

DNA LEGISLATION & NEWS

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The December 1, 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

Several articles covered the recent meeting of the National Commission on the Future of DNA Evidence.

Newspaper articles mentioned DNA backlog problems in Alabama, Illinois, Indiana, Maryland, New York, and Virginia. Wisconsin county and state authorities still have not agreed on which agency is responsible for collecting DNA samples from felony probationers. DNA evidence was used to exonerate suspects in Pennsylvania, Michigan and New York – and “cold hits” caught criminals in Illinois (for a Maryland crime), Florida, Georgia, Kentucky, and Missouri.

Texas and Arkansas have prefiled legislation allowing for post conviction DNA analysis under certain conditions. The Arkansas bill also extends the statute of limitations for prosecutions if DNA evidence is available. The Senate for both Michigan and Pennsylvania are due to debate post conviction proposals for possible enactment this year. An Ohio lawmaker plans to continue pushing for post conviction laws, despite a voluntary policy recently announced by the Attorney General, and Virginia lawmakers continue to mull proposals.

In international forensic DNA news: Sri Lanka has used DNA evidence for the first time in court; an Australian state has begun taking samples from prisoners; police in England have taken samples from 2000 in a “DNA dragnet;” and the EU is considering a DNA database. Missing persons DNA database are being established in Bosnia and an Australian state.

STATE LEGISLATION

Forensic DNA

1. Arkansas SB 4 (prefiled for 2001 Session) -- Extends the statute of limitations for: prosecutions based on DNA and allows for post-conviction appeals based on DNA.
2. Texas SB 119 (prefiled for 2001 Session) – Allows for post conviction DNA testing under certain conditions.

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NEWS ARTICLES

Forensic DNA

1. "New law could affect hundreds of inmates." San Jose Mercury News, November 29, 2000.
Discusses the new California law allowing for post conviction DNA analysis. Reports that many defense attorneys are suspicious of the Attorney General and believe that very few post conviction DNA tests will be allowed uncontested. Also points out that the importance of DNA testing will be diminished if too many inmates request analysis without good justification.
2. "State begins process of issuing bonds to build forensic science labs." The Associated Press State & Local Wire, November 29, 2000.
Alabama has begun selling \$17.5 million in bonds to fund construction of new forensic science labs in Birmingham and Montgomery. The Director of the state's Department of Forensic Services estimates that it currently takes up to three years to process DNA samples – the new lab is expected to help ease this backlog.
3. "News in brief from western Pennsylvania." The Associated Press State & Local Wire, November 29, 2000.
In Pittsburgh, a man charged with home invasion has been exonerated through DNA from also being a serial rapist. A series of unsolved rapes that occurred over the summer have all been linked to the same DNA profile.
4. "DNA does not link suspect to Oakland County child killings." The Associated Press State & Local Wire, November 28, 2000.
DNA tests on an exhumed body have proven that who was thought to be responsible for (but never charged with) killing four Detroit-area children 24 years ago is innocent. Police now have the genetic profile of the suspect and hope to eventually solve the case.
5. "Accused murder challenges DNA evidence." The Associated Press State & Local Wire, November 28, 2000.
An accused murderer's defense attorney in Livingston, NC is disputing the prosecution's interpretation DNA evidence. DNA analysis showed that the sample could have come from more than one man and did not rule out the suspect or the victim. Using a "likelihood ratio," an expert for the prosecution determined that the DNA belonged to the accused. The defense claims this method for determining a person's identity has only been used in court in paternity cases, never in contested criminal cases.
6. "GOP wants \$710 million for jails and anti-crime programs." The Associated Press State & Local Wire, November 28, 2000.
Republican state legislators in California have proposed spending \$710 million of the state's projected \$10.3 billion surplus on jails, crime labs, law enforcement equipment and prosecution of gun-related crimes. The proposal specifically targets \$200 million "to renovate or expand local crime labs." Although Republicans are in the minority party in California's legislature, the GOP controls enough votes to block passage of the budget bill, which must pass by a two-thirds margin.

