

# DNARESOURCE.COM

Smith Alling Lane, P.S. provides governmental affairs services to Applied Biosystems. As part of this representation, the firm generates weekly reports on state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports publicly available through this website. The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.

The July 6 & July 13, 2001 DNA legislative and media report (combined) 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

Oregon has passed an all-felons database expansion bill, and more limited expansion bills have passed the Senate in California been signed into law in Illinois. Several articles in Kentucky pointed out that state's meager DNA database laws and urged for expansion next year.

Several articles criticized the large DNA backlogs at Los Angeles city and county crime labs. Backlog issues at the Arkansas crime lab were also reported.

A man facing prosecution after he was arrested on a "John Doe" warrant is challenging the warrant in a Wisconsin court. A North Carolina Court has ruled that DNA collected during an investigation can be used in unrelated investigations.

Post conviction bills continue to progress in Louisiana and North Carolina, and the US Senate held a hearing on the Innocent Protection Act. A US Appeals Court has upheld a decision by a lower court to allow DNA testing, and US Justice Sandra Day O'Connor and the Arizona Supreme Court chief justice have each (independently) called for a reconsideration of the criminal justice system in light of recent DNA exonerations.

In Canada, the DNA database law has been upheld in court. Hong Kong will be using DNA testing for "abode-seekers," and Malaysia will allow it for birth registration purposes.

## STATE LEGISLATION

### Forensic DNA

1. New Jersey SB 2500 – Appropriates funding for "enhanced DNA testing."

### Genetic Research

2. New York AB 9292 -- Enacts the "Cloning Prohibition And Research Protection Act."

### Paternity

3. Massachusetts SB 1964 – Requires fathers in child support proceedings to either have a genetic test or to sign a written statement refusing such tests. Paternity could still be challenged later if the man refuses testing, but after five years he could not challenge child support requirements.

## NEWS ARTICLES

### Forensic DNA

1. "Expand DNA database." The Courier-Journal (Louisville, KY), July 10, 2001.  
Editorial argues that Kentucky's DNA database should be expanded to include all convicted felons. Acknowledges concerns that DNA information should not be shared with insurance. Explains that testing burglars in Kentucky would require an estimated \$ 1.8 million initial cost, plus \$ 173,000 annually. "But the returns would be far better than what taxpayers are getting now, and the number of crimes likely to be prevented or solved would be a bargain for \$ 173,000 per year, about what it costs to add four new police officers."
2. "Court Says Dna Testing Can Proceed." Daily Press, July 10, 2001.  
The 4th U.S. Circuit Court of Appeals has rejected Virginia's efforts to block DNA testing for a man on death row. The court said that the state's appeal was premature, and the DNA retesting was "just a step in the litigation process." "At this juncture, the district court has not yet even been presented with the admissibility of the DNA retesting results," one of the justices wrote.
3. "Bill adds more crimes added to DNA database." Scripps Howard News Service, July 10, 2001.  
The California Senate Public Safety Committee has unanimously approved a bill that would expand the state's DNA database to include burglary, robbery, arson and carjacking. The bill will add an estimated 10,000 additional felons to the database per year. The bill was amended to allow civil action against anyone who makes unauthorized use of an offender's DNA sample, but the ACLU continues to oppose the bill, arguing that adding robbers to the list of crimes is an encroachment on 4th Amendment rights against unwarranted search and seizure.
4. "Rape case hinging on DNA flawed, lawyer says." Milwaukee Journal-Sentinel, July 9, 2001.  
Milwaukee's prosecution of a man identified through a John Doe warrant is being challenged in court. The defense attorneys are arguing that the case wrongly circumvented the six-year statute of limitations, didn't properly identify the alleged attacker when it was issued, and is "unfair" to the suspect. The man was a convicted sex offender from the 1980s and was forced to submit a DNA sample after his conviction for robbery in 1996. The rape for which the man is now a suspect occurred in 1994, and his DNA sample was analyzed and linked to the attack in February 2001.
5. "Grand jury suggested changes in State Police lab two years ago." The Associated Press State & Local Wire, July 8, 2001.  
In West Virginia, a court recently ordered the release of a special grand jury recommendation that the State Police crime lab become independent. "We believe by definition a crime laboratory should be impartial and unbiased toward any party," the report said. "We question the wisdom of operating a West Virginia crime laboratory within the chain of command of a law enforcement agency." West Virginia's labs have recently come under scrutiny due to actions of a chemist involvement in several derailed drug prosecutions.
6. "DNA crime database gets few results." The Courier-Journal (Louisville, KY), July 8, 2001.  
Points out that Kentucky's DNA database only takes DNA samples from sex offenders, which compares poorly to neighbors like Virginia and Indiana who require DNA from a much larger array of felons. Notes that Virginia's database has 165,000 samples and has had 426 cold hits, while Kentucky's database of 3,200 has only had 3 cold hits with no convictions yet. Kentucky considered expansion legislation last year, but "There was talk about how much all these tests would cost and how much it would cost to store them . . . and that was the end of it."
7. "DNA match led to arrest in Louisville rape case." The Courier-Journal (Louisville, KY), July 8, 2001.  
Discusses a "cold hit" from Kentucky's DNA database. The database solved a rape case from April 2000 based on a DNA match with a man who served 13 years for a 1985 rape conviction. The victim identified the suspect after she saw him at a bar one night, but detectives would not have been able to establish probable cause without the DNA database hit. The man is denying the rape but has not been able to explain the presence of his DNA.
8. "Arizona Supreme Court chief justice wants commission to study wrong convictions." The Associated Press, July 7, 2001.  
The chief justice of the Arizona Supreme Court wants to establish a special commission to examine how police and prosecutors handled cases in which innocent people were convicted. While the justice says he knows of no

