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The August 24 and August 31, 2001 DNA legislative and media report are listed below (combined as one report).

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

The first all-felons DNA database expansion bill for the 2002 legislative session was filed in Kentucky. A loophole in California law is allowing inmates to “opt out” of the DNA database, and a Kentucky court decision clarified that the current DNA statute does not include juveniles. Washington, DC has begun collection of DNA from offenders, and the discussion continues of a Virginia proposal to require DNA upon arrest.

“Cold hits” made the headlines in Oklahoma, California, New York and Washington. “John Doe” indictments were handed down in Illinois and Texas. Two separate shows on CBS discussed the use of DNA databases in solving crimes.

A bill has been prefiled in Florida to allow post conviction DNA testing for inmates who plead not guilty or no contest at the time of trial, meanwhile the state Supreme Court is considering implementing such a rule without legislation. Requests for post conviction DNA testing under Texas’s new law are said to be causing a “logjam.”

DNA databases will be established in Ireland and Malaysia and there the DNA databases in Finland and Switzerland were discussed. Canada and New Zealand may be looking at amendments to their DNA database laws, and the British government is considering allowing civilians to collect DNA samples. South Korea is establishing a missing persons DNA database.

STATE LEGISLATION

Forensic DNA

1. Florida SB 122 (Prefiled for 2002) -- Provides for postsentencing testing of DNA evidence collected at the time a crime is investigated with respect to a defendant who pleads guilty or nolo contendere to committing the crime.
2. Kentucky Bill Request 422 (Prefiled for 2002) – Expands offender DNA database to include all convicted felons, and adds juveniles. Prioritizes classes of crimes for analysis if funding is limited.

NEWS ARTICLES

Forensic DNA

1. “In Rape Case Gone Awry, New Suspect.” The New York Times, August 29, 2001.
In Oklahoma, a “cold hit” on the DNA database has linked a rape in 1985 to a man currently in prison on rape and burglary convictions. This case involves a man who had previously convicted of the crime, served 15 years in prison, then was exonerated after new DNA tests proved he was not the culprit. The state may not be able to prosecute the new suspect because the statute of limitations has expired.
2. “DNA database of criminals.” New Straits Times (Malaysia), August 29, 2001.

Malaysia is working to set up a database of DNA profiles of convicted criminals and certain categories of suspects (drug addicts and traffickers). The database will be modeled after the British system.

3. "Killers Eyed For National DNA Files; Feds Study Loophole." The Toronto Sun, August 29, 2001.
In Canada, the federal government is considering changing its new DNA database law to fix what appears to be a loophole in the law. Apparently, a man who raped and murdered a child was not required to submit a DNA sample, but if he had only raped the victim he would have been ordered to surrender a sample. Under the current law for retroactive DNA collection, only multiple murderers, serial rapists and "dangerous offenders" are required to submit to the test. The Ontario provincial government is pushing for the collection of DNA upon arrest and wants the category widened for retroactive collection
4. "Court considers DNA rule for the second time in 3 months." The Associated Press State & Local Wire, August 28, 2001.
The Florida Supreme Court is considering how to implement rules for post conviction DNA testing. The legislature passed a post-conviction bill this year, but there is some discussion that the court could implement rules that are broader than what the new law allows. Of particular concern is that the law is limited to inmates who have been convicted and does not apply to those who pleaded guilty or no contest. On the other hand, the rule would limit DNA testing requests to within two years of sentences being upheld on a first appeal or, for existing cases, two years from this October.
5. "DNA opens doors." The Denver Post, August 27, 2001.
Editorial briefly discusses the importance of DNA testing both in exonerating the innocent through post-conviction DNA testing and convicting the guilty through DNA databases. Applauds Attorney General Ashcroft for \$30 million in grants to eliminate DNA backlogs.
6. "Evidence found in '86 death." Chicago Tribune, August 27, 2001.
In Chicago, new examination (by a private lab) of a 1986 rape and murder victim's clothing has resulted in possible DNA evidence. Previous examinations (by the Chicago Police lab) had concluded that there was no DNA evidence. The re-examination of the clothing was triggered by DNA tests performed earlier this year that showed that evidence found on the victim's underwear was not from any of the four men who were convicted of her abduction, rape and murder.
7. "DNA Leads To Arrest In '97 Slaying." Daily News (New York), August 26, 2001.
In New York, a "cold hit" on the DNA database has identified a suspect in a 1997 murder of an elderly woman. The suspect was released from prison on August 10 after serving 29 months for an unrelated robbery and slashing in the same housing complex in 1998. A DNA sample was required from the man upon release and the subsequent DNA analysis matched him to the crime.
8. "DNA evidence potent." Sunday Telegram, August 26, 2001.
Discusses the use of DNA evidence in Massachusetts. The state has recently removed its statute of limitations for sexual assault cases when DNA evidence is available. Massachusetts has also used DNA to exonerate several people who were previously convicted. The Worcester County District Attorney explained that DNA testing and court testimony are expensive and prosecutors need larger budgets to pay for these costs. He recommended establishing a special committee to discuss this issue.
9. "Inmate freed after DNA test sues city, state police." The Associated Press State & Local Wire, August 25, 2001.
In Kentucky, the first inmate to be exonerated of a crime by DNA evidence has sued the city of Louisville and the state police for falsely arresting him and causing him to spend eight years in prison. Among other points, the suit alleges that city police officers used improper and discredited identification procedures and that the state police used unreliable analysis to conclude that the man's hairs were similar to those found at one of the crime scenes. The amount of damages has not been specified.
10. "Trace Of Sweat Led To Conman." Birmingham Evening Mail, August 25, 2001.

