justifiable to take DNA samples from people who had committed minor offenses." The commission intends to "consult the public" on what sort of controls might be needed to protect civil liberties. The commission also stated that it recognizes the value of DNA in solving crimes.
20. "DNA evidence; Bill would allow tests for prisoners." The San Diego Union-Tribune, September 2, 2000. The California legislation to allow post conviction DNA testing for inmates under certain circumstances won unanimous approval from the legislature. In its final version, the measure was supported by both prosecutors and defense attorneys. Tests will be limited to inmates whose identity was or should have been an issue at trial; to cases where DNA testing or biological samples were not available during the trial; and convicts who generate a match would forfeit any further right of appeal.

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21. "British Columbia hopes to cut poaching through DNA database." The Associated Press State & Local Wire, August 31, 2000.

The Canadian Department of Fisheries and Oceans is preparing to develop a genetic database of abalone (a marine mollusk) which could be used to compare DNA from abalone from around the world to see if it originated on Canada's West Coast. The area is completely closed to abalone harvesting due to dwindling numbers of the species.

22. "Political News." The Associated Press State & Local Wire, August 30, 2000.

The Republican gubernatorial candidate in Indiana has included "expand use of DNA evidence to combat rape" in his list of proposals to improve public safety.

23. "New rules for taking DNA samples." AAP Newsfeed, August 30, 2000.

The federal government in Australia is proposing amendments to its DNA laws that would allow it to expand its DNA database to cover more offenders. The new law would allow mouth swabs in addition to blood samples, and would allow persons convicted of "less serious crimes" to refuse the procedure.

24. "DNA databank valuable." The Herald (Rock Hill, SC), August 29, 2000.

Reports that South Carolina lags behind other states in its use of the DNA databank. Says 675 sex offenders have been released from prison without having their DNA collected since the database law was enacted. Criticizes the state for not acting sooner to implement the database sooner and recommends that no more delay be allowed.

Genetic Privacy

25. "Senator Pushes Privacy Bill." Calgary Herald, September 2, 2000.

A Senator in the Canadian Parliament intends to introduce legislation personal privacy legislation that will cover genetic information, among other things.