execution of innocents in Arizona, he believes that recent exonerations in the US based on DNA testing "has pretty much demonstrated to the country we have made mistakes."

9. "Judge upholds law on DNA databank." The Vancouver Sun, July 7, 2001.  
Saying that the procedure is "minimally invasive" and does not unduly infringe on a person's bodily integrity, a British Columbia (Canada) Supreme Court judge has upheld the law that established Canada's DNA databank. The judge also rejected arguments the law violates the Charter of Rights protection against self-incrimination.
10. "Criminal Neglect; Inefficiency And Waste At Government Crime Labs Undermine Public Safety." The Daily News of Los Angeles, July 5, 2001.  
Reports that the Los Angeles Police Department has a backlog of 2,600 unsolved cases containing DNA information, and the Sheriff's Department has another 1,900 - 1,200 sex crimes and 700 homicides. Explains that the primary problem is funding and questions if the labs could operate more efficiently by using private labs. Points out that the Sheriff's Department sends out a third of its caseload at a cost equaling only about a fifth of its budget.
11. "Crime lab gets national accreditation." The Advocate (Baton Rouge, LA), July 4, 2001.  
In Louisiana, the Acadiana Criminalistics Laboratory has received national accreditation. The accreditation includes DNA analysis. The lab is the only one in the state to use "contact DNA" analysis.
12. "Senate approves more DNA collections from criminals." The Associated Press State & Local Wire, July 4, 2001.  
The Oregon Legislature has enacted a bill to expand the state's database to include all convicted felons. The bill includes felons who are currently on parole, probation or who are post-prison supervision. The bill will mean an increase of approximately 13,000 additional felons per year (for a total of 15,000). The Governor has not said whether he will sign the bill.
13. "O'Connor Questions Death Penalty." The New York Times, July 4, 2001.  
US Supreme Court Justice Sandra Day O'Connor has questioned the fairness of the death penalty and raised the possibility that innocent people had been executed. She said that the growing availability of DNA testing might alleviate some concerns. But she said most states with capital punishment had not passed laws setting up testing after convictions.
14. "New state law will keep some rape cases open indefinitely." The Associated Press State & Local Wire, July 4, 2001.  
One of the new laws in Colorado will remove the 10-year statute of limitations in certain sexual-assault cases when DNA evidence is available. Prosecutors believe that more old rape cases will be solved as more and more offender samples are entered into the DNA databases.
15. "Court says blood sample can be used in more than one case." The Associated Press State & Local Wire, July 4, 2001.  
The North Carolina Court of Appeals has ruled that a blood sample obtained properly from a person not charged in a crime can be used as evidence in another unrelated investigation. The man said he had agreed to give the blood sample only because he was told that he was a suspect in a murder case and wanted to exonerate himself. The sample was later matched to an unrelated rape and kidnapping and was used against him at trial.
16. "DNA sample links man to burglary." Chicago Daily Herald, July 3, 2001.  
A man who left a beer can in a car he had broken into was nabbed as the perpetrator after DNA analysis on a cigarette butt that he smoked during a police interview. The DNA from the cigarette butt matched DNA gathered from saliva on the beer can. The man has past convictions for criminal trespass to a motor vehicle, forgery and burglary.
17. "State Legislators To Convene in San Antonio for National Meeting." US Newswire, July 2, 2001.

