

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 29, 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

Kentucky and Iowa newspapers reported on federal funding for crime labs coming their way, and in Washington the Governor has proposed to build a new \$8 million crime lab.

The Texas Attorney General is working with lawmakers on post conviction DNA testing legislation, as is the Governor of Florida. Efforts for post conviction DNA testing made headlines in Connecticut, Mississippi, Missouri, New Hampshire, and South Carolina.

Interpol's plans for a DNA database are solidifying, Greek and Finnish authorities are seeking permission to take more DNA samples for databases.

STATE LEGISLATION

Forensic DNA

1. Arkansas HB 1128 (pre-filed for 2001) – Establishes a drug offender registry. Specifies the type of information the registry is to include, and authorizes law enforcement to include any other information that the Arkansas Crime Information Center deems necessary, including evidentiary genetic markers.

Genetic Privacy

2. South Dakota HB 1003 (prefiled for 2001) -- Prohibits the use of genetic tests in the offer, sale, or renewal of certain types of insurance.
3. South Dakota SB 1 (prefiled for 2001) -- Requires written informed consent before genetic testing.
4. South Dakota SB 2 (prefiled for 2001) -- Prohibits employers from obtaining, seeking, or using genetic information
5. South Dakota SB 4 (prefiled for 2001) -- Regulates the disclosure of and access to a patient's health care information. Health Care is defined to include genetic treatments.

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NEWS ARTICLES

Forensic DNA

1. "Wife could get millions if DNA test shows husband was cheating." The Associated Press State & Local Wire, December 26, 2000.
A woman in West Palm Beach (FL) has sent stained bed sheets to a DNA lab for testing in order to establish her husband's infidelity. If she can prove that her husband was unfaithful, the couple's prenuptial agreement will allow her access to his considerable fortune in their divorce.
2. "Lawmakers head into new, somewhat uncertain session," The Associated Press State & Local Wire, December 26, 2000.
The Texas Attorney General has been talking with state lawmakers about death penalty issues likely to surface in the coming legislative session. "I think there's emerging a consensus view that we need to do something about the availability of post-conviction DNA testing as well as the competency of counsel."
3. "Editorial." The Connecticut Law Tribune, December 25, 2000.
The editorial criticizes the Connecticut Department of Public Safety for not analyzing a hair sample that could solve, or at least point out a likely suspect for, a murder from 1973. The article notes that the Department is concerned with the cost of new testing for this case, but also notes that the Department "is already running a deficit of some \$3 million, proving that it has no qualms about spending money it doesn't have."
4. "Around Kentucky." The Courier-Journal (Louisville, KY), December 24, 2000.
\$300,000 from Congressional appropriations have been earmarked for Kentucky's State Crime Labs. No details on how that money will be spent.
5. "Region in Brief." The Boston Herald, December 23, 2000.
The New Hampshire Attorney General's Office is asking the court to reverse a decision that would allow an inmate to have DNA tests conducted on key evidence that was used to convict him 27 years ago. The AG's office is arguing that the request was not filed within three years of murder conviction, and AG's also has said that it has lost much of the evidence in question.
6. "The undetected." The Economist, December 23, 2000.
Greece appears to be making credible efforts at catching terrorists in its country. The Socialists are promising new legislation to make it easier to bring suspected terrorists to trial – including DNA testing of suspects.
7. "Crime Use DNA tests." The Florida Times-Union (Jacksonville, FL), December 23, 2000.
Short opinion article on the Florida inmate who died of cancer before DNA test results exonerated him of the crime. Mentions that Governor Jeb Bush is working on a system to provide DNA testing for all Death Row inmates.

