

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 15, 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

Suffolk County, New York got its first "cold hit" involving property crime cases, and a judge in Nassau (NY) OK'd the use of mitochondrial DNA evidence. Backlogs at crime labs in Louisiana and Arizona made headlines.

A new crime lab in New Orleans is underway, and planners are discussing a new crime lab for a South Carolina county.

An Australian Senator has been roundly criticized for suggesting that DNA samples should be collected upon birth, and the country's ACT Assembly has endorsed expanding DNA collection requirements to include suspects for indictable offenses. Meanwhile, the Canadian government has indicated that it will not support Ontario's suggestion to collect DNA from all suspects, and Ireland is preparing to begin a DNA database of rapists and murderers.

Senator Leahy's post conviction bill has been receiving more attention from the Administration and the Democratic Caucus, both of which may push for the legislation before this year is out. A federal court has waded into the outskirts of post conviction analysis issues for federal prisoners

STATE LEGISLATION

No new state legislation.

NEWS ARTICLES

Forensic DNA

1. "Stay Denied After Testing of DNA." The Washington Post, September 13, 2000.
A Virginia inmate (D. Barnebei) who was granted post conviction DNA analysis was denied a stay of execution by a federal judge after the DNA tests conclusively linked the inmate to the crime. The inmate now claims that the DNA tested was tainted. A previous court decision had already determined that DNA analysis was not needed in this case due to the other "overwhelming" evidence against the inmate, and tests were only conducted after the Governor ordered them.
2. "Atlanta court sees exception to time limit on federal appeals." The Associated Press State & Local Wire, September 12, 2000.
The 11th US Circuit Court of Appeals (in Atlanta) has recently returned a case to the District court, despite the fact that the one-year time limit on federal appeals had passed. The case was not directly related to DNA, but the decision acknowledged that, "The question raises concerns because of the

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inherent injustice that results from the conviction of an innocent person and the technological advances that can provide compelling evidence of a person's innocence.”

3. “Man arrested in Alabama linked to 15-year-old homicide by DNA evidence.” The Associated Press State & Local Wire, September 12, 2000.
A Florida man was arrested recently in Alabama for a double murder committed 15 years ago in Texas. Police had always suspected the man. A DNA sample from the crime scene (which was not well-preserved) was submitted for analysis on several occasions throughout the last 15 years, but DNA technology only recently became sophisticated enough to extract a good sample.
4. “DNA Links Convict To 2nd Burglary.” Daily News (New York), September 12, 2000.
Suffolk County, New York has gotten its first “cold hit” on a property crime case. A man burglarized a store and left behind blood on a window that was broken during his entry. A few weeks later the man was arrested and convicted in a second burglary, after which his DNA sample was taken and matched against the sample left behind at the first robbery.
5. “Media Stakeout with Senate Minority Leader Tom Daschle (D-SD).” Federal News Service, September 12, 2000.
When asked about his opinion on a death penalty moratorium, US Senate Minority Leader Tom Daschle responded that he did not support a blanket moratorium, but he said it was “critical” to pass the post conviction DNA testing bill introduced by Senator Leahy.
6. “Backlog critical at state crime lab.” The Florida Times-Union (Jacksonville, FL), September 12, 2000.
An “acute” shortage of staff at the state crime lab in Jacksonville, Florida is creating a significant backlog of crime scene analysis – especially for DNA. Some sex crimes cases may need to be sent out to private labs in order to receive timely results. Only 20 of 34 analyst positions are currently filled, and low salaries and non-competitive retirement packages are blamed. The Chairman of the state legislature’s Criminal Justice Appropriations Committee said he will continue to address the issue in the coming legislative session, but also notes that state workers are paid less across the board – “the pie is only so big.”
7. “Justice ministers to get tough on gang recruiting.” The Ottawa Citizen, September 12, 2000.
The federal Canadian government has indicated that it will hear Ontario’s proposal to collect DNA samples from all crime suspects, but expects that the proposal will be flatly rejected. Officials believe the proposal is unconstitutional and that it could put the entire DNA database program at risk of being struck down by the courts.
8. “Teamwork on DNA.” The Times-Picayune, September 12, 2000.
Reports that police in New Orleans have not used DNA testing frequently because there is no crime lab in the area that tests DNA. Police must either send samples out to “costly” private labs, or wait extended periods for FBI analysis. However, a new lab is being built in Jefferson Parish that will have operating costs of \$200,000 a year and lab equipment is being financed through a federal grant of \$250,000. DNA analysis will be conducted at this lab.

