

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 November 10, 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 Washington, DC's "mobile crime labs" reports that the unit is "spread too thin" and prosecutions could be in jeopardy. In Wisconsin, some local jurisdictions are having trouble finding the funds and/or manpower to collect DNA samples from all felons -- as required by law.

DNA databases made "cold hits" in Illinois (for crimes in Missouri), and in Virginia. An Ohio man has been cleared of charges through DNA tests, and in Florida a jury has acquitted a man of murder, despite strong DNA evidence that he committed the crime.

A new bill has been introduced in Congress that would repeal the statute of limitations for sexual assaults and provide funding for backlog analysis. Meanwhile, a Texas county has indicted it's first unknown rapist based on a DNA profile.

In other federal activity, Congress has stripped a provision for military offenders to be included in CODIS from a defense bill, funded the Department of Justice CLIP grant, and the Forensic Sciences Improvement Act has been passed by the Senate with considerable post conviction DNA language.

In England, police hope mitochondrial tests on cold cases will lead to more suspects, more officers are agreeing to DNA samples for the national database, and the Parliament is growing closer to repealing the "double jeopardy" law.

STATE LEGISLATION

No New State Legislation

NEWS ARTICLES

Forensic DNA

1. "Use of DNA evidence is becoming more widespread." The Lawyers Weekly, November 10, 2000. Reports on the increased use of forensic DNA evidence in prosecuting crimes. Discusses grounds on which defense lawyers can challenge DNA evidence.

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2. "2nd jury finds man not guilty in death." St. Petersburg Times, November 8, 2000.
In the second trial of a man whose first trial ended with a hung jury, the second jury has found the man not guilty of murder. The case hinged largely on DNA evidence. DNA found on the victim's blouse matched the man with trillion-to-one odds. However, the defense attacked DNA, bringing up the case of a British man who was arrested on the strength of DNA evidence only to be freed later after further tests showed he could not have committed the crime
3. "UF toxicologists working on Boston Strangler case." The Associated Press State & Local Wire, November 7, 2000.
The University of Florida's William R. Maples Center for Forensic Medicine is conducting DNA tests on hair, tissue and other samples taken from the body of the woman who was believed to be last victim of the Boston Strangler. The victim's family believes the man convicted of the crime may not have been the true perpetrator.
4. "DNA key to Fyfe case." The Gazette (Montreal), November 7, 2000.
DNA evidence is expected to play a key role in the Montreal (Canada) trial of a man suspected of being a serial killer.
5. "Ramsey seen selling crime investigations short." The Washington Times, November 7, 2000.
Police and prosecutors in Washington, DC are concerned the city's police evidence technicians are stretched too thin, which could result in delays and mistakes in criminal investigations. The department's new policy of deploying crime lab officers for street patrol work is resulting in numerous technicians having to spend their days in labs and courts, and their nights on street patrol. DNA evidence analysis is already outsourced. To preserve the chain of custody, lab technicians must personally take DNA evidence to either the FBI's lab or to a private lab. The Police Chief would like to find \$25 million to establish a city crime lab.
6. "Belleville man linked to rapes in Madison County and St. Louis." The Associated Press State & Local Wire, November 6, 2000.
A man in Illinois has been linked by DNA to two sexual assaults in that state, and was further linked through "cold hits" to two rapes in St. Louis, Missouri after the suspect's sample was sent to the national DNA database.
7. "Supreme Court denies appeal by death row inmate caught through DNA." The Associated Press State & Local Wire, November 6, 2000.
The US Supreme Court has denied the appeal of a Virginia death row inmate who has the distinction of being the first person caught through a "cold hit" in Virginia's DNA database.
8. "Straw poised to end protection of double jeopardy." Daily Mail (London), November 6, 2000.
A final report from the British Law Commission is expected to favor scrapping the "double jeopardy" law in England. The move to repeal this law comes after new DNA evidence has been found for several cases in which a suspect has already been tried and acquitted. Aggravating the situation is a man acquitted of killing his wife who has since publicly admitted to paying for a contract killer and saying he "got away with murder." The repeal would apply only to the "most grave criminal offenses" including murder and rape.

