

## DNA LEGISLATION & NEWS

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The October 20, 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

An article on Mississippi's State Crime Lab reported that the DNA Unit needs more funding, personnel and training for police in order to appropriately use DNA technologies and eliminate the state's backlog. New York has reduced violent crimes and Governor Pataki gave credit to DNA technologies, meanwhile the NYPD took a trip to Scotland Yard to study England's DNA techniques.

DNA evidence was used in California, Florida, Pennsylvania, Texas, and Washington to link suspects to crimes and to secure convictions – in some cases where the crime might have otherwise gone unsolved. DNA taken from a man in England who was caught stealing a candy bar linked him to an unsolved rape. Prosecutors in Canada continue to test the limits on the types of offenses for which judges will allow DNA samples to be taken for the state's new database.

In post conviction developments, Michigan's Senate is debating a bill that would allow DNA testing under certain circumstances. The US Supreme Court has denied the appeal of a post conviction DNA case, the Virginia Supreme Court will review the state's "21 Day Rule," and a Wisconsin jury has entered a \$2.6 million judgement against a defense attorney for not pursuing DNA tests that could have cleared one of his clients. Both Massachusetts and England are exhuming bodies in order to conduct post execution DNA tests.

### STATE LEGISLATION

No New State Legislation

### NEWS ARTICLES

#### Forensic DNA

1. "Serial Killer Spills Guts." The Calgary Sun, October 18, 2000.  
A Washington State serial killer has agreed to plead guilty to thirteen counts of murder. DNA testing has been used extensively in this case to link the suspect to the victims.
2. "Hanratty To Be Exhumed In Final Quest For Truth." The Express, October 18, 2000.  
A Court of Appeals in the UK has agreed to allow the body of a man executed 38 years ago to be exhumed for DNA testing. The man was convicted largely on the testimony of one of his victims who claimed to recognized his voice, but was not able to pick him out of a lineup.
3. "Mattoo case accused gets bailable warrant." The Hindu, October 18, 2000.

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Judges in New Delhi, India have thrown out the DNA evidence in a rape and murder case on the grounds that the Central Bureau of Investigation "influenced the laboratory scientist who gave the opinion of matching of DNA without resorting to due procedure and protocols of analysis of DNA and calculation and interpretation of results of analysis against all canons of justice and fair play."

4. "U.S. Supreme Court denies appeal of man in connection with 1984 murder." The Associated Press State & Local Wire, October 17, 2000.  
The US Supreme Court has denied the appeal of a man who was convicted of rape and murder 15 years ago. Recent DNA test results on semen found on the victim's body did not match the inmate. Prosecutors still believe that the man participated in the crime (which is thought to have multiple perpetrators.)
5. "Prime Minister Jean Chretien fine-tunes his cabinet as election call looms." The Associated Press State & Local Wire, October 17, 2000.  
Saskatchewan's (Canada) highest court has dismissed an appeal by a doctor who sexually assaulted two female patients and then inserted another man's blood into his own arm (on three separate occasions) in an effort to thwart DNA tests.
6. "Bathtub-slayings suspect is linked to fifth assault." The Houston Chronicle, October 17, 2000.  
DNA evidence has now linked a fifth sexual assault in Dallas (1998) to a man suspected of killing two women in 1996 and leaving their bodies in a bathtub. He is also suspected of committing two rapes in 1998 and two sexual assaults in 1999.
7. "Texas Inmate's Confession Slips Through the Cracks." The New York Times, October 17, 2000.  
A born-again Christian inmate in Texas wrote a letter in 1998 to Governor Bush and local police claiming guilt for a crime for which two other men had been convicted. Subsequent DNA tests have not matched the two convicted men, and a new DNA test on the confessor is underway. The Travis County prosecutor reopened the case earlier this year.
8. "DNA Evidence Key In Trial Of Man Accused In 3 Rapes." Pittsburgh Post-Gazette, October 17, 2000.  
In a Pennsylvania case of man accused of raping three elderly women, ranging from age 67 to 89, DNA evidence is playing a key role for the prosecution. One of the victims died a year after the attack, and another victim was "too hard of hearing and dim of sight" to be able to identify her attacker. However, DNA tests report that there is a one in two quadrillion chance that someone other than the suspect committed the crime.
9. "New Search For Boston Strangler Begins." The Boston Globe, October 16, 2000.  
The body of the "Boston Strangler's" last victim was exhumed and scoured for possible pieces of DNA evidence that could be used to test against a sample taken from the brother of DeSalva – the man suspected of being the Strangler. DeSalvo was killed in prison before he could be tried for any of the 13 murders, and the family of at least one victim believe that DeSalvo was innocent.
10. "New York Leads Way In Reducing Violent Crimes." The New York Post, October 16, 2000.  
New FBI statistics show that New York lead the way among the 10 most populous states in reducing violent crimes over the last five years. Governor Pataki said that the declining numbers are "a result