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9. "Janet Reno holds news conference regarding federal death penalty." FDCH Political Transcripts, September 12, 2000.
Says that the Attorney General's office strongly supports the "aims" of federal legislation introduced by Sen. Leahy and Reps. Delahunt and LaHood regarding post conviction DNA testing. Reno further states, "the department has been working closely with Senator Leahy's staff on developing statutory language. Our goal is to minimize the potential for frivolous litigation while striving to ensure that a person who has a reasonable claim that he or she is innocent of the crime for which they were convicted and imprisoned will have access to DNA testing. We are also working with staff to develop and fund a system of grants to support these goals."
10. "DNA Test To Beat Crime." The Mirror, September 11, 2000.
Ireland will be considering legislation that would allow police to reasonable force to take a saliva sample from suspects in cases of rape and murder. The legislation was ordered by Justice Chief John O'Donoghue.
11. "Senator wants split in largest court district." Beaufort Gazette (South Carolina), September 10, 2000.
South Carolina's single largest circuit court district may be split into two districts, if a local Senator is successful in his efforts. However, another option under consideration to create a new crime lab that could help with the backlog in getting cases to trial. Services provided by the potential lab have not been decided, but could include "forensic testing for cases such as rape and murder."
12. "Landmark DNA laws passed for ACT." The Canberra Times, September 9, 2000.
The ACT Assembly of Australia has recently voted to allow police to take DNA samples from persons convicted of an indictable offense, or "reasonably suspected of having committed" such an offense. The measure passed with bipartisan support and is much more expansive than the current national DNA laws for Australia, which are limited in the crimes for which DNA samples may be obtained.
13. "California Develops New DNA Program Which Could Help Families Of Missing Children." NBC Nightly News, September 9, 2000.
News segment covers a bill recently passed by the California legislature that creates a DNA database of missing persons for comparison against unidentified corpses. The tests were reported as providing closure for parents who are desperate for it. Of the 2000 unclaimed bodies in California, 150 of them are estimated to be children. The testing is being funded through an increased death certificate fee.
14. "Audit finds backlogs in work at DPS crime labs." The Associated Press State & Local Wire, September 8, 2000.
A performance audit released by the Arizona Auditor General's office reported that the state's Department of Public Safety crime labs have significant backlogs in DNA testing, which jeopardizes some cases. Only one-fourth of the DNA samples collected from offenders since 1993 have been analyzed and uploaded into the state's database. DPS recently sent 2,500 DNA samples to a private lab at a cost of \$100,000, and recently obtained \$201,500 in federal funds to process 5,000 more.
15. "Senator calls for DNA profiling at birth." AAP Newsfeed, September 8, 2000.
An Australian Senator plans to introduce legislation that would require DNA samples be taken from babies at birth for inclusion in a national DNA database in order to help solve crimes. The DNA sample would not be kept – only the profile.

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16. "DNA database for babies dismissed as nonsense." AAP Newsfeed, September 8, 2000.
An Australian Senator's plan to collect DNA from babies (see story above) has been likened to tattooing and labeled "dopey". Civil liberties spokesmen and Labour spokesmen predicted there would be a public outcry if such legislation was attempted.
17. "Crime Bills Pushed in Last Month of Congress." APBnews.com, September 8, 2000.
A spokesman for US Senator Leahy said that the post conviction DNA bill -- "The Innocence Protection Act" -- is on the "fast track" to be considered by Congress this year.
18. "'Creeper' case jury begins deliberations." The Atlanta Journal and Constitution, September 8, 2000.
A defense attorneys for a man thought to be the "Norcross Creeper" in Georgia, have argued to the jury that the DNA evidence should be discounted since the samples were mislabeled at one point. Apparently, the sample in question is the sample given by the man for testing -- not the sample retrieved from the crime scene. Other markings on the vial assisted the crime lab in relabeling the sample correctly.
19. "Less Precise DNA Test OKd / Judge Allows Use In Rape Case." Newsday (New York), September 8, 2000.
A Nassau (New York) judge has agreed to allow the district attorney's office to try a rape case using mitochondrial DNA. This will be the second time the courts have allowed mitochondrial DNA evidence in New York cases.
20. "D.C. Trial Poses Test For DNA Evidence." The Washington Post, September 8, 2000.
A murder trial in DC is being tried solely on DNA evidence -- there are no eyewitnesses, murder weapons, fingerprints or other evidence to tie the suspect (the victim's ex-husband) to the crime. Additionally, another man -- who was also a suspect for sometime -- had the keys to the victim's house and recently stolen car.
21. "There Must Be No Half Measures In The DNA Bank." Birmingham Post, September 7, 2000.
Argues in support of English Prime Minister Blair's recent proposal to fund the collection of DNA samples from arrestees -- but criticizes that the samples will not be kept if the person is acquitted or otherwise not charged with a crime. Suggests that a national DNA database with everyone's profile "is not necessarily individually desirable, but it is universally unavoidable." Also said that the nation cannot let civil liberties arguments regarding individual privacy stand in the way of catching criminals who "severely taint our lives."
22. "After execution, DNA tests sought." The Fort Worth Star-Telegram, September 7, 2000.
The sons of a man recently executed in Texas are attempting to prevent the local prosecutors and police from discarding the evidence from the case. The sons would like to have additional DNA testing done on a rape kit that was last tested in the 1980's. Prosecutors oppose new tests.

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Genetic Information

23. "In Wake of Genetic Revolution, Questions About Its Meaning." The New York Times, September 12, 2000.
Article by Eric Lander of the Whitehead institute at MIT. Questions whether society will seek to pigeonhole people once more information becomes known on the human genome. The author is opposed to laws limiting scientific investigation, but would support a "ban on modifying the human germline."
24. "Labs store DNA as 'ultimate gift'." The Sunday Star-Times (Auckland), September 10, 2000.
Three labs in New Zealand are storing the DNA of 140 for medical reasons and also for people who want to protect their estates against false inheritance claims in the future. One legislator indicated that some regulation over this industry may be necessary, saying, "I think we are a little bit cavalier with some of this technology."
25. "Public must have a say in what science is doing." The Irish Times, September 8, 2000.
The public should play a larger role in the increasing scientific research into the human genome – especially medical research. More guidelines and oversight are needed for gene therapy treatments.

FEDERAL REGISTER

Forensic DNA

1. Department of Justice – Announcement of a meeting on September 24-25 of the working groups of the National Commission on the Future of DNA Evidence to discuss an issue in brief regarding suspect/elimination sample DNA databases.

Paternity

2. Department of Health and Human Services – proposed rulemaking for Tribal Child Support Enforcement. HHS stops short of requiring DNA tests when paternity is an issue – due to objections from tribes who claim that genetic paternity is not always important in their culture. However HHS directed that when conducted, genetic testing must be done by an accredited lab. HHS further states that tribes may require contracts that ensure the samples will only be used for the stated purpose and that they will be destroyed after testing is completed.