

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 October 13, 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

Congressional discussion on HR 4640 ("The DNA Backlog Elimination Act") and introductory statements on S. 3130 (Senator Hatch's post conviction and backlog elimination bill) and S. 3045 (the "Forensic Sciences Improvement Act") can be found by following the following link: <http://thomas.loc.gov>

Arkansas used DNA to link a suspect to two rapes and a murder, but the statute of limitations has elapsed for one of the rapes. A suspect who fought giving police a DNA sample, only to be overruled by the Vermont State Supreme Court, has found that the sample in question exonerated him.

An Australian state reports success with its new DNA sampling of prisoners. The Canadian RCMP's problems – including DNA backlogs – were discussed by Members of Parliament at a Committee hearing.

A post conviction bill for the 2001 session has been filed in the Louisiana House of Representatives. Newspapers around the country continue to run articles on post conviction issues.

STATE LEGISLATION

Forensic DNA

1. Louisiana HB 7 (Pre-filed for 2001 Session) -- An inmate may request and obtain post conviction DNA testing if the evidence in question has had a clean chain of custody, and if the technology for testing was not available at the time of trial. Also provides that the results may be used as a basis for post conviction relief.

NEWS ARTICLES

Forensic DNA

1. "DNA test plans resume today in Felker case." The Atlanta Journal and Constitution, October 11, 2000.
Newspapers seeking a post-execution DNA test in Georgia have agreed to include the County District Attorney in conference calls with the private lab that has been hired to conduct the analysis (Forensic Science Associates of Richmond, CA). The prosecutor had previously filed a motion asking that the testing be suspended in after newspapers reported that the private lab had criticized the State Crime Lab's handling of the original evidence.

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2. "Henry Lee returns to investigating unsolved cases full time." The Associated Press State & Local Wire, October 10, 2000.
Former Connecticut State Police commissioner and forensic scientist, Henry Lee, has announced that he will continue to work as a paid consultant in the state forensic lab for another five to 10 years – "continuing the upgrades he started decades ago and training young scientists for the day he really retires."
3. "Mother of teen files suit against murder defendant." The Associated Press State & Local Wire, October 10, 2000.
An Arkansas man who raped a 16-year-old girl has been linked through DNA to the 1995 murder of a 74-year-old woman and the 1993 rape of a 93 year-old woman. The two cases had been unsolved until now, but the man can only be charged with the murder because the statute of limitations has expired for the 1993 rape.
4. "MPs urge RCMP to fix dangerous inefficiencies." Calgary Herald, October 10, 2000.
A legislative committee in the Canadian Parliament recently reported that although the RCMP has taken some steps to alleviate the problems noted in an April report by the Auditor General, it still has a long way to go. Among the problems facing the RCMP is a significant delay in DNA evidence analysis.
5. "Freed Prisoner Sues Over Lack of DNA Test." Capital Times (Madison, WI), October 10, 2000.
A Wisconsin man who served more than 4 years in prison before being freed by additional DNA testing, is suing his defense attorney for failing to have the key piece of evidence analyzed for the trial.
6. "Judicial race puts spotlight on court; DNA case is issue in contest for top position." The Fort Worth Star-Telegram, October 9, 2000.
A race for one of the seats on the nine-member Texas Court of Criminal Appeals is spotlighting post conviction DNA issues. One of the candidates for the position has been criticized for her outspoken defense of her decision to deny a Texas inmate access to a new trial after DNA tests did not implicate him in the crime.
7. "DNA reviews increasingly being used to right wrongs." The Houston Chronicle, October 9, 2000.
Travis County, Texas has created a board that includes lawyers and Austin police officers to review 400 murder and sexual assault cases tried before 1996, when DNA testing became more common. The board will review cases in which the defendant did not know the victim, the evidence is not overwhelming, and defendant has maintained an innocence plea. Only sexual assault and murder cases in which biological evidence was preserved will be considered, and cases in which the inmate is still incarcerated will be given priority
8. "Homicides become harder to solve." The Indianapolis Star, October 8, 2000.
The growing influence of drugs and an increasingly mobile society has made criminal investigations more difficult over the years. The use of DNA databases has been a helpful tool to investigators, but the article reports that "Each state can have their own, but then they have to go into the other 49 states," in order to be effective.

