

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 December 22, 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

DNA backlog problems in Idaho and Washington made headlines. The Nebraska State Patrol is now offering free DNA tests to local jurisdictions, while a state task force has found that Nebraska's crime labs are underfunded.

Investigators in Pennsylvania have solved an old case through re-testing crime scene DNA, and Maryland got a "cold hit" from CODIS on a sex assault (the perpetrator was on Illinois' database.) Phoenix (Arizona) has established a "cold case" team that is using federal funds to review old sexual assault cases for testable DNA evidence.

A Wisconsin legislator has committed to reintroducing legislation in 2001 which would extend the statute of limitations for rape cases.

Legislators in Missouri, Texas and Virginia introduced bills addressing post conviction DNA testing issues. A counties in both New York and Florida will be offering post conviction DNA tests for inmates, and a similar program in San Diego County (CA) has found only two eligible cases thus far. The story of a man who died of cancer on Florida's Death Row, only to later be exonerated of the crime after DNA testing, made headlines around the country.

In England, the House of Lords has determined that DNA samples that are not expunged from the national database as required by law, are nonetheless admissible as evidence if such a sample is later matched against an unrelated crime. A Wisconsin court is admitting DNA evidence that was taken from a car without a search warrant.

Christmas Gift Idea – A rap song on DNA written by an 80 year-old man. Copies are available for purchase. See article #24.

STATE LEGISLATION

Forensic DNA

1. Missouri SB 1 (prefiled for 2001) – Requires evidence used to convict to be preserved if it was or could be tested for DNA. Provides for post conviction DNA testing.
2. Missouri SB 29 (prefiled for 2001) -- Requires evidence used to convict to be preserved if it was or could be tested for DNA. Provides for post conviction DNA testing.

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3. Texas HB 366 (prefiled for 2001) – Provides for post conviction DNA testing, requires convicting county to pay for DNA tests for indigent inmates, and requires evidence to be preserved in certain instances.
4. Virginia HB 1590 (prefiled for 2001) – During sentencing, juries should be instructed that “an individual who was sentenced to death in the commonwealth and twice scheduled to be executed was later granted an absolute pardon absolving him of guilt for a capital murder conviction on the basis of DNA testing.”
5. Virginia HJR 508 (prefiled for 2001) – Requires a study on whether there should be a moratorium on the death penalty. The study is to include a report on procedures that should be established for post conviction access to forensic evidence, including DNA testing.

Genetic Privacy

6. Missouri HB 122 (prefiled for 2001) – Redefines “genetic information” and rewords current laws against genetic discrimination in insurance and employment. Permits civil action for damages and relief if the law is broken.

NEWS ARTICLES

Forensic DNA

1. “L.I. Prosecutor to Review Cases That DNA Tests Could Reverse.” The New York Times, December 20, 2000.
The Suffolk County (New York) District Attorney has announced he will review the cases of prisoners who might be cleared by DNA evidence. The County will pay for any DNA testing.
2. “State's crime DNA system beset by problems.” The Associated Press State & Local Wire, December 19, 2000.
Washington State has a DNA sample backlog of 22,627. Additionally, up to 15,000 samples may need to be re-tested using new methods. The backlog is hampering the investigation of a serial killer. The co-chair of the state's criminal justice and corrections committee said that getting an efficient system operating is “critical.”
3. No Title. The Associated Press State & Local Wire, December 19, 2000.
A judge in Chippewa Falls (Wisconsin) has ruled that DNA evidence taken from the car of man accused of killing his mother in western Wisconsin is admissible, even though authorities didn't have a search warrant.
4. “Police say no plans for DNA testing in Wagga.” AAP Newsfeed, December 19, 2000.
Police in Wagga Wagga, Australia have said that they have no plans to do “DNA dragnets” on local men in their efforts to track down the rapist of a 69-year-old woman. Police do not believe that mass testing would be practical on their local population of 60,000 – the estimated cost of which is estimated to be over a million.

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5. "Guilty as predicted: A dusting down for genetic fingerprinting." The Guardian (London), December 19, 2000.
Discusses the successes of UK's database and the recent ruling in the House of Lords that DNA samples kept illegally by police could be used as evidence in subsequent cases. Brings up concerns that Britain's large DNA database, which apparently also contains innocent people, could eventually be used to predict "criminality" through genetic tests.
6. "Law Report: Evidence Obtained Through Prohibited Investigation Was Admissible." The Independent (London), December 19, 2000.
The House of Lords (Britain) has determined that although a DNA sample should have been destroyed and should not have been used for an investigation, evidence obtained as a result of such a prohibited investigation was not rendered inadmissible. In the case in question, a man had been arrested for burglary and later acquitted of the crime. However, his DNA sample was kept in the DNA database and was later used to link the man to an unsolved rape.
7. "Old sexual assault cases to get second look from Phoenix police with DNA tests." The Associated Press State & Local Wire, December 18, 2000.
Police in Phoenix (Arizona) are reconsidering 1700 unsolved sexual assaults in the hopes that DNA can be used to identify the perpetrator. The special unit to review these cases was sponsored through the state's Violence Against Women grant.
8. "Measure Supports DNA Testing." The Richmond Times Dispatch, December 17, 2000.
A task force of the Virginia State Crime has proposed legislation for consideration by the General Assembly addressing post conviction DNA testing. The proposal would permit an inmate to apply for DNA testing of newly discovered human biological evidence, or for the testing of evidence by a newly developed DNA technology that was not available earlier. The proposal also limits applications to those felons who have maintained their innocence. The state's forensic laboratory is concerned that the new proposal could require a significant increase in the pieces of evidence per case that could be requested for testing.
9. "Remove barriers to DNA testing." St. Petersburg Times, December 17, 2000.
Discusses the case of a man who recently died of cancer while on Florida's death row. DNA tests conducted subsequent to the man's death have exonerated him. "Smith's tragic story hopefully will make it impossible for even the most execution-crazed public officials to ignore the injustice of denying DNA tests."
10. "DNA Ties Killer to 2nd Murder, in '78." The Washington Post, December 17, 2000.
Police in Pennsylvania who were assigned to an unsolved murder were finally able to identify a suspect after crime scene evidence was tested with new DNA technologies. The DNA test results matched a man who was in a Pennsylvania prison for another murder. The man had been a suspect in the case but was never charged.
11. "Chicago man indicted in 1989 sexual assault." The Capital (Annapolis, MD), December 16, 2000.
Maryland authorities recently had DNA from an unsolved sexual assault re-tested and submitted to CODIS where a "cold hit" was made against a registered sex offender in Chicago.