Police in England have identified a suspected burglar through a tiny dot of his sweat found on a cigarette lighter that was left at one of the crime scenes. Forensic scientists believe the sweat may have penetrated through his gloves.

11. "DNA Database To Be Used To Find Missing Children." The Korea Herald, August 25, 2001.
In South Korea, the government plans to earmark 100 million won next year for the launch of a human DNA database to find missing children and their families. An average of 680 children go missing every year in Korea and an estimated 19,000 children are living in 271 welfare facilities across the country. Some civic groups are opposed to the database because they believe that laws protecting against genetic discrimination and commercial misuse need to precede the establishment of human DNA databases.
12. "Judge says DNA evidence can be used in '81 rape case." State-Times/Morning Advocate (Baton Rouge, LA.), August 25, 2001.
In Louisiana, a judge has ruled that the prosecution may use DNA evidence to link a man to a rape in 1981. In this case, the suspect's brother spent almost 20 years in jail for the crime before he was exonerated through DNA testing. After the exoneration, the DNA evidence was matched to the suspect through Virginia's DNA database.
13. "DNA project sheds light on old crimes." The Seattle Times, August 24, 2001.
Police in Washington State have announced that a project to clear a backlog of more than 30,000 DNA profiles from felons has reinvigorated 16 "cold cases" around the state. The database has already helped police solve many cold cases and has linked Washington felons to other unsolved crimes in Arizona and Minnesota.
14. "Police: DNA links Arizonan to 1993 San Diego rape." The Associated Press State & Local Wire, August 23, 2001.
Police in California have identified a man suspected of rape through a "cold hit" on the national database. The man had been included in the database due to a previous public sexual indecency charge in Arizona. The man's previous convictions included carrying a concealed weapon, indecent exposure and molestation of a minor, and auto theft.
15. "DNA Database Is Unveiled To Crack Crime." Belfast Telegraph, August 23, 2001.
Northern Ireland's Justice Minister is proposing to significantly expand the state's DNA database. Originally the database was to only include violent crimes, but now the government would like to include offenses such as auto theft and burglary. The proposal is being finalized by staff before it will be presented to the Cabinet for consideration.
16. "Program Leads to Suspect in Rape." Los Angeles Times, August 23, 2001.
Los Angeles Sheriff's office recently linked a registered sex offender to a 6-year-old unsolved rape through a "cold hit" on the DNA database. The "cold hit" is thought to be one of the first resulting from a \$50 million state-financed grant to eliminate California's backlog of DNA cases. There is an estimated 30,000 unsolved sexual assault cases in California.
17. "Prohibiting DNA may deny justice." University Wire, August 23, 2001.
A Kentucky newspaper argues that the recent ruling in a state court that juveniles are not to be included in the state's offender DNA database will hinder future police investigations.
18. "California convicts opt out of DNA database." The Washington Times, August 23, 2001.
A loophole in California law means that prison officials can't forcibly take DNA samples without a court order. As a result, 2,300 prisoners have refused to give blood and saliva samples for the state's DNA database of convicted criminals. Four years ago, a proposed amendment would have authorized the use of force to take blood or saliva samples from an uncooperative inmate, but the amendment failed to pass. Ultimately, the Legislature made it only a misdemeanor to refuse to give a sample, which is of little threat to inmates serving life sentences.
19. "Nailing A Criminal The DNA Way." The Times of India, August 22, 2001.

