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The April 26, 2002 DNA legislative and media summary 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

An all felons DNA database bill in Illinois continues to be supported by local law enforcement. Bills to allow collection of DNA through saliva samples are advancing in Colorado and Oklahoma. In California, a bill to allow "reasonable force" to collect DNA samples has cleared an important hurdle and is moving forward.

Cold hits were made in California and Ohio, and the DNA database was used to link crimes in Colorado and Pennsylvania to a military man. A bill to extend the statute of limitations when DNA is available has passed both chambers of the Oklahoma legislature. Cold case units using DNA to solve crimes were discussed in Oregon and California. Two suspects in California have been exonerated through DNA testing, and a clerical mistake has brought an audit to a Nevada lab after DNA samples were improperly labeled and a crime was attributed to the wrong person.

A new bill in Congress would standardize DNA evidence collection and expand funding for DNA analysis. Meanwhile, DNA and other crime lab backlogs made the news in New Mexico, Massachusetts, Indiana, Maryland (Baltimore) and Texas (Fort Worth). A local funding proposal would build a new local lab in Kansas.

Post conviction testing has confirmed the guilt of a Nevada man, and post conviction testing requests are being considered in Maine and Illinois. An Arizona survey shows support for better access to post conviction DNA testing, and a federal proposal to expand access to post conviction testing continues to gather supporters.

## STATE LEGISLATION

### Forensic DNA

1. Colorado HB 1420 – Appropriates funding for genetic testing of adult and juvenile offenders.

## NEWS ARTICLES

### Forensic DNA

1. "Panel OKs Bill to Let Prisons Use Force in DNA Testing." Los Angeles Times, April 24, 2002.  
In California, a compromise bill authorizing prison officers to forcibly extract DNA blood or saliva samples from murderers, rapists and other criminals who refuse to give it up voluntarily cleared a steep hurdle in the Senate. The legislation stalled when the Senate President Pro Tem -- a member of the Public Safety Committee, opposed it. The amended bill specifically allows the use of reasonable force (now defined in the legislation), require the videotaping of cases in which an inmate is removed from a cell by force, and direct prison supervisors to authorize use of force in writing before the DNA sample of blood is drawn or the mouth swabbed. About 16,000 eligible prisoners either have refused to give specimens or have not been asked
2. "Airman Held In Rapes." Wyoming Tribune-Herald, April 24, 2002.  
An airman stationed at F.E. Warren Air Force Base in Cheyenne is being held by authorities in connection with several sexual assaults and burglaries in Fort Collins, Colorado, and he also is being looked at in connection with a series of rapes and a murder in Philadelphia. The cases in Colorado have been linked through DNA both

to one another and also to the Philadelphia cases. Authorities are awaiting new DNA testing to link the man to the crimes.