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9. "Illinois Supreme Court Committee On Death Penalty Issues Final Report." The Legal Intelligencer, November 6, 2000.
The Illinois Supreme Court's committee on capital cases has released its final report on recommendations regarding capital punishment reform. Among the recommendations is a call for "and standardized discovery rules for DNA evidence."
10. "Rape Kit Funding Pushed." Daily News (New York), November 5, 2000.
Senator Schumer (D-NY) has vowed to push the Senate to pass a bill that would set aside \$50 million to process the backlog of rape kit samples. The article notes that the bill (presumably HR 46400) has passed the House of Representatives, but has not been acted upon in the Senate. "It is outrageous," Schumer said. "With modern technology we could convict these rapists, and yet nothing is happening."
11. "DNA test advances leave 800 killers fearing knock at door." Sunday Telegraph (London), November 5, 2000.
Police in England hope to use mitochondrial DNA testing to help clear up hundreds of unsolved cases for which they previously thought their evidence samples to be too small for testing.
12. "Unknown man indicted in rape case." The Associated Press State & Local Wire, November 4, 2000.
A grand jury in Austin, Texas has indicted an unnamed man for rape, using only a genetic profile. The indictment came only four days prior to when the statute of limitations for the crime was set to expire. It is the first time this strategy has been used in Travis County, Texas.
13. "Jury Awards \$1.7 Million In Wrongful Rape Arrest." Los Angeles Times, November 4, 2000.
A federal jury awarded \$1.7 million on Friday to a man who was wrongfully arrested two years ago in connection with a series of rapes. Four months his arrest, DNA tests exonerated the man in two of the assaults, including one in which the bloodhound had traced the suspect's scent to his house. The man claimed that the three days between his arrest and the time he was charged left him emotionally scarred.
14. "A \$420,000 grant to help police buy nonlethal weapons." The San Diego Union-Tribune, November 4, 2000.
San Diego police have received a \$240,000 grant from the state to buy nonlethal weapons and better crime laboratory equipment. On the whole, the department will spend more than \$810,000 this year to provide nonlethal weapons to its officers, to bolster the crime lab and to improve training of crime lab workers.
15. "Expert: Blood at house was victim's." The Union-Leader (Manchester, NH), November 4, 2000.
In a murder trial in New Hampshire, defense attorneys are criticizing the state for collecting hundreds of blood samples but only sending a "handful" of them to a private lab (Cellmark) for analysis. The defense argues that if more samples had been tested, Keshen asked, wouldn't it have been more likely that another contributor could show up. The defense also tried to show that the samples could have been contaminated in the state lab system.

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16. "Sheriffs late in gathering felons' DNA." Milwaukee Journal Sentinel, November 3, 2000.
Law enforcement in Wisconsin has been late in beginning collections of DNA samples from all felons, as required by a law passed in 1999. Additionally, the Milwaukee County Sheriff's Department is refusing to collect any samples, calling it an unfunded mandate. Sheriff's argue that when they supported the law's enactment, they were under the impression that the Department of Corrections would collect the samples. Local judges are concerned with the process not being carried out despite court orders for **DNA** samples that accompany every felony sentencing.
17. "Area Man Guilty Of Murder In 1997 Death Of Neighbor." The Richmond Times Dispatch, November 3, 2000.
A "cold hit" from Virginia's DNA database has resulted in a murder conviction. Crime scene evidence that was fed into the database matched to a former state inmate who also happened to be the same person who notified police that he "found" the body. The man had been included in the database due to a 1995 burglary conviction.
18. "Man cleared on basis of DNA test." The Associated Press State & Local Wire, November 2, 2000.
DNA tests have cleared an Ohio man who was considered a suspect in a series of rapes. However, the prosecution proceeded with on charges against the man stemming from several break-ins and the molestation of an 8-year-old girl.
19. "Killer gets life after cigarette DNA tests on." The Guardian (London), November 2, 2000.
In England, a man has been convicted of a 1995 murder after police linked the man to the crime scene using DNA tests on a cigarette that was left behind. The man had been the prime suspect in the case, but was only arrested and charged in January this year after the DNA test had been completed.
20. "Police 'will' have DNA tests after all." The Gloucester Citizen, October 27, 2000.
5 police officers in England who had been sidelined after they refused to submit DNA samples to the national database (for exclusionary purposes), have suddenly changed their minds and have indicated that they will reply with the sample request. The officers "were deemed to be in such key roles that continued operation in those roles would present an unacceptable risk to serious crime investigations. In view of this, arrangements were put in hand for redeployment to less sensitive roles." Approximately 25 officers are still refusing to provide samples.

