

## DNA LEGISLATION & NEWS

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The November 17, 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

A Virginia newspaper carried a nice article on the state's success with its DNA database. The Washington Post carried two articles detailing the pressures forensic labs are facing as they attempt to meet the demand for DNA testing. An Oklahoma Sheriff plans to "tap into" the states DNA database, and a ballot measure to build a new crime lab in a California county was not approved by voters.

A post conviction bill has been prefiled in the Texas Senate, and a Michigan Senate committee has approved a post conviction bill. The Ohio Attorney General has announced an initiative to allow post conviction analysis for certain cases, and Virginia legislators continue to discuss aspects of possible post conviction DNA legislation. Also in Virginia, several newspapers are asking a court for permission for post-execution tests.

Switzerland plans to completely replace fingerprinting of criminals with DNA sampling in the next four years. A Thai authority has announced a plan to automate all forensic DNA analysis. A Canadian political party's platform includes a plan to require DNA samples for all suspects of indictable offenses. In England, the national database has reached the 1 million mark for DNA profiles.

A newly elected US Representative who wrote Ohio's DNA database law could be a new federal ally.

You may be further interested in a report that Myriad Genetic Labs has won contracts for DNA analysis for several states and a California county's plan to seek state funds for analysis assistance.

Also included is a Japanese procurement announcement and a patent ruling that could affect human genome project discoveries.

### STATE LEGISLATION

#### Forensic DNA

1. Texas HB 157 (Prefiled for 2001 Session) – Provides for post conviction DNA testing if certain conditions are met -- "reasonable probability" of favorable results; evidence is in testable condition and has not been previously analyzed using the same type of test; and the petition was filed to prove innocence and not to unreasonably delay execution of a sentence.

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### **Genetic Privacy**

2. Texas SB 11 (Prefiled for 2001 Session) – Protects the privacy of medical records (including genetic tests).
3. Texas SB 12 (Prefiled for 2001 Session) – Prohibits discrimination in employment based on the use of certain medical information (including genetic tests).
4. Texas SB 13 (Prefiled for 2001 Session) – Prohibits employment and health insurance discrimination based on the use of certain genetic characteristics.
5. Texas SB 60 (Prefiled for 2001 Session) – Prohibits employment and insurance discrimination based on certain genetic information and places further limits on the use of genetic information.
6. Texas SB 102 (Prefiled for 2001 Session) – Regulates the cloning of human beings.

### **NEWS ARTICLES**

#### **Forensic DNA**

1. "Day lays down the law: Suspension of charter rights envisaged to crack down on criminals." The Gazette (Montreal), November 15, 2000.  
The Canadian Alliance (conservative political party) has unveiled a 72-point criminal justice / public safety plan which includes mandatory DNA testing of anyone charged with an indictable offense.
2. "News In Brief." Press Association Newsfile, November 15, 2000.  
The number of DNA profiles of suspects or criminals being held in the UK's national DNA database has passed 1 million.
3. "Senate panel OKs procedures for DNA tests." The Associated Press State & Local Wire, November 14, 2000.  
The Michigan Senate Judiciary Committee has approved SB 1495 for full Senate consideration. The bill will allow post conviction DNA testing for one year if certain criteria are met. Democrats on the Committee objected to the bill's time limit and argued that few inmates would have the money or legal advice to necessary to contest their convictions under this proposal. The bill has the support of prosecutors.
4. "Ohio's Death Row Prisoners To Be Allowed DNA Testing." The Columbus Dispatch, November 14, 2000.  
The Ohio Attorney General has announced a new Capital Justice Initiative in which the state will pay for post conviction DNA tests. The AG's office will decide which cases should be allowed access to the post conviction testing, and will control the testing will along with law-enforcement agencies.

