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A WEB SITE FOR ANYONE WHO SEEKS INFORMATION ON THE LATEST DEVELOPMENTS IN FORENSIC DNA POLICY

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The December 13, 2002 DNA Resource 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.

SUMMARY

Legislation has been introduced in Missouri to expand the state DNA database to include all convicted felons. Hits on DNA databases helped to solve crimes in Virginia (child rape), New York (55 rape cases), Colorado (rape and murder of a California child). In Kansas, DNA testing helped find a suspect in the decapitation of a woman whose head was never found. In New Mexico, a man who spent more than 2 months in jail on murder charges has been cleared through DNA testing. Backlogs in New Mexico, Colorado and Indiana made the news.

Proposed legislation in New Jersey would expand post conviction DNA testing rights. Post conviction DNA testing cases made headlines in Michigan, Arkansas, and Virginia, and such testing has exonerated a man in Illinois and 5 men in New York (Central Park jogger case). In Minnesota, a judge granted an ineffective assistance of counsel motion to a defendant around issues relating to defense counsel's failure to move to suppress DNA evidence.

In international news...Singapore's legislature has approved the creation of a criminal DNA database, and France may relax laws for law enforcement to collect DNA samples from suspects. Uganda will be getting equipment for its own DNA testing, and South Africa is requiring DNA testing of four gang members in relation to rape and abduction charges. In Canada, DNA testing has linked a sex attack at a school with another attack 10 years earlier, and 2 men charged with sexual assault were recently exonerated by DNA testing.

STATE LEGISLATION

Forensic DNA

1. Missouri HB 54 – Expands DNA database to include all convicted felons, including those who plead guilty or no contest.
2. New Jersey AB 3068 – Permits courts to order post conviction DNA testing in murder convictions that do not receive the death penalty, under certain conditions. Requires such testing (under certain conditions) if the person is sentenced to death.

Paternity

3. South Carolina HB 2039 -- Would allow for vacation of a legal ruling establishing paternity if a man is able to show (within 3 years of such a ruling) that DNA testing reveals that there is not a statistical probability of paternity.

NEWS ARTICLES

Forensic DNA

1. "DNA links 2 high profile sex attacks 10 years apart, say Toronto police." The Canadian Press (CP), December 11, 2002.
In Canada, police have established a link between a high profile sex attack at a school washroom this year and a case that's more than 10 years old. DNA evidence suggests the same person may have been responsible for the elementary school attack and the sex assault of a woman in July 1990.
2. "Judge Plans To Vacate 5 Men's Convictions In 1989 Jogger Rape." Orlando Sentinel Tribune, December 10, 2002.
In New York, in response to requests from prosecutors, a Manhattan judge indicated in court papers that he will vacate the convictions of five young men who went to prison in connection with a 1989 attack on a Central Park jogger. Prosecutors asked the state Supreme Court Justice to throw out the convictions because of new DNA evidence and the confession of a man, jailed for another rape, who has said he alone attacked the jogger. The five men, arrested as teens, have completed their jail terms.
3. "Uganda; Uganda to Get DNA Machine." Africa News, December 7, 2002.
In Uganda, the commissioner in-charge of the Government Analytical Laboratory based at Wandegeya said DNA equipment will be imported from Switzerland for use in the country's crime lab. Officials anticipate that the equipment will save the Government a lot of resources which it has been spending in sending specimen to Nairobi and South Africa for DNA tests. Officials say that DNA testing will also speed up the disposal of cases where DNA tests were required.
4. "DNA weighs in as the next Identikit system." Courier Mail, December 6, 2002.
In Australia, Queensland University of Technology scientists are trying to obtain blood samples for a DNA study. Scientists are trying to develop a "DNA identikit" which will one day allow police to recreate suspects from DNA samples.
5. "ABA calls for moratorium on death penalty in Florida." Miami Daily Business Review, December 6, 2002.
In Florida, the American Bar Association advised Gov. Jeb Bush to put a moratorium on executions and to conduct a comprehensive review of the state's capital punishment processes and procedures. Describing death penalty procedures nationally as a haphazard maze of inconsistent and unfair practices. Bush has been a consistent advocate of the death penalty, but he came under fire recently for postponing an execution pending DNA testing.
6. "Man linked to decapitation." Topeka Capital Journal, December 6, 2002.
In Kansas, police believe they have found the man responsible for the June decapitation of a woman whose head was never found. A 41-year-old white male has been linked to the crime by DNA evidence.
7. "DNA Clears Suspect In Nambe Rape." Albuquerque Journal, December 5, 2002.
In New Mexico, a man who spent more than two months in jail on rape and attempted murder charges has been cleared by DNA evidence. The man had originally been identified by the victim from a photo array. The man's attorney hailed the benefits of DNA testing pointing out that if there had been no DNA, the case could have gone to trial and his client very well could have been convicted.
8. "DNA evidence played key role in Central Park jogging case." The Associated Press, December 5, 2002.
In New York, the move to throw out all convictions in the Central Park jogger case is in large part due to the result of higher-quality DNA tests not available at the time of the trial. At trial, the only physical evidence presented against the five men were strands of hair found on two of the defendants. Prosecutors said the hair matched that of the jogger. But DNA tests done earlier this year proved the hair did not belong to the jogger. Semen samples found at the 1989 rape scene instead matched the DNA of a convicted rapist, linking him to a crime he admitted earlier this year he committed alone. After reviewing the evidence for nearly a year, the District Attorney agreed, joining a defense motion Thursday that the convictions be voided. A judge will rule in February. Evidence recently made public shows a similar rape had been reported in the same area of the park two days before the jogger attack -

