

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

The December 8, 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

Articles report that Texas legislation will be introduced to authorize collection of DNA samples from persons arrested for sex offenses, and the North Carolina legislature will consider allowing DNA samples from all persons charged with a violent felony. New York, Texas and Georgia used their DNA databases to make solve crimes. Hearings regarding the admittance of contested DNA evidence are scheduled in Arkansas, New York, Rhode Island and Oklahoma.

A Missouri legislator plans to introduce a bill to extend the statute of limitations.

Janet Reno would like to address post conviction DNA testing issues prior the end of her term in office. A Michigan post conviction bill has passed the Senate and is under consideration in the House. Post conviction bills were prefiled for the 2001 session in New Jersey and Texas. In Virginia, a special panel continues to make progress on a post conviction DNA testing proposal for 2001.

An Australian state has begun mass DNA testing of its prisoners, and prosecutors in Ontario, Canada are aggressively seeking DNA samples for the new database there.

STATE LEGISLATION

Forensic DNA

1. New Jersey SB 1920 (prefiled) – Provides for post conviction DNA testing under certain circumstances.
2. Texas HB 312 (prefiled) – Establishes procedure for post conviction DNA testing.

Genetic Research

3. Montana Draft 326 (prefiled) – Allows for genetic testing of skeletal remains to determine cultural affiliation

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

NEWS ARTICLES

Forensic DNA

1. "After the Exoneration." Time, December 11, 2000.
Report in Time Magazine that although DNA is increasingly being used to prove wrongful convictions, most states do not have a mechanism to provide for compensation. The article is a case study of a man who was convicted and later exonerated for a rape in California. Points out that although the man was exonerated, the victim still believes he was her attacker, and the man has an arrest record for less serious crimes that were committed both before and after his prison term.
2. "Lawyer seeks to exclude DNA evidence." The Associated Press State & Local Wire, December 5, 2000.
In Arkansas, lawyers for a man charged with murder are arguing that DNA evidence linking the suspect to the crime should be thrown out. The man's DNA sample had been taken because he was a suspect in an unrelated rape and attempted murder case. The sample was compared against the unsolved crimes DNA index and a match was made. Defense lawyers are arguing that police did not have probable cause to compare his sample against the database. The judge should rule on this issue by the end of the month.
3. "State says DNA testing points to Motyka." The Associated Press State & Local Wire, December 5, 2000.
Lawyers for a Rhode Island man charged with rape and murder want DNA evidence excluded based on their argument that "methods used by a laboratory hired by the state do not conform with accepted practice for DNA testing." The article does not further describe the type of DNA testing in question, but reports that the testing was done on fluids
4. "DNA exonerations challenge reliability of eyewitness identification." The Associated Press State & Local Wire, December 5, 2000.
In many of the recent post conviction DNA exonerations, eyewitness testimony played a major role in the original conviction. Reviews the reliability (or lack thereof) of eyewitness testimony.
5. "Concerns about DNA testing of prisoners." AAP Newsfeed, December 5, 2000.
Police in Queensland, Australia have begun collecting DNA samples their prison population. Anyone convicted of an indictable offense is required to supply a DNA sample. Some people in Queensland are concerned with the police's authority to take involuntary samples if offenders refuse to comply.
6. "Lawmakers rush to limit DNA proof." Detroit News, December 5, 2000.
Post conviction DNA testing legislation in Michigan is on a "fast track" to being enacted this year. The Senate has approved the measure and the House is expected to consider it for approval prior to the end of this year's session. In its current form, the bill would allow inmates to appeal convictions based on DNA if the appeal is begun within the next five years. Other criteria include: he defendant must have always maintained innocence; identity must have been an issue; the DNA sample must be relevant to the conviction; and the sample must be uncontaminated.