A leading forensic scientist in India pointed out that, "India's archaic Evidence Act is yet to include it [DNA] as a proof on which final verdict can be given. Discusses the importance of DNA in solving crime and exonerating innocents.

20. "Court: Juvenile sex offenders don't have to give DNA samples." The Associated Press State & Local Wire, August 21, 2001.
A Kentucky Court of Appeals has ruled that juvenile offenders do not have to provide DNA samples for the DNA database because the law does not consider them to be convicted felons. The DNA database law itself does not specifically include adjudicated juveniles, but rather refers to convicted felons. In the unanimous ruling, the court said that even if a juvenile pleaded guilty to crimes that would be considered felonies under other circumstances, the statute seems to carve out an exception for juveniles.
21. "Prosecutors file charges against a man identified only by his DNA profile." The Associated Press State & Local Wire, August 21, 2001.
In Macon County, Illinois, prosecutors have filed burglary and sexual assault charges against a "John Doe" who is identified only by his DNA profile. The prosecutors filed the charges in order to stop the statute of limitations from expiring after DNA linked a burglary case to a sexual assault case.
22. "DNA and Death Row State justices consider whether Legislature went too far by setting rules on how evidentiary testing can be conducted." Broward Daily Business Review, August 21, 2001.
Discusses the "turf war" brewing between the Florida Supreme Court and the Legislature as the Court prepares to consider whether the Legislature overstepped its boundaries by including procedural guidelines in the law. (See article #4 for further details.)
23. "High volume of DNA samples swamps crime labs." CBS News Transcripts (CBS Morning News), August 20, 2001.
Reports that zealous police around the country are swamping crime labs with requests for DNA tests. The national backlog of unanalyzed casework is around 180,000. Reports that Congress has recently spent \$30 million to assist labs with the backlogs, and "Congress will soon consider spending millions more, both to clean up the backlog and to build a nationwide system capable of dealing with an ever-growing load of DNA evidence."
24. "State Police chief addresses issues New crime labs, civilian review board on agenda." Charleston Daily Mail, August 20, 2001.
The West Virginia State Police Superintendent recently told lawmakers that he was working with West Virginia and Marshall universities to create two new crime labs. The Superintendent hopes to move the State Police crime lab out of its current Charleston location to a new facility and he is looking into creating a new crime lab in the Morgantown area.
25. "Newest DNA test shakes up Death Row." Idaho Statesman, August 20, 2001.
Reports that an Idaho Death Row inmate's possible exoneration would be the second time a rapist's conviction has been overturned based on mitochondrial DNA testing of hair. The FBI estimates that 5 percent to 10 percent of the agency's traditional hair analyses, done under a microscope, have been proved wrong by mitochondrial testing.
26. "Finnish police make increasing use of DNA analyses." Nordic Business Report, August 20, 2001.
Finnish police authorities estimate that DNA is helping to solve hundreds of crimes in the country. The Finnish police maintain a DNA database that currently contains records of about 3,500 persons, all sentenced for specified crimes ranging from rape to theft. Finnish law requires that a person suspected of a crime always has to agree to a DNA sample being taken if it is needed.
27. "Traffic Wardens To Get Power Of Arrest." The Sun, August 20, 2001.
In Britain, a series of possible police reforms under consideration includes allowing civilian staff to carry out breath tests, fingerprinting and taking DNA samples.