Critics say that the rush to judgment this case allowed the true perpetrator to remain free where he committed additional rapes and murdered a pregnant woman.

9. "South Africa; Court Orders DNA Tests On Men Accused of Raping Tourist." Africa News, December 4, 2002. In South Africa, four gangsters accused of abducting and raping a British tourist will undergo compulsory DNA testing this week. The decision to obtain conclusive forensic evidence forms part of the State's hardline prosecution strategy that has already seen the men charged with rape, murder, abduction, armed robbery, attempted murder, attempted armed robbery, indecent assault and the illegal possession of a firearm and ammunition.
10. "DNA Clears Pair In Sex Assault." The Toronto Sun, December 4, 2002., In Canada, two Toronto men who were charged with gang sexual assault after a 17-year-old was allegedly raped during an all-ages night at a local nightclub last March have been exonerated by DNA testing.
11. "Stroup case tops list for backlogged crime lab." Albuquerque Tribune, December 5, 2002. In New Mexico, the investigation into the death of a teenager is not waiting in line for analysis at the state crime lab, despite the lab's overwhelming backlog. The homicide case is at the front of the line for DNA processing. It was made a priority because a suspect is in custody and court deadlines must be met. But other cases will have to wait because the lab is shorthanded. Lab officials are seeking a special appropriation of \$650,000 from the Legislative Finance Committee in order to send work out to private laboratories. Until then, lab officials are identifying \$50,000 in grant funds that are immediately available to pay for outside DNA analysis. Four of the eight DNA analyst positions at the state lab are vacant because New Mexico cannot compete with neighboring states that pay an average \$100,000 annual salary. Depending on background and experience, New Mexico's analysts earn \$50,000 to \$70,000.
12. "Backlog Plagues State DNA-Testing Lab." Rocky Mountain News (Denver, CO), December 5, 2002. In Colorado, the state Bureau of Investigation recently told the state legislature that it has been swamped by law agencies asking for help in DNA testing. The backlog is about a 127-day wait from the time the sample is submitted until they get a response. Investigators ask for DNA testing on everything from trespassing to murder and sexual assault. Some legislators are questioning whether the state might want to restrict evidence requests to more serious crimes, but other officials note that DNA from minor crimes scenes sometimes can link a criminal to a much more serious offense.
13. "DNA a valuable but underused tool in solving crimes." South Bend Tribune, December 1, 2002. In Indiana, there is a 12-15 month backlog for about 750 DNA samples at the state crime lab. The state lab and a private lab in Seattle recently conducted a study in which 100 old and cold DNA samples were tested and run against CODIS -- 18 hits were made. Current Indiana law requires DNA for all violent felonies, sex offenses and burglary, but many probationers and persons sentenced to jail are not having their DNA samples collected. The article also notes that there are private labs that can complete DNA analysis much more quickly "because of automation and volume: With sufficient volume, automated testing allows for the use of high-speed equipment and reduced cost of reagents, the testing materials."
14. "Crime plan challenging liberal French tradition." The Dallas Morning News, December 6, 2002. French officials propose to tighten their liberal standards to counter the domestic crime wave by making it easier for police to stop and search suspected troublemakers and also easier to take DNA samples from suspects.
15. "Legislature Oks Death Penalty For Terrorism." St. Louis Post-Dispatch, December 6, 2002. In Illinois, the Senate enacted a new law that makes terrorism a death-penalty offense, unanimously over-riding the lame-duck Governor's veto. The new law also expands law-enforcement power to eavesdrop on terrorism suspects; makes it easier to get search warrants and seize terrorism-related charitable assets; and requires that DNA samples be taken from those convicted of terrorism.
16. "Missouri lawmakers seek to expand DNA testing." The Associated Press State & Local Wire, December 5, 2002. In Missouri, newly proposed legislation would require that all felons in the state provide genetic samples for a law enforcement database. Missouri's current DNA database law requires DNA only from convicted murderers and sex offenders. Through September, Missouri's database had 98 hits matching offenders already in prison with other crimes. The Missouri State Highway Patrol has 23,000 felons listed in its DNA database. At least 59,000 felons currently under the supervision of the Department of Corrections could be added under the proposal. The