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

7. "Hearing expected in DNA case." Tulsa World, December 5, 2000.
An Oklahoma state appeals court has ruled that county district court must rule whether police had probable cause to collect a defendant's DNA sample during the course of a New Mexico murder investigation. A hearing is expected in February.
8. "The price of justice." University Wire, December 5, 2000.
From Duke University's newspaper – *The Chronicle*. Discusses post conviction DNA testing bills that are being considered by Congress and the North Carolina Legislature. Calls the federal legislation a superior proposal, and the North Carolina proposal "misguided."
9. "State Legislatures Move Forward Despite National Political Gridlock." US Newswire, December 4, 2000.
The National Conference of State Legislatures' (NCSL) Joint Assembly on Federal Issues (AFI) and Assembly on State Issues (ASI) is meeting December 12-15 in Washington DC. One of the agenda items is, "Post Conviction DNA: Federal, State Activity."
10. "DNA program links prison inmate to unsolved 1982 murders." The Associated Press State & Local Wire, December 4, 2000.
The recent expansion of New York's DNA database law has resulted in identification of a suspect for two 1982 murders. The suspect is currently in prison for an unrelated rape and attempted murder. The man had also raped a woman who walked in on the 1982 crime and robbed four others, but he cannot be prosecuted for these crimes because the statute of limitations has elapsed. The man had always been a suspect, but had previously lacked legal authority to collect a DNA sample.
11. "Method of using DNA puts state agency in crimefighting vanguard." The Atlanta Journal and Constitution, December 3, 2000.
Georgia's new law requiring DNA samples from all felons has put it in the vanguard of using DNA databases to solve crimes. The Bureau of Investigation plans to ask for an additional \$1.1 million in the its budget next year to continue the collection and processing of DNA samples. Since Georgia began using it's database, there have been 59 forensic hits, which link two or more criminal cases; 13 offender hits linking individuals in the database to unsolved cases in Georgia; and 4 hits linking cases in Georgia to individuals in other states. Due to strong state funding, the Georgia crime lab has a very small backlog.
12. "Sheriff opens new center." The Deseret News (Salt Lake City, UT), December 3, 2000.
A ribbon cutting ceremony has been held for the Salt Lake County Sheriff's new building, which will include a new crime lab.
13. "Statute of limitations imposed in sex crimes." The Kansas City Star, December 3, 2000.
A Missouri appeals court has ruled that forcible rape or sodomy carries a three-year statute of limitations. A State Representative has announced that he intends to introduce legislation immediately to extend the statute and hopes it will be enacted and in effect by February. In the meantime, prosecutors intend to issue "John Doe" warrants based on DNA profiles as a stop-gap measure. The ruling strikes down a life sentence for an offender who was convicted of raping two children.

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

14. "DNA." The News and Observer (Raleigh, NC), December 3, 2000.
Reports that DNA is not frequently a factor in murder cases, but when it exists it can be enough to convict or exonerate. Discusses the use of post conviction DNA testing to prove/disprove guilt. A state senator is expected to reintroduce a bill that would require DNA samples for the state's database from all persons charged with a violent felony. The proposal is supported by prosecutors, but the ACLU calls this proposal too intrusive.
15. "Evidence valuable, but easily misused." The News and Observer (Raleigh, NC), December 3, 2000.
"We have seen an attempt to gather more people's DNA for law enforcement without a corresponding willingness of law enforcement to share DNA evidence that might be used to eliminate suspects and release people who have been wrongly convicted."
16. "Panel Oks Measure To Preserve DNA Evidence For Virginia Convicts." Daily Press, December 2, 2000.
Virginia's DNA Evidence Task Force of the State Crime Commission has endorsed a proposal to automatically put in storage genetic evidence used to obtain convictions. The evidence must be kept there as long as the convict is in prison. However, the panel has not agreed upon a second bill that would establish procedures by which inmates could have the evidence tested.
17. "Murder Case Relies on DNA Police Gained By Deception." The New York Times, December 2, 2000.
A jury for the New York State Supreme Court recently heard testimony regarding a DNA sample that was obtained from the coffee lid of a cup the suspect used while in jail. The sample was used to link the man to at three murders and two rapes. Police had previously attempted to obtain a sample by the man by posing as a doctor and asking for a tuberculosis. The prosecution is relying on mitochondrial DNA analysis.
18. "State, county at odds over DNA; Neither has collected samples from felons on probation." Milwaukee Journal-Sentinel, December 1, 2000.
Wisconsin State and Milwaukee County officials continue to disagree on who should be collecting DNA samples for felony probationers. A circuit judge is convening another meeting this month in hopes of finding a solution. All other counties have reached an agreement with the state and have accepted responsibility for collecting the probationer samples.
19. "For the Record." The Washington Post, December 1, 2000.
At a press briefing, Attorney General Reno said that post conviction DNA testing is one of her top issues that she would like to address in her remaining days in office. "DNA testing has been used to free innocent people. And it is important in these last days that we do everything we can to make sure that that tool is available, because one person who remains in jail who's innocent is a tragedy."
20. "Legislature to weigh law on DNA tests." Austin American-Statesman, November 30, 2000.
A bill being proposed by a Texas Democratic Senator would DNA samples to be taken from anyone arrested for rape, indecency with a child, sexual assault of a child, sexual assault using a weapon, or burglary or kidnapping with the intent to commit a felony sexual offense. The DNA profile would be expunged if the suspect is not indicted or is otherwise cleared of the crime. The bill also extends the statute of limitations for violent sex offenses and would increase spending for the state's participation in CODIS. ACLU has vowed to fight the legislation.