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of our common-sense criminal justice policies, including ending parole for violent felons, and investing in DNA technology.”

11. “Letters To The Editor.” The Virginian-Pilot (Norfolk, VA), October 16, 2000.  
A letter to the editor from a retired police officer points out that in post conviction DNA testing, just because no DNA evidence was found does not mean that a person did not commit the crime. Additionally, the officer points out that sometimes DNA evidence may be present at a crime scene, but not necessarily related to the crime.
12. “Capital Focus; Bill sets standards; critics say biased.” The Associated Press State & Local Wire, October 15, 2000.  
Michigan legislators are arguing over a post conviction bill which proponents say is needed and opponents say is unreasonable. Critics say the current bill would set up loopholes and a “revolving door” for defendants, rather than a thorough review of appropriate cases. The bill (SB 1395) requires that: a person must have always maintained innocence, identity was an issue at trial, a defendant must show that DNA evidence is relevant and that a properly conducted DNA test on uncontaminated evidence will establish that the defendant was not the source of the sample.
13. “VA. Supreme Court To Study '21-Day Rule'.” Daily Press, October 15, 2000.  
The Virginia Supreme Court has announced that it will review the state’s “21-Day Rule” which allows defendants only three weeks after sentencing to introduce new evidence that might prove their innocence. This rule has been particularly onerous to inmates who now have access to DNA testing but under the rules would not be able to use exonerating results in court to gain freedom.
14. “NYPD Taking DNA Lesson From Scotland Yard.” The New York Post, October 15, 2000.  
A team of NYPD officials has recently returned from London where they visited Scotland Yard and studied the department’s DNA and forensic evidence gathering techniques. Gov. Pataki has proposed expanding the police database with samples from all inmates in state prison, and is also pushing for legislation that extends the statute of limitations on crimes for which DNA evidence is available. Pataki and former NYPD Commissioner Howard Safir, have pointed out that DNA samples can also help inmates and suspects who claim they have been wrongly accused of crimes.
15. “Rapist Caught After Snack Bar Theft.” Birmingham Post, October 14, 2000.  
A UK man who had gotten away with a 1998 rape was caught after DNA samples were taken from him upon his arrest for stealing a candy bar.
16. “Lawyer ordered to pay former client \$2.6 million.” Associated Press State & Local Wire, October 13, 2000.  
A jury in Wisconsin has ordered that a lawyer whose client was convicted of rape to pay that client more than \$2.6 million – ruling that the lawyer did not seek crucial DNA tests that might have exonerated the man. The man spent 4 ½ years in prison on a 19 year sentence.
17. “Five years on, a cigarette butt puts a man in court for murder of a teen age girl 1995.” Daily Mail (London), October 13, 2000.  
New DNA tests on a cigarette butt left behind at a crime scene have conclusively linked the primary suspect to a murder scene. Investigators questioned the suspect shortly after the crime in 1995, but police did not have enough evidence at the time.