28. "Federal Solicitor General Lawrence MacAulay Assures Canada's Police Chiefs of Commitment to Fight Organized Crime." Canada NewsWire, August 29, 2001.
In a recent speech, Canada's Solicitor General noted that the new national DNA data bank, which opened last year and which now has over 12,000 DNA offender and crime scene profiles, has already made 53 matches.
29. "Case closed; DNA evidence becoming an increasingly useful tool in solving unsolved crimes." CBS News Transcripts (Sunday Morning), August 19, 2001.
Reports on the use of DNA databases in solving crimes and bringing closure to victims. Focuses on successes in Virginia - estimates that Virginia will have 300 "cold hits" by the end of 2001. Interviewed Barry Scheck who said, "Fewer innocent people will be hassled, much less arrested or convicted if we use this technology intelligently to link unsolved crimes to each other." Touches on the fact that other states do not have as strong a database as Virginia so many crimes are going unsolved.
30. "DNA law creates logjam." The Fort Worth Star-Telegram, August 19, 2001.
Courts have become swamped with requests for DNA testing after a new post conviction three months after a new post conviction DNA testing law was enacted. Judges and prosecutors in Texas say that the Legislature erred in allowing anyone - even someone charged with a misdemeanor -- to request DNA testing. Prosecutors are also concerned with the cost and space associated with storage requirements in the bill.
31. "State distributes hundreds of DNA identity kits to parents." The Santa Fe New Mexican, August 19, 2001.
The New Mexico Department of Public Safety is offering free DNA kits to parents who want to document their children's identity. The kits include a plastic-wrapped, cherry-flavored swab that is rubbed on the inside of a child's cheek to dislodge a few pieces of tissue, then sealed inside a small paper envelope with the child's name. Instructions are included so parents don't accidentally contaminate the sample.
32. "8,521 DNA Profiles Already Collected." Le Temps, August 18, 2001.
Since it was established in July 2000, 8,521 DNA samples have been entered Switzerland's DNA database. 7,587 of the samples were from offenders and the other 934 other profiles in the bank come from samples taken from crime scenes. Thus far, the database has matched 217 offender profiles to crime scene evidence -- a success rate of 23 per cent. The system has proved particularly effective in burglary cases.
33. "DNA tests clinch rape conviction." The Southland Times (New Zealand), August 18, 2001.
A rapist in New Zealand was recently identified through a cold hit on the nation's DNA database. The man had 14 prior convictions for theft and the judge noted, "If ever there was justification needed for the compulsory taking of DNA from burglars this case is it. But for that you would never have been caught."
34. "D.C. Taking DNA From Offenders." The Washington Post, August 18, 2001.
The D.C. Court Services and Offender Supervision Agency has begun collecting DNA samples from offenders on parole or probation. In addition to 330 registered sex offenders, the D.C. agency has identified about 3,400 parolees and probationers who will be required to provide samples.
35. "DNA Test For Va. Arrestees Proposed." The Washington Post, August 18, 2001.
Overview of the debate in Virginia over requiring DNA samples upon arrest - as proposed by both candidates for Attorney General. The state chairman of the bipartisan Crime Commission (a state senator) predicted that a law could be crafted to withstand a legal challenge if testing were extended only to those arrested for felonies. The division of forensic science estimates that it would cost the state \$5 million per year for such an expansion. "You're able to identify perpetrators of crime that the police would never have been able to identify," said Dr. Ferrara. "It's probably the best \$ 5 million the state could spend."
36. "DNA Advance Very Good At Getting Its Man." The Seattle Post-Intelligencer, August 17, 2001.
In Washington state, DNA has helped detectives identify and arrest suspects in five "cold" cases in the last month - an unprecedented rate for solving crimes where all other leads had been exhausted. However, this number is still no where near the "gold standard" set by Virginia, which collects from a wider variety of felons.
37. "N.H. AG seeks to block DNA test on man serving life." The Boston Herald, August 17, 2001.

The New Hampshire Attorney General's office is asking a court to block further DNA testing for a Massachusetts man serving life for a 1971 murder he says he did not commit. The Innocence Project is backing the inmate's request. Two DNA tests performed earlier this year were inconclusive, but the latest test indicated the victim may have been attacked by two men. Prosecutors have always contended the inmate was the lone assailant.