3. "Panel approves centralized sex offender registry." The Associated Press State & Local Wire, April 23, 2002. In Colorado, a bill that originally would have expanded the state's all felons law to include probationers and parolees has been altered to instead allow authorities to take saliva samples instead of blood samples. The bill's sponsor said the tight state budget made the original proposal impossible.
4. "Maricopa County voters support DNA testing of death row inmates." The Associated Press State & Local Wire, April 23, 2002. A poll in Maricopa County, Arizona shows that voters support DNA testing of death row inmates to help determine whether they are innocent or guilty. The poll found that 84 percent would support such an initiative, and 11 percent would oppose it. The poll also found that 62 percent would support a moratorium on executions until the issues related to DNA testing have been studied.
5. "Possibility Of DNA 'Contamination' Examined." The Western Mail, April 23, 2002. In England, three judges being urged to overturn the murder conviction of a man who was hanged 40 years ago began exploring the possibility that his DNA was present on two exhibits from the case because of "contamination". Last year the man's body was exhumed and tests confirmed that it was his DNA on the exhibits. The lawyer for the convicted man argues that it is impossible to exclude the possibility of DNA being deposited by contamination.
6. "DNA Science Pushed to the Limit In Identifying the Dead of Sept. 11." The New York Times, April 22, 2002. In New York, nearly half of the first round of samples from the World Trade Center attack that have been tested at DNA labs have come back with incomplete profiles. In as many as 700 cases, the medical examiner's office has been unable to link a DNA profile that was isolated from a piece of remains with any of the profiles established based on the items supplied by the victim's families.
7. "CCA Establishes Its Jurisdiction Over Claims for DNA Testing." Texas Lawyer, April 22, 2002. In Texas, the Court of Criminal Appeals held that it does indeed have jurisdiction over DNA testing claims - despite arguments by the state to the contrary. In other words, a death row inmate whose request for DNA testing is denied has the right to appeal directly to the CCA. The court also ruled that newly discovered evidence presented in an application for a post-conviction writ of habeas corpus to support a claim of actual innocence must constitute "affirmative evidence" that the individual didn't commit the crime, the CCA ruled 8-1.
8. "Lab has plenty of cases, but not enough resources." The Associated Press State & Local Wire, April 21, 2002. In New Mexico, the state Crime Lab is falling behind on its testing and has a backlog of 150 cases. The lab, with just two DNA analysts, completed 170 tests out of 282 submissions last year. It has untested samples dating from 1999. "There's no way we could ever catch up," said director Susan Scholl. The lab is preparing to begin participating in CODIS. The participation was authorized in 1997, but there was not adequate funding. New Mexico requires all convicted felons to provide DNA, and has collected 20,000 samples.
9. "Families use DNA to sniff out mystery dog's identity." Chattanooga Times/Chattanooga Free Press, April 21, 2002. A dispute between two families over a wandering dog has been resolved through court-ordered DNA testing. Two residents of the same town believed a black Labrador retriever was their runaway pet returning home after a long absence. The families were able to get DNA samples from the dogs' parents.
10. "When Trail Goes Cold, Homicide Unit Turns Up Heat." Los Angeles Times, April 21, 2002. Article discusses the Los Angeles Police Department's cold case unit. Police and prosecutors believe there are 1,300 solvable cases in the system, including more than 300 sexually motivated crimes eligible for DNA analysis under a three-year state grant. The \$50-million "cold-hit program" covers the costs of examining DNA in sexually motivated cases. However, the LAPD and the Sheriff's Department crime labs are short on staff and overwhelmed by a backlog of thousands of unsolved cases. Between the two agencies, there are at least 3,700

untested blood and semen samples from rape cases alone. Many of them date to 1994.