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9. "Sheer luck saves some whose DNA evidence was almost destroyed." The Associated Press State & Local Wire, October 7, 2000.
Discusses the "crazy quilt" of evidence preservation rules across the nation. Notes several cases where DNA evidence that eventually exonerated an inmate was very nearly destroyed, and other cases where potential exonerating evidence has already been disposed. Mentions that Congress is considering a bill that would establish requirements for preserving evidence and for giving notice before it is destroyed.
10. "State objects to new DNA testing for executed man." The Associated Press State & Local Wire, October 7, 2000.
The Virginia attorney general is opposing post-execution DNA tests for a man executed in 1992 "because it says the public does not have a 'right to know.'" The Boston Globe newspaper and a group called Centurion Ministries have been seeking crime scene evidence that they believe will determine the man's guilt or innocence.
11. "Even as prisoners go free, law and science of DNA remain at odds." The Associated Press, October 7, 2000.
Discusses the slow move to allow DNA testing in post conviction cases. Says that, "Some judges have strongly resisted ordering DNA testing. Others have refused to accept the lack of a genetic match as clear-cut proof of innocence." In some cases the prosecutors do not want the case reopened, and in other cases the evidence has already been destroyed. Tells the stories of several inmates who have been released after post conviction testing.
12. "DNA proves suspect in Scoville homicide didn't do it." The Associated Press State & Local Wire, October 6, 2000.
After the Vermont Supreme Court authorized prosecutors to collect and analyze a suspect's DNA samples, the samples have proven the man innocent. The suspect argued that the circumstantial evidence collected by the police did not justify an invasive DNA test. However, Supreme Court ruled that the DNA testing was similar to fingerprinting and that circumstantial evidence was sufficient to justify the test.
13. "DNA tests reveal clues to more than 200 crimes." AAP Newsfeed, October 6, 2000.
In the Australian state of Victoria, DNA samples taken from 1500 prisoners since June have resulted in fresh leads on 203 unsolved crimes – including four murders. Additional details will not be available until police have interviewed all the suspects.
14. "DNA may link bomb suspect." Calgary Herald, October 6, 2000.
An Algerian man suspected of plotting terrorist bombings in the US can now be traced to explosives found in his care through DNA evidence and fingerprints. The man was arrested in December of last year when he attempted to enter Washington State from Canada. No additional information regarding the DNA evidence is available.

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Genetic Privacy

15. "Insurance Firms to Screen Clients for Genetic Illness." The Independent (London), October 11, 2000.
The UK's Genetics and Insurance Committee has approved the use of genetic testing to assess whether a person will inherit Huntington's disease. In the future, people who have had the test and refuse to disclose it to an insurance company could lose their coverage. The Association of British Insurers also plans to apply for permission to ask for genetic test results for nine other diseases, including Alzheimer's and breast cancer.
16. "On-job genetic bias ban proposed." The Washington Times, October 10, 2000.
The Montgomery County (MD) Council is considering legislation that would ban genetic discrimination in the workplace to prevent workers with genetic markers for certain diseases being denied health care or jobs. The ban would be the first of its kind in the state, but it does not yet have the full support of other council members.
17. "New Venture Aims to Guard Genetic Data." The New York Times, October 9, 2000.
A new business called First Genetic Trust will hold DNA samples in secure accounts to be given out for medical research and diagnosis – but only with the person's permission. This venture was developed as a solution for the difficulty now facing researchers who cannot find people willing to give DNA samples due to fears that their possible susceptibility to a certain disease could later be used to deny them employment or insurance. Co-founders of this company are the current SNP Consortium chief executive, the former head of genomics and bioinformatics at Motorola, and the former director of the computational biology center at I.B.M.
18. "Could genetic selection be the evolution of our species?" The Sunday Herald, October 8, 2000.
In summary: "So, while polar icecaps slowly melt, while Africa and Asia continue to buckle under an unstoppable AIDS epidemic, while China and Russia stir and rumble with political and cultural change and the Middle East re-ignites with malice, we sit and worry about a future where science may allow parents who could be bothered, to choose a clever, red-haired child, free from cancer and myopia, and who prefers cabbage to burgers."
19. No Title. The Associate Press State & Local Wire, October 5, 2000.
Reports that the Nebraska legislature recently held a hearing on genetic discrimination and State Senator Pam Brown intends to introduce legislation in 2001 that would ban genetic bias.
20. "Genetic information still unprotected : Democrat." AAP Newsfeed, October 5, 2000.
Australian Democrats biotechnology spokeswoman has warned that genetic privacy is unprotected from abuse and discrimination. However, the federal government, while acknowledging that genetic discrimination is an important issues, will not support the Democrat's Genetic Privacy and Non Discrimination Bill on the grounds that it is premature.

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Paternity

21. "Dole Warning Over CSA Plan." Belfast News Letter, October 10, 2000.

A member of the Northern Ireland Assembly is seeking legislation to assure that DNA samples taken for paternity testing by the Child Support Agency will be destroyed after the analysis has been completed.

CONGRESSIONAL RECORD

1. House of Representatives floor discussion of HR 4640. Speaking in favor of passing the bill: Rep. Canady (FL-R), Rep. Scott (VA-D), Rep. Stupak (MI-D), Rep. Kennedy (RI-D), Rep. Gilman (NY-R) Rep. Thompson (CA-D), and Rep. Jackson-Lee (TX-D).
2. Senate statement on the introduction of S. 3130 – Senator Hatch's post conviction DNA testing bill and backlog elimination funding. Senator Hatch (UT-R) and Senator Smith (OR-R) both gave statements.
3. Senate statement on the introduction of S. 3045 – the Paul Coverdell Forensic Sciences Improvement Act of 2000 – by Senator Sessions (AL-R).