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8. "Criminal law & procedure - DNA evidence." Chicago Daily Law Bulletin, December 23, 2000.
In an Illinois Appellate Court, lawyers for the defendant argued that the state's DNA expert's testimony should be thrown out because the expert did not test a blood standard from a man with whom the victim had consensual sex prior to the attack. The court disagreed, saying that the evidence was overwhelming -- even without the additional DNA test -- that the defendant was guilty.
9. "Justices order Noxubee court to let convicted murderer test DNA evidence." The Associated Press State & Local Wire, December 22, 2000.
The Mississippi State Supreme Court has ordered a lower court to conduct a hearing that could lead to post conviction DNA testing for an inmate on death row, at county expense. The inmate believes that DNA testing may prove his innocence. Earlier this year, the justices had denied the inmate's request for a new trial, saying that he could have done the DNA testing at any point in his 1995 trial, and it was his own fault that the defense never asked for tests.
10. "News & Briefs from Iowa." The Associated Press State & Local Wire, December 22, 2000.
Iowa is to receive \$950,000 in federal funds to equip and upgrade forensic science labs in the state. The article notes that "money for crime labs has lagged while technology for investigating crimes, such as DNA testing, has improved."
11. "Judge denies trial to death row inmate despite DNA tests, flawed police work." The Charlotte Observer, December 22, 2000.
A judge in South Carolina has denied a new trial for a death row inmate convicted of a 1982 rape/murder. A Caucasian hair was found on the victim's body, which did not belong to here -- the man convicted of the crime is black. The judge said "one stray hair," was not enough to overturn a death sentence affirmed by three juries. He also noted that the defense had not asked for DNA tests on the 40-plus hairs found on the victim's bed that have already been matched to the inmate.
12. "Former Attorney for O.J. Simpson Seeks DNA Evidence Here." St. Louis Post-Dispatch, December 22, 2000.
At its own expense, the Innocence Project is seeking to have DNA tests run in three rape cases in St. Louis (MO). The current St. Louis Circuit Attorney has resisted the testing, but the newly elected prosecutor has committed to reviewing the cases when she takes office.
13. "Science-savvy judges in short supply." The Christian Science Monitor, December 21, 2000.
Judges who understand important forensic science issues, such as DNA analysis, are in short supply across the country. Many judges are taking special classes and "field trips" to state crime labs to learn more about DNA testing.
14. "Biometrics: Interpol's DNA Research." Intelligence Newsletter, December 21, 2000.
Interpol is pushing for the creation of a DNA database that would work with the same technology in all of Interpol's member states (U.K., U.S., Spain, Norway, France, Belgium, Austria, Australia and Argentina.). More nations are expected to join as the database idea catches on.

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15. "Finnish police want further authorisation for DNA registration." Nordic Business Report, December 21, 2000.
Finnish police are seeking authorization to create DNA profiles of suspected criminals who have not yet been found guilty.
16. "State Budget Plan Reflects Voters' Will." The Columbian (Vancouver, WA), December 20, 2000.
The Washington Governor's proposed state budget includes \$ 500,000 to buy land for a full-service, \$8 million State Patrol crime lab in Vancouver.
17. "Fears raised over laboratory for abode tests." South China Morning Post, December 20, 2000.
Debates in Hong Kong continue over a plan to authorize DNA tests from persons seeking "abode" who claim to have parents living on the island. It was recently revealed that the Guangdong laboratory, which would conduct the genetic tests for abode-seekers, has no international accreditation.
18. "Backlog of DNA samples freezes out crime fighters." The Spokesman-Review (Spokane, WA), December 17, 2000.
Washington State's crime labs are facing significant backlogs. The State Patrol would like the Legislature to change the law to require felons to submit to DNA sampling immediately upon conviction -- "Just like they have to give fingerprints immediately upon conviction, right there in the courtroom, "I don't think that's unreasonable." The co-chair of the House Criminal Justice and Corrections Committee said she would favor introducing legislation requiring immediate blood sampling.

Genetic Privacy

19. No Title. The Associated Press State & Local Wire, December 21, 2000.
Montana's McLaughlin Research Institute is receiving \$400,000 in federal funding for a program to educate physicians and politicians about the effects of genetic research. Officials from the Institute say the program will determine if there's a need for counselors to help people understand genetic information about their health.
20. "Nelson proposes bill to ban human cloning." The Fort Worth Star-Telegram, December 20, 2000
A Texas State Senator has called human cloning "morally unacceptable" and plans to introduce legislation banning such research. California, Michigan, and Rhode Island have already enacted such bans.
21. Make sure your rules comply with new state statute on genetic test results." Massachusetts Employment Law Letter, December 2000.
Gives a background on the new Massachusetts law that prohibits (1) disclosing genetic test results without the subject's consent, (2) requiring genetic tests as a condition of employment or insurance, and (3) discrimination by insurance institutions based on testing results.

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22. "DC Bar Labor And Employment Section To Present Program On Genetic Discrimination." The Metropolitan Corporate Counsel, December 2000.
The Equal Employment Opportunity and Individual Rights Committee of the DC Bar Labor & Employment Law Section held a brown bag lunch program featuring a panel of experts on the topic of Genetic Discrimination in the Workplace on Dec. 13.
23. "Should genetic information be a factor in employment decisions?" Virginia Employment Law Letter, December 2000.
Reviews the debate over being allowed to use genetic information in employment decisions, and outlines implications of using employee information in such a manner. Recommends that employers who are resisting restrictions on the use of medical information for legitimate business purposes should proceed with caution so long as federal legislation is still pending in Congress.