

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 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 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

The New Jersey Senate introduce two new DNA bills this week – one eliminating the statute of limitations when DNA evidence is available, and another allowing for post conviction DNA testing.

New Jersey also signed into law this week a DNA database expansion bill, and New York has developed a rule to require solitary confinement for prisoners who refuse to give DNA samples as required by law. Connecticut received a “cold hit” recently on its DNA database. Federal legislation that would authorize \$768 million for crime labs is being pushed for enactment before Congress adjourns this year.

Limitations on the Illinois post conviction bill are being argued at the state supreme court. Custody of a DNA sample is a bone of contention among several parties in a post execution DNA testing argument. Recent polls may be giving a boost to federal legislation for post conviction testing.

In international news, Romania has received funding for a DNA database, China has used a missing persons database to free 120,000 women and children from “human traffickers”, and Norway will be changing its law regarding the registration of criminal DNA profiles.

STATE LEGISLATION

1. New Jersey SB 1516 – Removes the statute of limitations for the prosecution of offenses when DNA evidence is available.
2. New Jersey SB 1532 – Provides for DNA testing on certain evidence in murder cases and requires DNA testing if death sentence imposed if identity was at issue.

NEWS ARTICLES

Forensic DNA

1. “Wee Waa's DNA samples go up in smoke.” AAP Newsfeed, September 20, 2000.
DNA samples that were taken from 420 volunteers in the Australian village of Wee Waa were recently destroyed, as promised. The “DNA dragnet” was successful in capturing a rapist who lived in the village.

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2. "Ministry Asks Judge To Block Evidence From Being Mailed; Group Says DNA Test Would Prove Executed Man Was Innocent." Roanoke Times and World News, September 19, 2000.
A group that is attempting to gain custody of an executed inmate's DNA sample for testing purposes is concerned that a judge's recent ruling to have it shipped across the country might cause the sample to be damaged or lost. The inmate was executed in Virginia, and the state police want the sample to be returned to their custody from a California lab.
3. "DNA testing: No longer just for prosecutors." The Christian Science Monitor, September 18, 2000.
New California law to allow post conviction DNA testing is called "one of the most momentous changes in criminal law here in decades." Reports that the bill is providing a "nudge" to federal legislation for post conviction and will be a model for other states to follow. Observers say that the federal legislation is stymied in Congress because of "sensitivity over the death penalty" from both presidential candidates.
4. "Political Violence Spreads To Romania." Inter Press Service, September 18, 2000.
Romanian police have recently received a \$120 million loan to purchase various law enforcement equipment, including a "DNA database."
5. "Survey shores up lawmakers' drive for DNA tests, competent counsel in death-penalty cases." Milwaukee Journal-Sentinel, September 17, 2000.
A recent poll that shows a growing number of death penalty supporters are concerned that innocent people might be executed is providing federal lawmakers with stronger ground from which to advocate for the Innocence Protection Act. Key sponsors of the bills are Senator Leahy (D-VT) and Smith (R-OR) and Reps. Delahunt (D-MA) and LaHood (R-IL)
6. "DNA Test Backed For Boston Strangler." The Record (Bergen County, NJ), September 17, 2000.
F. Lee Bailey, who represented the Boston Strangler, says he would support DNA testing in the case – even though he believes his client was guilty. Relatives of the convicted man and the family of one of the victims are seeking evidence from state and local authorities that they believe will show that the true criminal is still at-large. The convicted man was murdered in prison in 1973.
7. "120,000 Chinese Women, Kids Freed." AP Online, September 16, 2000.
Chinese police have reportedly freed 110,000 women and 13,000 children from a human-trafficking gang. Police were aided by establishing a DNA database of missing women and children (sometimes with samples taken from living relatives) and then matching the newly discovered victims to the appropriate families.
8. "Scientist Vows To Safeguard DNA In Va. Murder Case." The Boston Globe, September 16, 2000.
The scientist (Edward Blake) who has possession of the only remaining DNA evidence in the case of a man executed in Virginia in 1992 has indicated that he will oppose any effort by the state to retrieve and dispose of the sample. The Boston Globe recently asked a court to permit additional testing of the DNA sample, but the Virginia AG was successful in convincing the judge that he did not have authority to order such tests. The AG then asked Blake (who is in California) to return the sample to Virginia. Blake fears that the state intends to destroy the sample and is refusing to return it. He also fears that shipping the fragile sample across the country could result in its contamination.

