

DNA LEGISLATION & NEWS

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The October 6, 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 US House of Representatives unanimously passed a bill (HR 4640) that would supply states with \$170 million in grants for DNA backlog analysis, but whether the Senate will act on the bill this year is uncertain.

Several papers around the country carried a story cataloging New York City's huge rape kit backlog and the city's plan to outsource the analysis. "Cold Hit" cases were covered in California, Nevada, Virginia, and Wisconsin. Inmates and primary suspects who were exonerated by DNA tests made headlines in Florida, Texas, and Virginia.

An Indiana appellate court likened DNA samples to fingerprints and ruled that police and prosecutors were within the law when they used DNA samples acquired during a trial in which the suspect was acquitted to link that suspect to an unrelated rape.

Recent efforts at broad applications of Canada's new DNA database law have been unsuccessful – in one case a judge refused to order a sample, and in another case the prosecution withdrew a request for DNA after it was opposed by defense counsel.

The California Governor has signed three DNA bills addressing post conviction, statute of limitations, and missing persons. The Pennsylvania Senate is considering a post conviction bill and a statute of limitations bill, and the Michigan House has just introduced post conviction legislation. Meanwhile, a District judge has ruled that inmates have a constitutional right to request DNA testing that might prove their innocence.

STATE LEGISLATION

Forensic DNA

1. Michigan SB 1395 – Allows for post conviction DNA testing if certain criteria are met (eg, identity was an issue at trial, the genetic material was not previously subjected to DNA testing).

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Genetic Privacy

2. Pennsylvania HB 2789 – Prohibits managed care plans from selling or otherwise transferring “patient-identifying” information, including “patient-specific genetic information.”

NEWS ARTICLES

Forensic DNA

1. “Court docket.” Calgary Herald, October 4, 2000.
A Canadian judge has ruled that a man who was recently convicted of collecting Internet child porn will not be required to submit a DNA sample for the national database. The judge ruled that “In this case, DNA evidence would only be useful if the accused were to commit a crime significantly and qualitatively different from his current offence of possession of child pornography.”
2. “Interviews: Pardoned inmate hopes for parole decision soon.” The Associated Press State & Local Wire, October 4, 2000.
Virginia’s Governor has pardoned Earl Washington now that DNA tests have excluded him from a rape/murder crime for which he has served 17 years in prison. However, the man remains imprisoned due to an unrelated assault conviction. The man must remain in prison until a parole board is convened to review his case.
3. “Prosecution rests in Hyde County death case.” The Associated Press State & Local Wire, October 3, 2000.
In a murder trial in South Dakota, the prosecution and defense are arguing whether there is sufficient DNA material left from crime scene evidence to run additional tests. Prosecutors say that all the DNA evidence was used up in testing, but a DNA expert claimed that half of the sample is still available for testing. The prosecution says that only DNA extract was left after testing, which was offered to the defense but the defense turned it down.
4. “Man pleads guilty in 23-year-old murder case.” The Associated Press State & Local Wire, October 3, 2000.
A man who killed a young girl in 1977 was caught through Nevada’s DNA database. The killer’s DNA profile was on the Nevada system for two previous sexual assault convictions from 1969. The man is suspected of – though not yet linked to – similar unsolved crimes.
5. “Rape defendants could face obligatory HIV tests under House bill.” The Associated Press, October 3, 2000.
Reports that the US House of Representatives unanimously passed the DNA backlog elimination bill (HR 4640) which will provide \$170 million in federal grant money for state DNA analysis (\$45 million for databases work, \$125 million for casework). Notes that the fate of the bill is uncertain given that the end of the session is quickly approaching and the Senate is generally considered a more deliberative body and takes longer to pass legislation.