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7. "DNA sampling of prisoners to start next week." AAP Newsfeed, November 28, 2000.
Police in Queensland (Australia) will begin taking DNA samples from prisoners next week. A new law in Queensland requires DNA samples from anyone convicted of an indictable offense, and also allows police to take mouth swabs from those charged with an indictable offense. Other parts of the country have already begun mass testing of prisoners.
8. "Prosecutor: DNA links accused to crime." St. Petersburg Times, November 28, 2000.
In Florida, a shirt left behind at a murder scene contained both blood spatters from the victim and a cigarette butt in a pocket. Saliva from the cigarette butt has been analyzed and linked to a suspect. The man had already served a prison sentence for the beating, abduction and rape of a store clerk in 1983.
9. "Just a Needle-Stick Away: DNA Testing Can Convict The Guilty; It Can Also Destroy The Privacy Of Millions." The Nation, November 27, 2000.
Begins as a critique of DNA databases and the potential for privacy infringements, but ends by suggesting that DNA databases are an appropriate tool for law enforcement if strong privacy measures are included. Creates several theoretical situations in which the databases could be abused. Discusses issues of destroying databank samples, expunging databases and the possibility of offender profiles being used for genetic research. Written by an associate of the Centre for Professional and Applied Ethics, University of Manitoba.
10. "DNA Testing Holds Key to Justice, Scheck Tells State Judicial College." New Jersey Law Journal, November 27, 2000.
Barry Scheck told a panel of New York judges that in four out of ten post conviction investigations, DNA analysis has proven the person's innocence. Among proposals that Scheck presented to the panel: DNA tests should be conducted within seven to 14 days of a new crime. Authorities should test DNA evidence on unsolved crimes, including more than 100,000 untested rape kits that are often discarded after the statute-of- limitations period has run.
11. "Panel to advise police to restrict use of DNA." USA Today, November 27, 2000.
The National Commission on the Future of DNA Evidence is expected to recommend that DNA samples given voluntarily to aid police investigations should be used only in that case – the samples should not be compared against the DNA database for links to other crimes. Indiana, Illinois, Florida and New York have used this method as a tool to solve crimes, and California recently passed a law that allows a limited use of this the practice.
12. "Lawmakers back to wrap up session." The Associated Press State & Local Wire, November 26, 2000.
The Michigan Senate is preparing to debate a post conviction DNA bill prior to the end of this year's session. The bill was passed earlier by a Senate committee despite objections from Democrats that few inmates would have the necessary money or legal advice. Democrats also oppose the bill's one-year limit.

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13. "DNA Tests Help Find Moving Suspects." The Washington Post, November 26, 2000.
A DNA sample that was submitted to the Illinois DNA database by a convicted sex offender has been matched to a 1989 unsolved crime in Maryland. The "cold hit" is Maryland's first such success. The man has lived in several states, but never claimed residence in Maryland – policing are attempting to place him in the area at the time of the crime.
14. "Breyer makes a rare appeal." USA Today, November 24, 2000.
Supreme Court Justice Stephen Breyer called for assistance in helping judges understand the "moving target" of the field of genetics – particularly in patent law. Breyer's speech was given at a seminar held by Harvard's Kennedy School of Government. Breyer predicted that one genetic issue the Supreme Court is likely to see will concern genetic tests and related medical privacy issues.
15. "Authorities say DNA test links inmate to 1993 rape." The Associated Press State & Local Wire, November 23, 2000.
A state prisoner in Georgia has recently been linked to a 1993 thanks to a new Georgia law that requires DNA samples for all felony convictions and for all persons already imprisoned for such convictions. The suspect was in prison for a burglary.
16. "City police to do own testing of DNA evidence." The Baltimore Sun, November 23, 2000.
Baltimore Police, who have previously been sending all DNA analysis work out to either private labs or the state crime lab, has now purchased a DNA analysis machine and will begin processing its own samples. The machine was purchased with a federal grant of \$271,000. Police believe this machine will allow them to get quicker test results and will also allow them to test more evidence.
17. "Sex offender registry leads to rape arrest." The Courier-Journal (Louisville, KY), November 23, 2000.
Kentucky – which collects DNA for sex offenses only – has made its second "cold hit." A had been convicted on a sex offense in 1999 and was recently arrested for an offense committed in April 2000.
18. "Authorities tapping into DNA database for unsolved crimes." The Associated Press State & Local Wire, November 21, 2000.
The Indiana State Police are hoping that more local law enforcement authorities will tap into the state's DNA database. The state police may "re-educate" local authorities on the benefits of the DNA database. Also discusses the state's DNA backlog problem.
19. "DNA Panel Has Advice For Crooks." The Boston Globe, November 21, 2000.
Reports on the DNA conference at Harvard's Kennedy School of Justice. Suggests that if crooks had attended this conference they would all be considering new careers. Discusses the benefits of DNA analysis – in catching criminals and exonerating innocents, and reports that judges need better training on DNA evidence.
20. "DNA test takes 2 off list of suspects in slaying." The Times-Union (Albany, NY), November 21, 2000.
In New York, DNA tests have eliminated two suspects in a murder investigation, and tests on a third suspect are still pending.