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

21. "DNA Backlog May Delay Trial in Palo Alto Slaying." The San Francisco Chronicle, November 30, 2000.
The trial of a man accused of murdering his wife may be delayed until April due to a backlog in DNA analysis.
22. "Metro Briefs." San Antonio Express-News, November 29, 2000.
San Antonio police have matched DNA from two local crime sexual assault cases with the profile of a convicted Arkansas sex offender. The man has not yet been located.
23. "Errors feared in DNA testing of abode-seekers." South China Morning Post, November 29, 2000.
A bill in Hong Kong that would allow immigration authorities to require DNA tests as proof of paternity is being criticized again because China would be in charge of testing the immigrant (or "abode-seeker") and Hong Kong would test the relatives living in its country. Critics say the results could be flawed because the same body is not doing both tests.
24. "DNA tests result in charge seven years after rape." The Atlanta Journal and Constitution, November 23, 2000.
Georgia's new law requiring DNA samples from all convicted felons has resulted in a suspect being charged in an attack from seven years ago. The man is currently in prison for obstruction of law enforcement officers, possession of burglary tools and three counts of burglary, but had previously spent time in jail for conviction of rape, aggravated sodomy, kidnapping and burglary.
25. "Ontario moving to strengthen DNA data bank." The Lawyers Weekly, November 17, 2000.
The Ontario government has formed a team of eight to 10 lawyers whose task is to bring applications for DNA collection orders for dangerous offenders. Additionally, the Attorney General's Office has told prosecutors to bring ex parte motions on "virtually all" individuals convicted of serious crimes in the past.

Genetic Privacy

26. "Chinese experts warn against foreigners stealing genetic material." Agence France Presse, December 5, 2000.
China's ministry of health has warned that some foreign companies were stealing valuable genetic material from China by drawing blood samples from unwitting local patients.
27. "Law Professors on Challenges Brought by High-Tech." Xinhua General News Service, December 4, 2000.
Professors from over 130 law schools around the world convened in Beijing to discuss reform and development of legal education in the 21st century. A hot topic of discussion was whether or not it is necessary to protect a person's genetic information as his/her privacy. Should a boss know about the genetic information of his/her employees.

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

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.

The information presented in these reports does not necessarily reflect the viewpoints of PE Biosystems or Smith Alling Lane, P.S.

28. "The Gene's Out Of The Bottle." The Florida Times-Union (Jacksonville, FL), December 3, 2000.
"The ethical implications of genetic medicine are just starting to hit the American public like a cold blast from the shower." Discusses several of the potentially negative, or at least questionable, issues that could arise from decoding the human genome.
29. "Insurers Defy Public On Genetic Testing." Sunday Business, December 3, 2000.
Insurers in England are continuing with plans to expand the range of government-approved genetic tests despite research which reveals strong public opposition. A recent survey showed that only 8% of the public believed insurers should use genetic-test results for setting insurance premiums.
30. "MDs debate need for IQ test for unborn babies." Calgary Herald, December 2, 2000.
British researchers have developed a \$150 genetic test that they say enables doctors to screen unborn children for low intelligence or learning disabilities. Some doctors see use of this test as a significant step towards eugenics.
31. "Senate hardens privacy laws." The Canberra Times, December 1, 2000.
The Australian Parliament is strengthening its health record privacy laws, but so far has refused amendments that would treat genetic information with the same degree of privacy as health information.
32. "Grey Areas As The Great Genetic Debate Begins." The Scotsman, November 30, 2000.
Reports on the UK's Human Genetics Commission and the grey area that has been created by the decoding of the human genome – such as whether to share genetic information with insurers.
33. "Insurance Industry Faces Turmoil Over Genetic Disease." Business Times (South Africa), November 26, 2000.
Genetic testing has become an issue in South Africa after the UK announced it would allow life insurers access to test results that predict a person's risk of contracting hereditary illnesses. The country's Life Offices Association should complete its position paper on genetic testing early next year.