local ACLU is not convinced that including non-violent felons in the database is warranted.

17. "Singapore to set up DNA database of criminals." Channel NewsAsia, December 5, 2002.
The Singapore Parliament has passed an amendment to allow a DNA database of criminals to be created and maintained. Under the new law, police would be allowed to take DNA samples from those accused of a crime, convicted or who are in prison. MP's still have concerns with requiring DNA from the accused, and with courts drawing adverse inference if DNA samples are refused. The Home Affairs Minister said that these issues are under consideration.
18. "Man Gets 18 Years For Star Athlete's Death." The Richmond Times-Dispatch, December 6, 2002.
In Virginia, a man who was identified by DNA testing eight years after he raped a 13-year-old girl has been sentenced to life plus 220 years in prison for that and other crimes. He had escaped justice until March 2000, when the state DNA database connected him to the crime. He was in prison on unrelated charges. The databank also linked him to abduction, carjacking and two counts of rape that occurred in 1995.
19. "Murder: Man Is Held." Sunday Express, December 8, 2002.
In England, a man has been arrested in the murder of a 17-year-old student who was killed on New Year's Eve 1996. Police investigating the death confirmed that a man had been detained following checks made through the national DNA database.
20. "DNA Breakthroughs New tests have solved 55 old rape cases." Daily News (New York), December 8, 2002.
In New York, because of a 1996 state law requiring some felons to provide DNA samples, city cops have solved 55 rape cases that otherwise might have gone unsolved. In 2000, after the state got its DNA databank up and running, the NYPD began the Backlog Project, analyzing 17,000 untested rape kits that dated to the early 1980s and comparing the results to the database. Before that, sex assault kits were tested only when a suspect was arrested.
21. "CBI Links Convict's DNA To 23-Year-Old Murder." Rocky Mountain News (Denver, CO), December 6, 2002.
In Colorado, the state Bureau of Investigation has solved the rape and murder of a child more than 23 years ago in California through DNA a match on the DNA database. The suspect's DNA sample was collected during the last three years due to a sex offense conviction – Colorado requires DNA from all convicted felons. In February, the California police resubmitted DNA evidence to CODIS, and a match was made.
22. "Judge considering whether to order trial for man accused of rape." The Associated Press State & Local Wire, December 5, 2002.
In Oklahoma, a Tulsa County judge is considering whether to order a prisoner to stand trial for rape after DNA taken from the inmate allegedly tied him to the case. The man is currently serving time for six felony convictions, including rape, kidnapping and robbery. A forensic scientist testified that the prisoner cannot be excluded as the source of DNA linked to the rape. Testing excluded a man who already spent 14 years behind bars for the crime. Prosecutors believe the case is the first in the state that relies on a new law eliminating the statute of limitations in rape cases in which evidence linked to DNA is available.
23. "DNA tests ordered in '94 rape case." Detroit Free Press, December 10, 2002.