11. "Crusader for DNA evidence gets her bill sponsored in Congress." The Associated Press State & Local Wire, April 20, 2002.  
A Virginia woman who became an advocate for rape victims and for the use of DNA evidence in identifying rapists now has her name on a bill in Congress that would provide funding for DNA laboratories. "The Debbie Smith Act," would provide funds for crime laboratories to catch up on large backlogs of evidence waiting DNA testing, and help standardize DNA evidence collection so it can be readily put into state and national databases. Smith's case was solved on a "cold hit" from the Virginia DNA database -- it was only the fourth cold hit in Virginia, a state that has since logged more than 700 cold hits.
12. "Police study methodology for solving 'cold cases'." The Associated Press State & Local Wire, April 20, 2002.  
In Oregon, detectives from around the state gathered to share strategies for cracking old cases of murder and other serious crime by using new DNA techniques and re-examining other forensic evidence. The U.S. Naval Criminal Investigative Service, the first federal agency in the country to have a so called "cold-case squad" of dedicated staff for old murder cases, organized and sponsored the three-day seminar together with the Portland Police Bureau.
13. "Backlog At State Crime Lab Delaying Truro Slay Case." The Boston Globe, April 20, 2002.  
In Massachusetts, the delayed investigation into the slaying of a fashion is being blamed on the cash-strapped Massachusetts crime lab which has not completed DNA testing. Cape Cod Assistant District Attorney said the snail-like pace of the state crime lab is an "absurdity." For the last several years, DNA testing capabilities have been so limited that each of the state's district attorneys can submit only one case a month.
14. "DNA links policeman's daughter to his and his wife's slayings." Fort Worth Star-Telegram, April 20, 2002.  
In Fort Worth, Texas, DNA has tied a woman to the killing of her father (a local policeman) and his wife. The DNA testing was performed by an outside laboratory because of the large quantity that needed to be tested and because the local crime lab analysts had a heavy caseload. The accused woman's attorney said he has not seen the DNA test results but will question any evidence preserved by the police crime lab. "There is a great lack of confidence in some of the employees and lab technicians at the Fort Worth crime lab," he said.
15. "County's infrastructure tax proposal gets mixed reviews." The Kansas City Star, April 20, 2002.  
In Johnson County, Kansas, a county advisory panel has voted to recommend to county commissioners a quarter-cent sales tax increase and a 2-mill property-tax increase to last for 10 years. The tax proposal would be placed on the August 6 ballot. Among other things, the property-tax increase would raise \$100 million for a county courthouse, communications center and crime lab.
16. "Man asks court for DNA test." Kennebec Journal (Augusta, ME), April 20, 2002.  
In Kennebec County, Maine, a man convicted of rape claims the victim framed him and that a DNA test could prove it. The man has asked the County Superior Court for a court order for DNA testing on evidence that was preserved at his request by the trial judge in 1997. After the attack, the victim was taken to the hospital but refused to be examined at that time. She returned to the same hospital several hours later and consented to an exam. Maine's law governing post-judgment conviction motions for DNA analysis was adopted in 2001.
17. "Justice delayed Why did it take so long to run DNA tests?" Sacramento Bee, April 20, 2002.  
Editorial questions why DNA testing, which exonerated two suspects of robbery and attempted murder, was not completed sooner. While still under suspicion, the men spent some time in jail, had their families pawn personal possessions to make bail, lost their jobs and were ostracized by their neighbors. "So, if a test could have exonerated the accused or confirmed their guilt, why wasn't it done sooner? The explanation is complicated. Sacramento's crime lab has a long backlog. Homicides take priority over a robbery, even one as brutal as this one. Sex crimes, where the DNA evidence is almost always conclusive, also have higher priority. Also, because the defendants were out on bail, defense attorneys did not push as hard as they could have for early testing. In hindsight, the prosecution should have run the tests on its own, before charges were filed and lives disrupted."