38. "John Doe' indicted in Arlington rape." The Fort Worth Star-Telegram, August 16, 2001.
Prosecutors in Arlington have indicted a "John Doe" who was identified only through a DNA profile. A new law takes effect Sept. 1 eliminating the statute of limitations for sexual assaults when DNA evidence is collected but it is not retroactive. Recently, authorities found a man who had been indicted in Dallas County in a similar "John Doe" indictment. That man is scheduled to go to trial shortly.
39. "New Chief Executive For The Forensic Science Service Appointed." Hermes Database, August 15, 2001.
Britain's Forensic Science Service has announced the appointment of Dr David Werrett as the new Chief Executive of the FSS. Dr Werrett joined the FSS in 1974 and has worked in a number of areas including the introduction of DNA in forensic science which he pioneered with others and presented the first cases in court. He has been involved also in research and development and DNA development.
40. "DNA loophole for some criminals may be closed." The Evening Post (Wellington), August 14, 2001.
In New Zealand, the DNA database law is not retrospective, so does not apply to those convicted before the law was passed in 1995. Police would like the law to be retrospective and the Justice Minister has committed to reviewing the law. The Minister is already looking at legislation to expand the database to include burglary and to allow buccal swabs to be taken instead of blood samples. Police sources have also indicated they believe a large medical database with DNA samples would be a significant crime fighting tool, but the Minister has said he would not want those samples used for any other purpose other than medical research.
41. "DNA is invaluable tool." The Herald (Rock Hill, SC), August 12, 2001.
Editorial applauds the US Department of Justice grant money for DNA backlogs. "...DNA samples can provide practically unimpeachable evidence that can either lead to an arrest or clear a suspect's name...It would be foolish to have this technology available and not use it. This is money well spent."
42. "State hopes for funds to catch up on DNA backlog." The Arkansas Democrat-Gazette, August 7, 2001.
The Arkansas crime lab director said he plans to apply for a share of the federal money for DNA backlogs and expects the state to qualify for about \$ 1.25 million.
43. "Brooklyn Prosecutors Find Convictions Pass DNA Test." New York Law Journal, August 6, 2001.
The Brooklyn District Attorney's Office embarked upon a comprehensive search for DNA evidence that could possibly exonerate persons still serving jail terms for serious crimes, but has not yet found an eligible case out of the 700 it has reviewed so far. The Innocence Project believes that case reviewers may be unfairly eliminating cases that could be ripe for DNA analysis (such as cases where eyewitnesses had identified two or more defendants).

Genetic Privacy

44. "Biotech company in Iceland says it will accept ethics policy of world group." The Associated Press, August 28, 2001.
Iceland's medical association and the biotech company deCODE have issued a statement saying that if genetic information from patients had already been collected on a Health Sector Database and the individual wished to remove that information, "it shall be done immediately" and the cost would be paid by deCODE.
45. "Firm offers DNA 'copyright' to stars." Calgary Herald, August 23, 2001.
The DNA Copyright Institute of San Francisco is offering celebrities the opportunity to copyright their DNA as a precaution against fans cloning them.
46. "Bill Would Ban Genetic Info From Insurers." Wyoming Tribune-Eagle, August 18, 2001.

A Wyoming state legislature subcommittee has unanimously endorsed a bill that would ban the use of genetic information for insurance purposes. The ban would include health, long-term care, life and disability insurers.

Paternity

47. "DNA dramas: paternity tests a growing trend in Germany." Deutsche Presse-Agentur, August 15, 2001. Increasing numbers of German men are taking DNA paternity tests to ensure they are the real fathers of their children, and a growing industry of private laboratories is appearing.

CONGRESSIONAL RECORD

1. US Senate – Remarks from Senator John Warner (R-VA) in support of the Innocence Protection Act. "While I do believe that some technical improvements can be made to the Innocence Protection Act, I support its overall goal of additional, reasonable, protections against wrongful convictions."
2. Introduction of HR 2680 -- Amends the DNA Backlog Elimination Act to authorize \$100 million per year from 2002 through 2006 for grants to crime labs for DNA analysis.

FEDERAL REGISTER

1. Proposed Grant Guideline for 2002 State Justice Institute Grants. Grants will be awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Education programs for "State court judges, law clerks, and staff counsel about capital case law, DNA evidence, and other legal and scientific issues related to the trial and appeal of capital cases" was noted as an item of particular interest.