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6. "Crown pulls request for Tremblay DNA." Calgary Herald, October 3, 2000.
The Canadian government has withdrawn its request that a convicted serial batterer be required to submit a DNA sample for the national database. Although the law allows a judge to order DNA samples retroactively in some cases, the convict (who has 14 assault-related convictions) maintained that those conditions did not apply to his case.
7. "DNA tests link slayings in 3 counties." Los Angeles Times, October 3, 2000.
The Orange County (California) Sheriff's "cold case" unit has linked 10 victims in three counties from 1969 to 1987. DNA tests conducted on evidence left behind at four of the crime scenes indicates that a single person is responsible for at least six different attacks. At this time, the state's DNA database has not produced a hit on a possible suspect, but the DNA lab is backlogged with more than 50,000 samples that have yet to be entered in the database. Investigators had also hoped to sample 60 death row inmates, but an injunction prevents them from doing so.
8. "Ex-lover 'sent porn to smear rival.'" The Times (London), September 3, 2000.
In a smear campaign scandal involving a Buckingham Palace groom, police hope to find DNA evidence on the back of stamps that had been licked by a person mailing pornographic material.
9. "Judge says inmates can seek DNA tests." The Associated Press State & Local Wire, October 2, 2000.
A US District Judge has ruled that inmates who claim they were wrongfully convicted have a constitutional right to request DNA testing that might prove their innocence. The judge said that the 14th Amendment allows state prisoners to file federal civil rights suits in such cases. The ruling is not binding on other courts, but could become a national test case if higher courts uphold it.
10. "Capital Report." Pennsylvania Law Weekly, October 2, 2000.
A Pennsylvania Senate Committee has approved a post conviction DNA analysis bill, as well as a bill that would extend the statute of limitations in sexual assault cases if DNA evidence exists. The post conviction bill requires that identity must have been an issue at trial.
11. "Canadian Police Submit Seized Children's Organs for DNA Analysis." Xinhua General News Service, October 2, 2000.
Canadian police have seized and are running DNA tests on organs that are believed to have been taken from children's bodies without parental consent. The doctor suspected of taking the organs – believed to belong to British children -- now lives in the Netherlands and authorities are seeking his extradition.
12. "As DNA's role rises, nurses gather evidence." Milwaukee Journal Sentinel, October 1, 2000.
Now that DNA is such a useful tool in sexual assault cases, nurses who are often the first to see a rape victim play a vital role in gathering evidence. Today, even saliva and perspiration are valuable in determining an attacker's identity. The article also details a number of "cold hit" cases that have been solved through the Wisconsin DNA database. Mentions prosecutor's support of nationwide databanking and inclusion of all felons in the database.

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13. "Senior DNA expert resigns during probe of evidence handling." The Associated Press State & Local Wire, September 30, 2000.
A senior DNA expert at the Washington State Crime Lab (Dr. John Brown) has resigned amidst an internal investigation of his handling of DNA evidence in a 1997 rape case. In the state's first case of a person being convicted on the basis of DNA evidence alone, Dr. Brown has admitted that he did not disclose a first test that did not identify the suspect. After a colleague suggested that the first test was flawed, the evidence was retested and identified the suspect as the perpetrator.
14. "2 Convicted Men Cleared By DNA Test." AP Online, September 30, 2000.
In Texas last week, two inmates were cleared of separate sexual assault crimes after DNA testing confirmed they were not guilty. Austin investigators are currently reviewing cases before 1996 in which DNA testing could be used to confirm guilt or innocence.
15. "DNA names a murder suspect." The Los Angeles Times, September 30, 2000.
Orange County (CA) made a "cold hit" on an unsolved rape and murder dating back to 1992. The suspect has been linked to DNA evidence preserved from the crime scene – his profile was on the state's database for a 1984 rape conviction. The man (who has been arrested 24 times) dropped out of sight in 1993 and is believed to be in Mexico.
16. "Police: Victim Threatened Before Slaying." Sun-Sentinel (Ft. Lauderdale, FL), September 30, 2000.
DNA samples taken from saliva on a ski mask left behind at a murder scene have linked a man to a murder at a Florida restaurant. Although the suspect was publicly irate at being fired only a few hours before the manager was murdered, he was not the primary suspect. Police originally suspected another co-worker (who spent 13 months in jail before being released) because of a witness who has since admitted that her testimony that the man confessed to the crime was a lie.
17. "DNA Testing In Criminal Cases To Expand." Los Angeles Times, September 29, 2000.
California's Governor has signed into law three bills dealing with DNA. The first is a post conviction bill that allows inmates access to DNA testing in certain circumstances. A second bill allows police to compare a suspect's DNA profile with evidence from unsolved crimes (current law limits such sampling to those convicted of a crime). The last bill establishes a DNA database for missing persons, and will contain profiles of over 2000 unidentified remains kept in coroner's offices around the state.
18. "Briefs from central Pennsylvania." The Associated Press State & Local Wire, September 28, 2000.
The Pennsylvania Senate Judiciary Chairman has stated that he expects the Legislature will pass a post conviction bill that he introduced this year.
19. "DA seeks to halt lab testing until lab officials agree to keep quiet." The Associated Press State & Local Wire, September 28, 2000.
A Georgia District Attorney has asked a judge to halt **DNA** testing in the case of a convicted murderer who was executed in 1996 because of criticisms made by officials at the lab conducting the tests. The motion asks that the lab be ordered to remain silent about the case while the analysis is still going on. The DA further notes that the news organizations and the lab have twice failed to adhere to their agreement to see that he receives a copy of the lab's report at the same time as the news organizations