18. "Man wrongfully imprisoned for 15 years on rape charge sues for dlrs 75 million." AP Worldstream, April 19, 2002.  
In Oklahoma, a man who was imprisoned 15 years on a rape conviction then exonerated by DNA tests filed a \$75 million federal lawsuit alleging a police chemist conspired with a prosecutor to produce false evidence against him. A jury found the man guilty in 1986 based on the victim's mistaken identification of him and chemist Joyce Gilchrist's testimony that hair left by the rapist was "microscopically consistent" with the man's hair. Gilchrist, now retired, has been accused by the FBI of doing shoddy work and testifying beyond her expertise. Federal investigators say hair and fibers were misidentified in this case and others, prompting authorities to review hundreds of her cases.
19. "217 Back A House DNA Bill In Capital Case." The Boston Globe, April 19, 2002.  
In the US House of Representatives, the "Innocence Protection Act" has collected 217 signatures. The bill would provide grants to prosecutors for DNA testing in death-penalty cases, and would seek to make sure that suspects facing the death penalty have better legal representation. Despite increasing support, the bill has not had a hearing in the House Judiciary Committee in this Congress. The bill's sponsor said he would not approach the Republican leadership in the House to schedule hearings until he has 218 signatures, signifying enough support to pass it on the floor if it gets that far. A similar bill in the US Senate has 25 co sponsors, 35 short of the number needed to prevent its death by filibuster if it makes it to the floor.
20. "Police Forensics: DNA mix-up prompts audit at lab." Las Vegas Review-Journal (Las Vegas, NV), April 19, 2002.  
In Nevada, authorities are reviewing 270 DNA tests at the Las Vegas police forensics lab following the discovery of a clerical error that placed an innocent man in jail for nearly a year. The error occurred when the man's name was mistakenly assigned to a DNA profile of the man with whom he had been sharing a cell. While in the jail cell together, the other cellmate accused the man of raping him. Police took body fluids from both men and took them to the Las Vegas police forensics lab for profiling. The lab properly profiled the samples, but while entering the details of those DNA profiles into a computer, a lab technician accidentally switched the men's names. The DNA profiles were then sent to the DNA database and the mistakenly labeled DNA came back as a match with two unsolved sexual assaults of Las Vegas teens. Although the error appears to be a clerical mistake, police are reviewing the procedures surrounding all of its prior DNA testing to make sure there were no other mistakes.
21. "DNA database match leads to murder arrest." The Plain Dealer, April 19, 2002.  
In Ohio, Cleveland homicide detectives have identified a suspect using the DNA database for the first time. The man strangled a woman in her home earlier this year, and DNA from the crime scene was matched against his profile which had been entered in the database due to a 1987 aggravated burglary. The man also had previous convictions for burglary and grand theft.
22. "Murder victim photo bill OK'd." Tulsa World, April 19, 2002.  
In Oklahoma, the State House has passed a bill that would allow for saliva samples to be used by the Oklahoma State Bureau of Investigation's DNA Offender Database. Current law allows only blood samples to be used. The bill, would also add two crimes for which DNA samples can be collected for the database. The crimes include bestiality and prostitution by anyone who knew they were HIV infected.
23. "DNA tests ordered in '83 slaying on I-55." Chicago Tribune, April 19, 2002.  
In Illinois, The state Supreme Court has given a notorious convicted murderer the right to have evidence from his trial tested for a DNA match. The man's conviction was based largely on the identification of him by the victim's girlfriend, who was raped in the same attack, the court said. The man claims DNA testing of evidence taken in a rape kit would prove his innocence.
24. "Police may turn to private lab to process rape case." The Associated Press State & Local Wire, April 18, 2002.  
In Indiana, investigators may send DNA evidence in a rape case involving several University of Notre Dame football players to a private laboratory due to a months-long backlog at an Indiana State Police lab. State police have been requesting additional funding to handle their huge backlog. The number of backlogged cases statewide was 5,649 on March 1. DNA analysis of blood and other bodily substances accounted for 729 of the

backlogged cases.