Genetic Information

21. "Genetic testing and insurance." The Irish Times, November 6, 2000.
Letter from genetics counselors saying that, "The vast majority of research and clinical geneticists world-wide would not agree with the use of genetic information for insurance purposes. Genetic information is qualitatively different from other medical information, and should be inherently private." Says that the UK's new insurance policy is out of line with practice in 18 US states, and with that in many EU countries.

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22. "Commissioner Busquin hosts public debate on the responsible use of genetic data." Rapid, November 6, 2000.
Announcement in support of the conference on 'Genetics and the Future of Europe' on November 6 and 7 in Brussels. "It is one of the initiatives taken by the Commission to stimulate scientists to better communicate with society, represented at the conference by politicians, industrial and social leaders. The aim is to engage the debate on the responsible use and exploitation of genome information in health, food, environment and society."
23. "Super industry warns funds to tread warily on genetic tests." AAP Newsfeed, November 2, 2000.
A major superannuation lobby group in Australia has revealed insurance companies were already using genetic disorders as grounds for discrimination. The Human Genetics Society of Australasia went further, calling for an immediate ban on the use of genetic information for life or disability insurance purposes
24. "A Study In Data Collection Genomics Companies Go Abroad To Obtain Samples, Citing Obstacles In The United States." The Boston Globe, November 1, 2000.
Reports that many genetics research companies are going abroad to collect DNA samples for research because of the lack of laws in the US protecting donors, and, in some cases, because laws protecting donors go to far. For example, an Oregon law describes DNA ownership as private property, which raises questions over whether potential donors might have financial rights to any drugs developed.
25. "Mapping the Law on Genetic Privacy." New York Law Journal, October 24, 2000.
Discusses whether there is a need for federal legislation protecting genetic privacy. Points out that there are already several federal and state statutes that could protect against genetic discrimination, as well as case law. Explores New York law on the subject.

Paternity

26. "Assembly Gives Go-Ahead For DNA Parentage Tests." Belfast Newsletter, November 7, 2000.
The Stormont Assembly (in Ireland) has given approval to legislation that will allow courts to use DNA testing to establish parentage.

CONGRESSIONAL RECORD

1. US Senate, October 27 -- floor speech on FY 2001 Department of Justice Appropriations Conference Report – Senator Gregg points out that the FBI is receiving \$1.4 million for the "National Offender [DNA] Database," and that the bill provides a total of \$137.3 million for FBI forensic services.
2. US Senate, October 26 – amendment to the Paul Coverdell National Forensic Sciences Improvement Act (S. 3045). Authorizes nearly \$500 million over 6 years in federal grants for crime lab improvements. Provides non-binding "Sense of Congress" language that "Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases."

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3. US House of Representatives, October 25 – Conference Report for the FY 2001 Department of Justice Appropriations bill – includes \$30 million for DNA Backlog Grants / Crime Lab Improvement Program (CLIP). Provides OJP with \$250,000 to “conduct a study of the funding requirements for the operation of forensic science laboratories given the caseload growth and backlog. The study should identify the funding needed to address such issues as laboratory technical equipment, forensic science training, laboratory accreditation, laboratory information management systems, facilities improvement and personal staffing.
4. US House of Representatives, October 16 – Extension of Remarks by Rep. Thompson (D-CA) regarding the Conference Report for the National Defense Authorization Bill (HR 4606). Regrets that conferees rejected a provision that would require military offenders to be included in CODIS.
5. US Senate, October 5 – Floor speech by Senator Torricelli (D-NJ) on the introduction of “The Sexual Assault Prosecution Act” (S. 3168) that would “eliminate any limitation on indictment for sexual offenses and make awards to States to reduce their DNA casework backlogs.” Provides \$60 million in grants to states over 4 years.