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9. "Burglar caught by a quiche." The Gloucester Citizen, September 15, 2000.
A burglar in the UK was caught after his DNA was matched against saliva recovered from a half-eaten quiche left behind at a crime scene.
10. "UK Government Authority welcomes police future plans for DNA." M2 Presswire, September 15, 2000.
The Metropolitan Police Authority (of the United Kingdom) has outlined plans to further increase the use of DNA at crime scenes as part of an improved and quicker detection of criminals. The Met projects that 83,000 samples will be collected for 2000/01, up from 12,000 for 1996/97.
11. "Va. Takes Another Look At DNA in 1982 Murder; Gilmore Reviews Tests, Orders More." The Washington Post, September 15, 2000.
A Virginia inmate whose death sentence had previously been commuted to life in prison after tests conducted in 1993 returned results that excluded the man from the crime, is now having additional tests conducted on several pieces crime scene evidence (over 100 pieces are in custody) in hopes that he may be granted a full pardon. The state police have recently reopened the case, however no official statement has been released regarding the new DNA test results. In the meantime, the Governor has ordered additional tests on other pieces of evidence.
12. "Coverdell's memory could speed effort to clear crime labs." The Associated Press State & Local Wire, September 14, 2000.
A federal bill sponsored by Georgia Senator Paul Coverdell, who recently died, is experiencing a resurgence in popularity. The bill would authorize \$768 million to "unclog" state crime labs. Now being sponsored by Alabama Senator Jeff Sessions, the bill is gaining support among members from both sides of the aisle in both chambers, and supporters are pushing for enactment this year – as a tribute to Senator Coverdell.
13. "Norway to change law on DNA registration." Nordic Business Report, September 14, 2000.
ENTIRE ARTICLE: "The Norwegian ministry of justice has said that a proposal for a change in the law regarding the registration of the **DNA** profile of criminals will be released this autumn."
14. "Expanded DNA testing for criminals is now law." The Record (Bergen County, NJ), September 14, 2000.
The New Jersey Governor has signed a bill into law which will allow New Jersey law enforcement to expand its collection of DNA samples to include murder, manslaughter, second-degree assault, kidnapping, and crimes involving children in which a victim is lured or sexual conduct impairs the morals of a child. Previously, New Jersey required DNA samples only from certain sex offenders. The state police currently has 5,000 DNA profiles on file.
15. "Limit to DNA testing law argued in high court." Chicago Daily Law Bulletin, September 14, 2000.
The Illinois post conviction law is being argued at the State Supreme Court. The State Appellate Defender is arguing that the state law "was designed for defendants to buttress claims of innocence and should not be limited to only those cases where testing could result in exoneration." If left standing, the defender claimed that the decision would effectively limit post conviction DNA testing to single-defendant cases and exclude cases that involved multiple defendants. Illinois Supreme and Appellate Court opinions are available online at www.state.il.us/court/search.htm.

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16. "Suspect linked through DNA database convicted of rape." The Associated Press State & Local Wire, September 13, 2000.

A Connecticut man has been linked to a rape in another part of the state after his DNA samples was submitted to the state's database upon his conviction for sexual assault. The rape victim did not see her attacker's face and the link was made solely based on DNA evidence.

17. "Inmates to be punished if they refuse to provide DNA samples." The Associated Press State & Local Wire, September 13, 2000.

A New York rule has recently been put forward that will give solitary confinement punishments to inmates who refuse to give DNA samples as required by law. Thus far, DNA samples have been taken from 26,000 of the 70,000 inmates in New York, and only two have resisted. A 1999 law expanded the DNA database to require samples from those convicted of murder, sodomy, intimidating a witness or criminal use of a firearm.

18. "California And The West; Families Of Missing Children Urge DNA Testing Of Unclaimed Bodies." Los Angeles Times, September 13, 2000.

Overview of California's recently passed legislation that establishes a DNA database for missing persons. Supporters of the bill plan to use it as a model for similar efforts in other states. The bill has not yet been signed by the Governor.

Genetic Privacy

19. "Employers Beware." Forbes, October 2, 2000.

Article begins: "It's a sign of prosperous times: State legislators are meddling in the workplace." Author says not to "fret" about the "mischief" of possible federal legislation, because there is a significant amount of activity in state capitals regarding business regulations. As a case in point, the author points out that although Congress had only held one hearing on genetic testing, 22 states have passed laws prohibiting genetic discrimination in employment and 20 have genetic privacy protections.

20. "States Jump Into Privacy Battle; New Bills Set Limits On Use of Customers' Personal Data." The Washington Post, September 20, 2000.

Broad article on state-based efforts to regulate businesses through privacy laws – mentions a California bill that would regulate databases containing genetic information, and study efforts in Iowa and New Hampshire to focus on data collected by genetic testing.

21. "Health warning As DNA screening takes hold, Americans find it can leave them unemployed and uninsured: Who's testing our genes - and why?" The Guardian (London), September 19, 2000.

The US equal opportunities commissioner has called for tougher safeguards (ie, federal legislation) for workers against genetic discrimination. A recent survey reported 582 cases where people have been turned down for jobs or health insurance because of "flaws" discovered in their genes. The article reports that federal legislation to protect workers has been blocked by insurance and corporate industry lobbies.

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22. "States stumble in efforts to protect patient records In the absence of federal standards, laws vary widely." The Dallas Morning News, September 18, 2000.
Reports that states have been attempting to fill the void created by the federal government's lack of action on medical privacy issues (including genetic privacy). However, the result has largely been a patchwork of legislation "that is neither consistent nor comprehensive."
23. "Genes That Fit - Revealing DNA blueprint as matter of courtship has ethical implications." The Denver Post, September 17, 2000.
Questions whether genetic information will become a factor in personal relationships, especially when one is determining the desirability of a future spouse (and potential offspring). The author seems to be asking where will it end? And what effect will it have on society? Also ponders whether President Reagan would have been elected if a reporter could have retrieved his "cocktail napkin" and then determined that he was predisposed to Alzheimer's disease.
24. "Thompson Introduces Companion Privacy Commission Bill." National Journal's Technology Daily, September 14, 2000.
US Senate Governmental Affairs Committee Chairman Fred Thompson (R-TN) introduced a bill that establishes a panel to study privacy issues. The panel would not prohibit or preclude another privacy bill from going forward. The White House is concerned that he panel would be used as an excuse to delay addressing issues such as genetic discrimination. The bill is cosponsored by Senator Kohl (D-WI) and a House companion bill is sponsored by Reps. Hutchinson (R-AR) and Moran (D-VA)

Paternity

25. "Firm rejects paternity test concerns." The Canberra Times, September 19, 2000.
The director of DNA Solutions in Melbourne, Australia has rejected a call for a ban on his paternity test service from the Australian Medical Association. The lab is being criticized for offering DNA tests over the internet and because its "HiarDNA" test would not require the consent of either the mother or child in question.