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18. "DNA evidence unlocks key to 9-year-old rape case." Press Journal (Vero Beach, FL), October 13,2000.  
Florida has gotten a "cold hit" from their DNA database for an unsolved rape in 1991 from a man who was recently convicted of another sexual assault. The man is also a suspect in two sexual battery cases in Florida and two more in Virginia.
19. "Use of DNA in investigation expected to make strides." The Associated Press State & Local Wire, October 12, 2000.  
The Mississippi State Crime Lab DNA Unit's technical leader has said that the state needs to come up with more money for state labs, hire better workers and give police officers more training in order to take advantage of DNA technologies. The state currently has a backlog of 1,000 DNA cases awaiting analysis.
20. "High-Tech Arm Of Law Reaches Out For Murderers Who Escaped Justice." Birmingham Post, October 12, 2000.  
A special team of detectives in West Midlands (UK) has been created to re-open cold cases and examine evidence for new DNA leads.
21. "Ventura Man Indicted In '93 Hueneme Rape, Slaying." Los Angeles Times, October 12, 2000.  
DNA evidence has helped link a suspect to an unsolved crime from 1993. The man had previous battery convictions for which he was required to submit DNA samples to the state database, but the state Department of Justice has not determined why a match was not made sooner. The department explains that it could have been part of the 50,000 sample backlog, or the two samples could have been tested under separate methods which would have made matching impossible. The suspect has three additional felonies on his record.
22. "Man who hit girlfriend gets probation." The Ottawa Citizen, October 12, 2000.  
An Ottawa man who assaulted his girlfriend when he thought she was pregnant was given a suspended sentence and placed on probation for a year, but the judge declined to order a DNA sample for Canada's new databank.

### **Genetic Privacy**

23. "Montgomery Weighs Bias Legislation; Bill Addresses Using Workers' Genetic Code." The Washington Post, October 18, 2000.  
The Montgomery County (MD) Council will hold a hearing on November 16 to consider legislation that would prohibit public and private employers in the county from using genetic information to make hiring, firing or promotion decisions. The bill is said to have widespread support from the County Council and County Executive, and, if enacted, will be the first law of its kind to be passed by a local jurisdiction.
24. "Section: Dick Godfrey." The Journal (Newcastle, UK), October 17, 2000.  
Column warns that the UK may come to regret its recent decision to allow limited genetic testing by insurance companies. "I detect the appearance of the thin edge of a potentially enormous wedge." Predicts that workers could find difficulty finding jobs and insurance and that a "genetic underclass" could develop.

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25. "Notorious Hacker Calls For Central DNA Databank." Newsbytes, October 17, 2000.  
Kevin Mitnick (computer hacker extraordinaire) has suggested that creating a central DNA database may be a way to curb identity thefts. He said that most computer systems are "totally weak" and that, "Anybody who puts their mind to it can get your Social Security Number and thus obtain copies of your bills."
26. "Insurers to take on government over gene tests." The Guardian (London), October 13, 2000.  
An insurance industry lobby group in the UK has said that the insurance companies will continue to demand information about seven genetic tests from potential customers, even if the government, as expected, only approves one of them (Huntington's disease). The group said that they saw no reason to wait for the government to approve use of the other six tests, and would carry on using them unless they were told to stop.
27. "Draft allows conditional use of gene samples without consent." The Daily Yomiuri, October 12, 2000.  
The Japanese Government has decided that scientists researching the human genome will be able to use samples from donors without obtaining their consent providing certain conditions are met.
28. "Senate Health Services Committee Releases Interim Report." Texas Worker's Comp Advisor, October 12, 2000.  
The Texas Legislature's Senate Health Services Committee has released an interim report with recommendations for topics to be addressed in the 2001 Legislature. Among the recommended topics included in the report is a clarification of definitions of "genetic test" and "genetic information" to prevent "occurrences of genetic discrimination in insurance and employment."

### **Paternity**

29. "Appellate Watch Johnson Trust Challenge Tests Finality of Paternity Judgments." New Jersey Law Journal, October 16, 2000.  
New Jersey's highest court heard arguments on whether a child was entitled to share in a \$350 million fortune, despite questions about her paternity that could be resolved by DNA testing. The child was formally acknowledged by the father in divorce proceedings as his, but he always suspected that the child was a product of the mother's affair.