Key meeting sessions at the upcoming annual meeting of the National Conference of State Legislators will include “DNA: Power to Convict and Exonerate.”

18. “DNA testing access receives final approval by Legislature.” The Associated Press State & Local Wire, July 2, 2001.

A bill to allow inmates greater access to post conviction DNA testing has received final approval in the North Carolina Legislature. The bill requires retention of DNA evidence until the person is released from prison and would require the state to pay for indigent testing.

19. “Foster signs bill allowing DNA testing for prisoners.” The Times Picayune (New Orleans), July 2, 2001. The Louisiana Governor has signed a bill that will allow inmates until Aug. 31, 2005, to apply for post conviction DNA testing.

20. “Crisis At Crime labs; Cases Go Unsolved, DNA Evidence Goes Untested For Lack Of Funds.” The Daily News of Los Angeles, July 1, 2001.

DNA backlogs at the Los Angeles Police Department and Sheriff’s office have arisen due to significant funding shortfalls – especially for personnel. LAPD has 2 employees trained to do STR tests and the county lab has 8 – ideally, each should have 40 STR-trained employees. Priority cases can take up to 6 months for analysis, and cases without suspects go unanalyzed. Many agencies are being forced to outsource casework, which can get expensive. Officials are considering creating a South Bay laboratory that could handle case loads for the South Bay agencies. Many labs to not send DNA evidence to the labs unless they have a suspect.

21. “DNA analysis links inmate to 1997 sexual assault case.” The Associated Press State & Local Wire, June 30, 2001.

A “cold hit” on Wisconsin’s DNA database has linked a felon to a rape from 1997.

22. “Forensic biologist uses DNA to solve wildlife crimes.” The Associated Press State & Local Wire, June 30, 2001.

The University of Florida’s (BEECS) Biotechnologies for the Ecological, Evolutionary and Conservation Sciences lab occasionally performs DNA tests on animal material to aid in criminal investigations – particularly for poaching crimes.

23. “Ryan approves criminal DNA database bill.” The State Journal-Register (Springfield, IL), June 30, 2001.

The Illinois Governor has signed a bill adding 11 crimes to the states DNA database, including concealment of a homicidal death, stalking, residential burglary, causing a catastrophe and aggravated battery with a firearm. However, the State Police are not required to begin collections until funding is appropriated. A 1999 expansion law that is just now coming into effect will increase the database to 20,000 new profiles per year, and this year’s law (when implemented) will mean 85,000 new profiles each year. The state currently collects only 2,000 profiles per year.

24. “DNA evidence convicts serial rapist.” The Associated Press State & Local Wire, June 29, 2001.

In Louisiana, a man has been convicted as a serial rapist after DNA evidence was used to link him to a series of rapes. The man committed the rapes 6 months after he was paroled from prison -- his previous conviction was a plea-bargained to burglary in a case in which a man broke into a home and raped a 10-year-old girl.

25. “Ryan signs bills expanding DNA database, raising higher ed grants.” The Associated Press State & Local Wire, June 29, 2001.

In signing the new DNA database expansion legislation (see article #23), the Illinois Governor also reaffirmed a commitment of \$1 million to build a new State Police laboratory building in Springfield that will work solely on DNA offender samples.

26. “Criminal Law and Procedure; Evidence.” California Supreme Court Service, June 29, 2001.