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21. "Janet Reno speaks at Harvard on impact of DNA evidence." University Wire, November 21, 2000. US Attorney General Janet Reno gave the keynote address at the conference of the National Commission on the Future of DNA Evidence. Reno lauded DNA evidence as a tool to catch criminals and to exonerate the wrongly convicted. Reno reportedly highlighted DNA themes of accuracy, constitutionality and privacy, relevance to particular cases and public trust. The commission's term will end soon, but Reno has indicated the need for additional discussions on the potential and dangers of genetic forensics, and has asked NIJ to convene an annual conference for the issue.
22. "Advances in DNA tests offer police new horizons." The State Journal-Register (Springfield, IL), November 20, 2000. New DNA technologies allow police to get positive identifications from DNA samples that were previously considered too small to give accurate results. Highlights several Illinois cases in which suspects were either not charged or not convicted largely because DNA tests could neither prove nor disprove that they committed the crimes. The samples have now been returned to the lab for further testing and police are hopeful that a match will be made this time. Mentions the state's DNA backlog problems.
23. "Tort Reform, DNA, Hate Crimes Top Legislative Agenda." Texas Lawyer, November 20, 2000. A new post conviction bill (HB 157) has been introduced for Texas' 2001 legislative session. The bill would allow DNA testing if there is "reasonable probability" that the test would produce exculpatory evidence, and if the material had not been previously tested. Inmates would be entitled to lawyers during the process, and the state would pay the costs for indigents. The bill also contains provisions addressing preservation of evidence.
24. "Last Resort; Attorney General Offers More DNA Testing." The Columbus Dispatch, November 20, 2000. Outlines the Ohio Attorney General's proposal to offer increased post conviction DNA testing. The Public Offender's office appreciates the proposal but would like to see it enforced by state law, and believes that the current proposal is weighted against the convicted. Column ends by saying that the Public Defender's comments are "thought provoking" but that "Public defenders have a track record of exploiting every legal avenue to thwart the execution of a sentence."
25. "Experts to Discuss Future of DNA Testing." US Newswire, November 19, 2000. Summarizes the National Institute of Justice's report, "The Future of DNA Testing: Predictions of the Research and Development Working Group." The reports predictions include: increased speed, sensitivity and reliability of DNA technology, increased use of national criminal DNA databases and international matching opportunities, better techniques for handling degraded samples.
26. "Long Wait for DNA Result Can Be Justice Delayed." The New York Times, November 19, 2000. Discusses the DNA backlog problem in New York. Reports on a suspect who spent one month in a New York prison while waiting for DNA test results that eventually exonerated him. Although New York's labs are in the middle of an expansion, delays can still be very long. A \$13.2 million earmark in the state budget supports the State Police Forensic Investigation Center in Albany.