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12. "Clearing Of Convict Cracks DNA Door." Sun-Sentinel (Fort Lauderdale, FL), December 16, 2000.
Broward County (Florida) prosecutors have committed to allowing DNA tests if there is evidence that could possibly exonerate an inmate. A State Senator has said he will write to the Governor asking for issue an executive order for DNA testing of every inmate on Death Row.
13. "Prosecutors Find Few Cases for DNA Tests." APBNews, December 15, 2000.
San Diego prosecutors report that only two of 120 cases that have been reviewed thus far would qualify for post conviction DNA testing. In some cases there is no DNA to test, and in many others the defendant never claimed innocence. All DNA results that are gathered as a result of the testing will be entered into the state's DNA database.
14. "Burglar caught by DNA." The Journal (Newcastle, UK), December 14, 2000.
A man who left a cigarette butt at a residence he burglarized four years ago has been identified in the UK after he was arrested for another burglary. Routine DNA tests linked the man to the earlier crime.
15. "State Patrol Is Offering DNA Tests." Omaha World-Herald, December 14, 2000.
The Nebraska State Patrol is now offering DNA tests to local law enforcement agencies. Agencies were previously required to send DNA work either to private labs or to the medical lab at the University of Nebraska.
16. "Wisconsin state rep seeks to extend statute of limitations for rape." University Wire, December 13, 2000.
Wisconsin State Rep. Scott Walker (R) has announced that he wants the current state statute of limitations to be extended for prosecution for rape cases. A similar bill appeared to be poised to pass the Legislature last year, but was never enacted after it was amended to make prosecutions more complicated
17. "Crime lab will not test suspect's blood." The Associated Press State & Local Wire, December 12, 2000.
In Idaho, police investigating vandalism at an elementary school cannot confirm one of the suspects was involved because the state crime lab refuses to test blood samples found at the scene. The Idaho State Police are routinely turning away DNA samples not related to a violent crime (like burglary and vandalism) in order to avoid a large backlog. Local police cannot afford to send the samples to a private lab.
18. "Updates with details from press conference." The Associated Press State & Local Wire, December 12, 2000.
A legislative task force report has found that the Nebraska State Patrol "has limited capacity to lead efforts necessary to address emerging public safety policy issues." Among other areas, the report pointed out that the patrol's crime lab and Sex Offender Registry program are underfunded.

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Genetic Privacy

19. "European Parliament Sets Up Temporary Committee On Human Genetics." European Report, December 16, 2000
The European Parliament has established a temporary committee on human genetics and related new technologies in modern medicine. The committee will last for twelve months and will examine ethical, legal, economic and social issues related to these new developments.
20. "All the questions that must be asked now." The Straits Times (Singapore), December 16, 2000.
"Singapore is spending billions of dollars developing the life-sciences industry -- but at what hidden costs to society? Will genetic information and genetic manipulation change human ethics as we know it? Will cloning technology bring a brave new world of misfits? And should we make babies -- just to produce spare body parts?"
21. "Estonian parliament approves plan to set up national gene bank." AP Worldstream, December 14, 2000.
The Estonian Parliament voted 42-3 to approve the Government's plan to establish a gene databank storing the genetic information of about 1 million Estonians. Participation in the databank will be voluntary. The records must be encrypted and anyone caught violating the privacy provisions will be faced with a jail sentence.
22. "Genetic Information Law approved." The Jerusalem Post, December 14, 2000.
Jerusalem's Knesset has unanimously passed a law that will: give researchers access to genetic tests, while guaranteeing that the information remains confidential; protect against discrimination in employment and insurance coverage; and regulate the use of genetic data bases by law enforcement and the military.
23. "Montgomery Moves to Ban Genetic Bias on Job." The Washington Post, December 13, 2000.
Montgomery County (Maryland) has become the first local jurisdiction in the nation to approve a measure to ban employment discrimination based on a person's genetic code. The measure was unanimously approved, with one abstention who felt that the federal government should determine whether such laws are necessary.
24. "Lake Worth Man Writes Rap Song On DNA." The Palm Beach Post, December 11, 2000.
An 80-year-old New York City native living in Florida has written a rap song about how DNA information in a chromosome is translated to make proteins. "The song sounds like a cross between Ice-T and Arlo Guthrie." So far he has sold ten copies of the song.

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