In Michigan, over the objections of a detective, a County judge ruled that evidence from a 1994 conviction for rape and robbery should be DNA tested. The judge said he wanted all the evidence tested, noting there was no reason not to take advantage of DNA testing that was not commonly used in Michigan at the time of the trial. The detective told the judge the testing, specifically on a pair of underwear, would be useless because the victim was not wearing it
24. "Admission of DNA leads to ineffective assistance claim." The Minnesota Lawyer (Minneapolis, MN), December 9, 2002.
In Minnesota, a court has ruled that where a defendant pled guilty to first-degree criminal sexual conduct in a case relying on a DNA sample that had been required as part of a sentence in an earlier case that had been reversed, the defendant was entitled to postconviction relief based on ineffective assistance of counsel. The court based this ruling in part on that fact that had defendant's counsel moved to suppress the DNA sample originally taken, prosecutors would not have had a DNA sample to match up with. Additionally, the requirement that the defendant register as a sex offender had been set aside, and the statute requiring registration as a sex offender and requiring the production of a DNA sample are virtually identical in language. The postconviction court concluded that because the DNA evidence had been obtained without authority, there was a reasonable probability that a

suppression motion would have been granted. Defense counsel argued that the defendant would be deprived of any meaningful remedy for the ineffectiveness of his counsel if the DNA evidence could be admitted against him. The mere removal of the DNA evidence from the database, after its use to convict him of an offense resulting in a 146-month prison sentence, would be meaningless. In granting the ineffective assistance of counsel motion, the court concluded that the DNA would have been suppressed if challenged, the defendant in all probability would not have pled guilty, and the defendant was prejudiced by the attorney's failure to move to suppress the DNA evidence.

25. "Va. Inmate Seeks DNA Evidence Left From 1979 Killings; Request Comes as Panel Eyes New Rules." The Washington Post, December 09, 2002.
In Virginia, a former death row inmate whose sentence was commuted to life in prison only days before his scheduled execution has asked the state to search for any biological evidence that remains from the 23-year-old case so he can seek DNA testing. The inmate did not have the right to seek DNA testing before the 2001 law which extended the statute of limitations for seeking post conviction relief when evidence was available for DNA testing. His attorneys said they are not even certain if biological evidence has been preserved.
26. "2nd DNA test frees inmate in rape case." Chicago Tribune, December 8, 2002.
In Illinois, a man who served 16 years of a life sentence for rape has been released from prison after a second DNA test indicated he did not commit the crime. He became the latest man to be exonerated by DNA testing. His conviction remains in place because the test results are classified as preliminary. Once they are official, the conviction can be reversed. Meanwhile, he is free on \$5,000 bond.
27. "Judge OKs DNA test in '79 slaying case." The Arkansas Democrat-Gazette, December 05, 2002.
In Arkansas, hair found on the body of a veterinarian murdered more than 20 years ago will undergo DNA testing to see if it belongs to the man's convicted killer, a judge has ruled. If the state crime laboratory is able to extract enough DNA to yield test results, the case would be the first in Arkansas to fully utilize a state law passed in 2001 allowing postconviction DNA testing.