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27. "Fighting Crime and Injustice with DNA." Roanoke Times & World News, November 19, 2000.
Virginia is reaping the benefits of being the first state to require DNA samples from all felons. The state's database has helped solve 250 cases – 140 of them in this year. Virginia is spending \$10 million to help address backlog problems.
28. No Title. AP Worldstream, November 18, 2000.
The International Commission on Missing Persons (established by leaders of the Group of Eight nations) is collecting DNA samples from relatives of missing Bosnians in hopes of identifying remains found in mass grave sites. Unfortunately, since entire families were massacred, sometimes the scientists must rely on DNA from distant relatives, which is less accurate. The ICMP hopes to collect nearly 75,000 samples.
29. "DNA data shift is due." The Baltimore Sun, November 18, 2000.
The Maryland State Police will begin sending backlogged DNA samples to private labs for analysis in July. Maryland officials want to help "fast track" development of CODIS so that more crimes can be solved. The state, which requires DNA samples for all violent felonies, has a backlog of 10,000 samples. Maryland did not receive any of the federal funds that were distributed to states this year to address backlog problems. State authorities are calling for more funding and personnel.
30. "Police In DNA Blitz To Net Serial Rape Fiend." Birmingham Evening Mail, November 18, 2000.
Police in England are hunting for a serial rapist believed to be responsible for 20 attacks on elderly victims. The police are using "DNA dragnetting" techniques in which over 2,000 samples have been collected for analysis from men who fit a general description of the attacker.
31. "Espy Seeks Wider Use Of DNA Tests." The Columbus Dispatch, November 18, 2000.
An Ohio State Senator (Espy) believes the Attorney General's offer to allow post conviction DNA testing for certain cases is not enough. He wants to introduce legislation that would allow post conviction testing for adults and juveniles convicted of lesser crimes as well. Espy, a Democrat, introduced a bill in September (SB 335) but the Republican-controlled Legislature has not given the bill a hearing. Espy will reintroduce the bill again next year if it is not acted upon prior to the end of this session.
32. "Britain bids to teach police EU approach Eurofile." The Daily Telegraph (London), November 18, 2000.
Euro delegates have approved a European Police College and Britain is bidding to host the facility. Officers will be taught how to work with the European Union's investigative body, Europol, and learn about the evolving structures of the "European Judicial Area" which could include a prospective DNA database.
33. "Sri Lankan court gives death sentence for murders in first DNA case." AP Worldstream, November 17, 2000.
A court in Sri Lanka has handed down death sentences in the country's first case using genetic information to identify the culprits.

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34. "Man pleads guilty to raping teen eight years ago." The Associated Press State & Local Wire, November 16, 2000.
A "cold hit" on Missouri's database linked a man currently in prison for a 1997 sexual assault, to a 1992 rape for which he had not previously been a suspect.
35. "Families of missing persons to be invited to volunteer DNA." AAP Newsfeed, November 16, 2000.
In New South Wales (Australia), the relatives of missing persons are being invited to donate DNA samples in hopes of eventually identifying their loved ones. This new program was prompted by two successful matches that police made using the DNA of family members to identify unknown remains. Samples will be kept on a database but will not be compared against the criminal database.
36. "DNA Links Parolee To Attacks On 2 Women." Daily News (New York), November 16, 2000.
Police in New York City are searching for a violent parolee who has been linked by the DNA database to attacks on two women. The man has an extensive criminal record and was released from prison a year ago after serving ten years for robbery and attempted murder.
37. "DNA Helps Track Suspect In 3 Decade-Old Killings." The Record (Bergen County, NJ), November 16, 2000.
Advances in DNA technology allowed New York police to link three rape/murders the same person. The suspect's "name had come up" in all the investigations, but the DNA samples available had previously been too small for testing. The man was currently in prison for car theft, and if not for the strong police work, might have been paroled next year (New York does not require DNA samples for car theft.)
38. "Myriad Analyzing DNA for the FBI." The Salt Lake Tribune, November 16, 2000.
Arizona, Maine and Oregon have awarded forensic DNA analysis contracts to a private lab in Salt Lake City called Myriad Genetics. This will be Myriad's first major venture into forensic DNA work.
39. "Conference of police chiefs calls for an image makeover." San Antonio Express-News, November 16, 2000.
The International Association of Chiefs of Police is calling on the federal government to create an independent panel to study the US justice system. Among the questions for the panel to consider would be "whose DNA authorities should sample."
40. "D.C. Police Seek to Build Forensic Lab." The Washington Post, November 16, 2000.
Police in Washington, D.C. are proposing a \$17 million crime lab that would speed up court delays and free the city of its dependence on federal crime labs. A DNA lab will be a center point for the new facility, if it is approved.
41. "Va. Drafts New Evidence Rules." The Washington Post, November 16, 2000.
The Virginia State Crime Commission has asked the state Supreme Court to delay its plan to allow death row inmates to bring the court new evidence of innocence, because the commission is working on its own solution. The commission's proposal would allow appeals for all inmates, but based only on new physical evidence (such as DNA) – not new witnesses or recanted testimony as proposed by the court.