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20. "DNA tests for abode seekers." Hong Kong IMail, September 28, 2000.
The Hong Kong government is proposing legislation that would allow immigration officials to require DNA tests for persons seeking "abode" if the person fails to produce sufficient evidence to prove blood ties with a Hong Kong permanent resident parent. The person seeking abode would further be required to pay for the test.
21. "City Sending Old Rape Evidence for DNA Testing." The New York Times, September 28, 2000.
New York City will spend \$12 million over the next three years to have private laboratories test 12,000 rape kits. If the testing proves positive, the remaining 4,000 will be tested later. Since January 1999, all new rape kits, as well as biological evidence from homicide investigations, have been analyzed for DNA by New York City's medical examiner's office, but 16,000 kits from before 1999 have never been tested. City officials called on the legislature to extend the statute of limitations (which is 5 years) so that any solved rapes can be prosecuted.
22. "Multiple-case use of DNA raises alarms." USA Today, September 28, 2000.
A man in Indiana was acquitted of a rape after his defense convinced the jury that the interaction was consensual. Then, police used the DNA sample the man provided during the trial to charge him with another rape. The man has moved to suppress the DNA evidence in the second rape case on the grounds that it was an unconstitutional search and seizure. However, an Indiana appeals court has upheld the trial court's rejection of that argument. Illinois, New York and Florida – and possibly many other states – have used this tactic to charge and convict people. Laws in Alaska, Michigan, Vermont, and Wisconsin forbid this practice, whereas Florida, Texas and California specifically allow it.
23. "CA likens DNA to fingerprints; Appellate Court rules police may keep DNA samples." The Indiana Lawyer, September 27, 2000.
More in-depth legal report of the above-mentioned case. Public defenders plan to appeal the ruling to the state's Supreme Court. The decision noted that the defendant did not complain about the earlier court order to draw the samples used to compile the DNA profile in the first place. The Court wrote: "The closest analogue to retention of DNA samples is the fingerprint databank...Our supreme court has held that police are not required to destroy an individual's fingerprint records after acquittal." The defendant also failed to point to anything that required the crime lab to destroy the profile after his acquittal, the judge wrote, and found no legal basis requiring the crime lab or other law enforcement organization to get a search warrant to reuse the profile
24. "DNA evidence seals conviction for rape of U. Virginia student." University Wire, September 27, 2000.
Article catalogs several Virginia rape cases that were solved on the basis of DNA evidence alone. All of the suspects were identified through cold hits on the state's DNA database.

Genetic Privacy

25. "Get facts on DNA, tissue samples." USA Today, October 3, 2000.
Letter from the Biotechnology Industry Organization regarding a previous article ("DNA -rights defenders: Get off my genetic property"). States that "No one can own another person's DNA or any other product of nature. A patent only prevents a commercial competitor from making, using or offering for sale the innovator's invention; it does not confer ownership."

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26. "Ruling outlaws gene discrimination." The News and Observer, October 2, 2000.
One of the first attempts to use genetic data to ban individuals from jobs has been ruled unlawful by a judge in Hong Kong. The judge ruled that "The men's "genetic liability to develop the disease their parent suffers from does not present a real risk to safety at either place of employment,"
27. "Gene mapper says Congress should outlaw genetic discrimination." The Associated Press State & Local Wire, September 30, 2000.
Dr. Francis Collins, director of the National human genome Research Institute, said that Congress should act to outlaw discrimination on the basis of someone's genetic makeup. He said one way to avoid genetic discrimination is through a law making the genetic screening of employees illegal
28. "They need your DNA." New Scientist, September 30, 2000.
Asks: Should scientists who take blood and tissue samples for research be allowed to use them for other studies without permission? Will the original donors care if they do?
29. "John Podesta Holds News Briefing For Internet Press Organization." FDCH Political Transcripts, September 29, 2000.
Podesta said that one of the biggest challenges facing the next Administration will be dealing with both the positive and negative outcomes of the human genome project – "both in the great promise that it has for improving health care, et cetera, and then great social policy challenges that it has on privacy and genetic discrimination, et cetera."
30. "DNA records to be held on nationwide database." The Independent (London), September 28, 2000.
Scientists in the UK will establish a national genetic database containing the DNA and medical history of around half a million British adults in order to investigate links between genes and inherited illness. Ministers want the database to be put in the hands of an independent body to ensure that the police, insurance companies and private firms cannot access the sensitive material.
31. "Genetic Testing Dilemma; Public Fears Place Feds In Quandary." Capital Times (Madison, WI), September 27, 2000.
Participants at the annual meeting of the Wisconsin Biotechnology Association discussed genetic privacy and genetic discrimination issues.

Paternity

32. "2 biological dads called possible." Chicago Sun-Times, September 27, 2000.
Using techniques made famous by "Dolly" the cloned sheep, scientists in Scotland believe they will be able to develop a method that will allow gay couples to procreate using their DNA and a woman surrogate.