A man appealed his conviction, arguing that the Profiler Plus (DNA testing) kit was a new scientific technique and thus could not properly be introduced into evidence without a full Kelly/Frye hearing to determine its scientific reliability. The appeals court disagreed and found that the Profiler Plus kit is simply a more

sophisticated and refined version of a DNA testing methodology already accepted in the state, and rejected the defense's contention that every new PCR/STR test kit must be subjected to Kelly analysis to determine its scientific reliability.

27. "San Mateo County OKs budget." The San Francisco Chronicle, June 29, 2001.  
The budget recently approved by San Mateo County (CA) supervisors includes \$5 million to design the sheriff's new crime lab, which will be paid for largely with state funding and other revenue sources.
28. "Criminal law & procedure - speedy trial." Chicago Daily Law Bulletin, June 29, 2001.  
Summary: Trial court correctly granted state's motion to extend the speedy-trial deadline under statute allowing for such extensions to accommodate the testing of DNA evidence; in a case charging the defendant with criminal sexual assault, the state showed that it exercised diligence in obtaining the DNA evidence and the results of the testing were material to the case.
29. "Nine month delay in DNA match caused by case backlog and evidence load." The Associated Press State & Local Wire, June 28, 2001.  
Identification of a suspected in a murder case was delayed for 9 months due to DNA backlogs at the Missouri crime lab. The man was eventually identified as a suspect in the crime after a cold hit from the DNA database. The man was on the database for a crime he committed in Arkansas. The FBI said that the case could have been solved in a few days, if not for the backlog.
30. "Senate panel puts death-penalty system on trial." The Dallas Morning News, June 28, 2001.  
The US Senate Judiciary Committee held a hearing on "The Innocence Protection Act." The bill provides \$ 50 million in state grants for meeting new minimum national standards for defense attorneys. States that do not meet these standards could have federal prison funds withheld. The bill also requires preservation of biological evidence and access to post conviction DNA testing for inmates. Senator Hatch says he supports the DNA provisions, but has reservations with the rest of the bill.
31. "DNA testing approved for abode-seekers." South China Morning Post, June 28, 2001.  
Hong Kong's legislature has approved legislation to begin DNA testing of abode-seekers in cases where parentage cannot be documented. Applicants will be charged about \$ 2,600 for a DNA test in Hong Kong and cost \$ 1,100 yuan on the mainland. The testing is expected to start as early as next month.
32. "NRD Won't Make Dna Test Compulsory." Bernama The Malaysian National News Agency, June 27, 2001.  
In Malaysia, the National Registration Department (NRD) will not make it compulsory for late applicants for birth registration to undergo DNA tests. However, an applicant who was facing a dead end after being rejected by the NRD would be allowed to undergo the test to determine the eligibility of the child to obtain a birth certificate.
33. "Forensics help trap 1,000 car thieves." Bristol Evening Post, June 27, 2001.  
Police estimate that DNA and fingerprint evidence has been used to arrest more than 1,000 people for car crime in the Avon and Somerset (England) force area in the past year.
34. "County OKs budget with nothing for unions." Ventura County Star, June 27, 2001.  
The costs of remodeling the Ventura County's crime lab was mentioned as a factor that could potentially cloud the financial picture for the county's criminal justice funding.

#### Genetic Privacy

35. "Keep genetic tests private, delegate says." The Charleston Gazette, July 10, 2001.  
A legislative panel in West Virginia recently heard that no state law prohibits an insurance company from using information obtained through genetic testing to underwrite policies. A bill to protect genetic information passed the state Senate this year, but died in the House.
36. "Wading Into The Gene Pool." Time, July 2, 2001.

Canadian scientists have proposed a genetic databank composed of the blood samples of 50,000 Quebecers. The material in turn would enable researchers to map the genetic variations of the entire Francophone population. The scientists hope to raise the \$ 300 million they need for this project from Genome Canada and the provincial government, as well as from U.S. pharmaceutical firms.

## **FEDERAL REGISTER**

1. Department of Justice – Interim Rule to implement section 3 and related provisions of the DNA Analysis Backlog Elimination Act of 2000 (requires DNA samples from specified federal prisoners for inclusion in CODIS). Comments must be submitted by August 27, 2001.