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42. "County, state officials can't agree on who will collect samples." The Associated Press State & Local Wire, November 15, 2000.

Although state and county officials are still fighting over who is responsible for collecting DNA samples from felony probationers, they have reached an agreement on collection from felony convicts still in custody. The state's new law requiring DNA samples from all convicted felons apparently did not clearly delineate who was responsible for the collection, which has resulted in a backlog of criminals who have not yet been sampled. An Assistant DA warned that the state could risk being sued by victims if the law is not carried out quickly.

Genetic Privacy

43. "Opposition concerned at deal on DNA mapping." BBC Summary of World Broadcasts, November 29, 2000.
The Human Rights and Democracy Movement in Tonga (Australia) is condemning the government's agreement with a company called Autogen to sell the rights to research the genetic makeup of Tongan people.
44. "Co-Op Insurer Will Not Ask For Genetic Data." The Express, November 29, 2000.
Britain's Co-operative Insurance Society has become the latest insurer to announce that it will allow its policyholders to keep genetic test results to themselves. The company joins four others that have rejected the Association of British Insurers policy that people must disclose the results of genetic tests.
45. "Genetic Test Ban Is Urged On Insurance." The Express, November 28, 2000.
A recent survey in Britain shows that 76 per cent did not think insurance companies should be allowed to see genetic test results in order to set premiums – which, for certain cases, has already been approved by the government's Human Genetics Commission.
46. "Comment & Analysis: Privacy - the last frontier: Just how private is your genetic blueprint, if scientists, police and insurers all get to see it?" The Guardian (London), November 27, 2000.
Written by the Vice Chairman of the Human Genetics Commission in England. "We have to ensure that this [genetic] information is controlled by the individual, and made accessible only in circumstances which he or she chooses."
47. "Ethical standards critical for research." The Kansas City Star, November 27, 2000.
A grant of \$580,000 has been made by Aventis Pharmaceuticals Foundation to the Midwest Bioethics Center. "The ethical, legal and social implications of genetic research are myriad, and it will take careful and discerning minds to study them and recommend the fairest rules for researchers to follow."
48. "Ban DNA Screening Of Young Children, Ministers Are Urged." The Independent (London), November 25, 2000.
In a confidential report to be released the England's ministers next year, the Human Genetics Commission will urge a ban on genetic screening of children for incurable diseases until they are old enough to understand the implications.

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49. "Cornell U. workshop grapples with moral problems in genomics." University Wire, November 21, 2000.
The Ethical, Legal and Social Issues committee of the Cornell Genomics initiative investigated the social impact of genetic research and new biological technologies at a recent workshop. Participants discussed issues of genetic testing and patenting.
50. "Likud stalling early elections bills." The Jerusalem Post, November 16, 2000.
A committee of Jerusalem's legislative body has approved a bill that would protect a person's genetic information from review. The bill would allow only institutes, labs, or other facilities that receive special Health Ministry approval to conduct genetic tests on humans. The bill also sets down rules on preserving genetic material after test results are ready.

FEDERAL REGISTER

Forensic DNA

1. Department of Justice meeting notice for December 7 meeting of FBI's DNA Advisory Board.