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5. "Myriad Genetic Laboratories Awarded Contracts for Felon Identity Genomics." PR Newswire, November 14, 2000.  
Myriad Genetics announced that it has been awarded contracts for the DNA backlog analysis for several (unnamed) states. Estimates that over 1 million DNA samples nationwide have been collected from specified offenders which have not yet been analyzed for inclusion in the state's DNA database.
6. "Bank Of DNA Samples Yields Big Results For Va. Police." Roanoke Times & World News, November 14, 2000.  
Reports on the growing number of "cold hits" that Virginia's DNA database is collecting (250 cases have been solved and the database currently holds 120,000 profiles). "It ain't cheap on the surface in terms of dollars and cents," Ferrara said. "But if you look at it from the standpoint of, first, how much investigator time did it save and, more importantly, how many victims did not become victims because of the databank or how many innocent people were not convicted of a crime they didn't commit, then those costs seem minimal."
7. "Va. Leaders To Review Fairness of Death Pen." The Washington Post, November 14, 2000.  
Virginia's Joint Legislative Audit and Review Committee has announced that it plans to review the state's 21-day rule which prevents defendants from introducing any new evidence, including DNA testing, after three weeks of sentencing. The Chair of state's Crime Commission (a Republican Senator) has indicated that he supports creating a "right to a judicial hearing on DNA evidence," even if the 21-day deadline has passed.
8. "For DNA Detectives, the Workload Is Exploding." The Washington Post, November 14, 2000.  
Thorough article on the use of DNA in law enforcement efforts. Forensic labs around the country cannot keep up with the demand for DNA analysis. New York is spending \$13.2 million this year on DNA work and training, and New York City has allocated \$12 million to test 12,000 rape kits. Virginia is spending \$ 9.6 million to clear its backlog of more than 100,000 offender profiles. 1 of 4 DNA tests conducted by the FBI exonerates the suspect. Reports that Peter Neufeld favors larger databases to increase the probability that the right suspect will be found.
9. "How Labs Pick Up The Genetic Trail." The Washington Post, November 14, 2000.  
Briefly discusses the need for quality control in DNA testing labs. Further reporting on the race for forensic labs to keep up with the demand for DNA analysis. States are rapidly expanding budgets and increasing staff.
10. "Sheriff seeks state grant to fund genetic testing." The Press-Enterprise (Riverside, CA), November 13, 2000.  
The San Bernardino County Sheriff's Office is seeking a state grant from California's Office of Criminal Justice Planning's Cold Hit program. The program would reimburse the Sheriff's Department for up to \$ 65,000 in costs to check genetic evidence in about 90 cases. The department plans to compare the profiles from unsolved sexual-assault cases against evidence obtained in other cases and to DNA samples from convicted offenders.
11. "House's 42 New Members Bring Plenty of Experience." Roll Call, November 13, 2000.  
Pat Tiberi (R-OH), recently elected to the US House of Representatives, formerly was a member of the Ohio State Legislature where he sponsored the bill that created the state's DNA database.