25. "Police break DNA machine with overuse." The Baltimore Sun, April 18, 2002.  
Baltimore police were unable to run DNA tests on evidence for three weeks recently after an \$80,000 machine broke down - delaying analysis in about 20 cases. The problem stemmed from overuse of the department's 310 Genetic Analyzer, causing the machine's lasers to burn out in the middle of last month. The breakdown highlights the need for more DNA equipment, police officials said, especially as the department begins to analyze hundreds of cold cases during the next year. "I definitely need another one," said the director of the city police crime lab. "There's an urgency to get these things done. We're running it all the time." The city has about 5,100 dormant cases (including 800 homicides) dating to the late 1980s that have evidence that might contain DNA.
26. "DNA test an issue in assault of girl." Milwaukee Journal-Sentinel, April 18, 2002.  
In Wisconsin, a legal dispute has erupted over whether the prosecutor's office or the public defender's office should pay for a DNA test to determine paternity of the aborted fetal material of a 10-year-old girl who is the victim in a sexual assault case. The judge initially ordered the district attorney's office pay for the test but backed off when the office questioned whether he had the authority to do so. The judge then agreed to check into whether the public defender's office would pay for the test.
27. "DNA evidence leads to arrest in rape." The San Francisco Chronicle, April 18, 2002.  
In California, San Francisco police have made their first two arrests in a 1995 rape case as part of a program to clear unsolved sexual assault and murder cases. Investigators made a "cold hit" on the DNA database when genetic evidence from the 1995 rape of a prostitute in San Francisco was matched to the DNA profile of an ex-convict. The man had been arrested for a similar sexual assault in 1996, pleaded guilty to sexual battery and provided a DNA sample when he was sent to prison. There was no genetic information from the man's co-defendant in that case, but the victim identified him as a suspect. Authorities have identified about 400 cases in San Francisco that DNA evidence may help solve. The San Francisco Police Department is funding the investigation in part with its share of a \$50 million grant being used by departments around the state to solve old rapes and rape-homicides. The typical statute of limitations for a rape case is six years, but prosecutors were able to file charges against the two men because a new state law extends time limits in cases where reliable DNA evidence exists.
28. "Nevada Supreme Court rejects appeal in rape case." The Associated Press State & Local Wire, April 17, 2002.  
The Nevada Supreme Court has rejected an appeal based on arguments that authorities mishandled and lost DNA evidence a state prisoner says could have cleared him in a rape case. The man filed the petition more than three years ago, charging that cigarette butts from the crime scene were missing from the evidence held by the Washoe County sheriff's department. He maintained new DNA testing of those butts could prove someone else was at the crime scene. In the ruling, the justices said that the man didn't claim that DNA testing of the cigarette filters might have value "until well after the filters were discovered missing in November of 1995, when testing was no longer possible." The opinion says Klein failed to show he was prejudiced by disappearance of the filters and failed to show bad faith on the part of the state. Justices said even if the cigarette filter showed a different DNA signature, the man failed to show that the verdict would have been different.
29. "House approves cut in Medicaid program for children's care." The Daily Oklahoman, April 17, 2002.  
In Oklahoma, the State House has passed Senate Bill 1428, which would eliminate the statute of limitations for prosecuting anyone suspected of committing rape, forcible sodomy, lewd molestation of a child or sexual abuse of a child as long as DNA evidence had been collected. Under the bill, the evidence has to be collected within seven years of the crime.
30. "DNA confirms guilt in '89 rape." Las Vegas Review-Journal, April 17, 2002.  
In a Nevada post conviction DNA testing case, new DNA tests on crime scene evidence for a man who was convicted to four life sentences for burglary, robbery, sexual assault and attempted murder has only further indicated his guilt. The Innocence Project had been deeply involved in this case. A Las Vegas defense attorney who has been working in conjunction with the Innocence Project said that although the DNA testing appears to match Lee's DNA profile, the effort served a purpose. "We did not know, and that is why we tested."

31. "Bill would require DNA samples from felons." The State Journal-Register (Springfield, IL), April 15, 2002. In Illinois, the law enforcement community is strongly supporting a bill to expand the state DNA database to include all convicted felons. The Sangamon County Sheriff noted that in 2001, more than 13,000 people were booked into the county jail. Seventy percent had been there before, he said. "The same people are committing crimes over and over again," he said. DNA is "a huge tool for us," he said. "It's as revolutionary as fingerprints were at the turn of the century. DNA's even better." The legislation would force all convicted felons in Illinois to give samples within a month or two of conviction. The Illinois database currently contains 19,000 samples, and the proposal would expand the database five-fold in the first year alone. About 100,000 felony convictions take place in Illinois each year.

#### Genetic Privacy / Research

32. "Coalition Battles Bill To Ban Cloning." The Boston Globe, April 22, 2002. Major universities, biotechnology companies, and scientists are making a fervent case to Congress against pending legislation that would ban human cloning for any purpose and outlaw a basic type of biomedical research.

#### Paternity

33. "DNA doesn't define 'dad'." San Antonio Express News, April 21, 2002. In 1999, a Texas judge ruled that DNA tests inadmissible and ordered the "father" to pay \$1,000 a month in child support. The state court's decision has been upheld by higher courts, and which the Texas Supreme Court refused to consider the case last month.
34. "Orissa Orders DNA Test To Settle Child 'S Parentage." Indian Express, April 20, 2002. In India, the parentage of a three-year-old boy whose mother has been ostracized by her village for bearing a child outside marriage will now be settled by DNA tests. The woman has said that the father had sex with her after promising to marry her. When she became pregnant, he married her and wanted abortion. When she refused, she refused to take her responsibility and denied having any sexual relationship with her, the complaint said.