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12. "DNA testing urged for executed man." Daily Press, November 12, 2000.  
The Washington Post, Richmond Times-Dispatch and the Virginian-Pilot (Norfolk) have asked a circuit court judge to allow DNA testing for in a case of a man who was executed in 1992 in Virginia. The man had always maintained his innocence. The state intends to fight the request.
13. "Man charged with city murder." AAP Newsfeed, November 10, 2000.  
Police in Western Australia have been criticized for collecting DNA samples from several homeless Aboriginal men and women during the course of a murder investigation. The suspect had previously been described as a Caucasian male.
14. "DNA evidence confuses Pasco County murder case." St. Petersburg Times, November 10, 2000.  
In a Florida murder trial, a DNA expert has admitted that DNA evidence from the crime scene links the defendant to the crime, but also that another unknown person's DNA was also found. The defense has also been pursuing testimony on the DNA identification error in England and asking repeatedly about the workings of statistical probability and the margin of error in using DNA to identify suspects.
15. "Chief rejects deployment complaints." The Washington Times, November 10, 2000.  
Washington, DC Police Chief Ramsey has dismissed complaints from the mobile crime lab unit that they are being spread too thin. However, the head of the police union has confirmed that the complaints are legitimate. "The mobile crime lab deals with the most serious crimes, and it's under scrutiny at trial," Sgt. Neill said. "The chief is not the one who stands up in court and says, 'We had to hurry.' It's the officer who has to stand up for that evidence."
16. "Voters Reject Supervisors' Pay Increase; Crime lab plan also apparently defeated." The San Francisco Chronicle, November 9, 2000.  
Voters in San Mateo County, California have rejected a ballot measure that would allow the county to build a new crime lab. Although the measure faced no formal opposition, it failed to garner the two-thirds majority vote necessary for passage – it gained only 55 percent.
17. "Senator speaks to St. Michael's College about death penalty." University Wire, November 9, 2000.  
US Senator Leahy (D-VT) gave a speech at St. Michael's College in Colchester, Vermont addressing the death penalty issue. Senator Leahy said that DNA testing should be available to both the prosecution and defense, in the same way the fingerprinting is equally available.
18. "Switzerland to Use DNA Testing to Track Down Suspects." Xinhua General News Service, November 9, 2000.  
The Swiss federal government is reportedly planning to completely replace the practice of fingerprinting criminals with DNA sampling instead within the next four years. An experimental database has been operating since July 1 of this year.
19. "New DNA testing to search for old killers of two women." The Associated Press State & Local Wire, November 8, 2000.  
Wyoming authorities plan to submit DNA evidence from two unrelated unsolved murder cases (one from 1972 and another from 1985). The evidence has been sent to Cellmark labs for processing and will be included in the state's database.

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20. "Police operations in for major shake-up." Nation, November 8, 2000.  
In Thailand, a new forensic investigative unit has been established which is being lead by an independent forensic pathologist (one of only 4 qualified forensic pathologists in the country). She plans to "ensure the accuracy of DNA tests by insisting that the unit relies on full automatic testing procedures and eliminate the risk of human error that prevails with the technique used at the Police Headquarters Forensic Unit."
21. "Voters return Glanz, Selph to offices." Tulsa World, November 8, 2000.  
Tulsa County, Oklahoma has re-elected Sheriff Glanz to office. During the election process, Sheriff Glanz said that he would "like to see the county tap into a statewide DNA database to solve more crimes."
22. "Political Climate." The Boston Globe, November 5, 2000.  
A Massachusetts judge may be profiled in an upcoming Readers Digest feature called "Americas Worst Judges." Among this judge's list of rulings that sparked the magazine's interest: a decision that state law allowing DNA samples to be forcibly taken from convicted criminals was unconstitutional (later overturned by the Supreme Judicial Court).

### **Genetic Privacy**

23. "Influence our **genetics** laws ." Evening Chronicle (Newcastle, UK), November 13, 2000.  
At the English Government's Human **Genetics** Commission meeting on November 27, the main topic for discussion will be if genetic information on individuals should be available to organizations, such as insurance companies.
24. "Estonia sells its gene pool: A genetic database project is an ethical timebomb." The Guardian (London), November 9, 2000.  
Calls Estonians "blissfully unaware" of the potential side effects of participating in the country's DNA sampling project for human genome research. The collection of genetic, genealogical and medical data is harmless, but drawing connections between them could be a "timebomb."

### **Paternity**

25. "Testing Using Bubblegum, Cigarette Butts, or Razor Clippings!" Business Wire, November 14, 2000.  
D-FWMall.com is offering in-home DNA collection kits that claim to be able to gain DNA information (such as paternity) from bubblegum, cigarette butts, etc. Once a sample is collected, the kit is returned to the lab for analysis.
26. "Fukuoka bureau revokes boy's Japan citizenship after DNA tests." Japan Economic Newswire, November 8, 2000.  
The government of a Japanese prefecture has revoked a child's citizenship after DNA paternity tests conclude that the father was not a Japanese native (as claimed by the mother), but rather is a Chinese native. The mother is also Chinese and was studying at a Japanese university when she became pregnant.

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### FEDERAL REGISTER

#### Paternity

1. Federal Employees' Group Life Insurance Program – Current language is amended to allow DNA tests to prove paternity of an insured person's child, either before or after the insured's death.