

The September 20, 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

Federal legislation reauthorizing grants for state and local laboratories to analyze DNA has passed the Senate and is headed for the House (S. 2513). Utah has nearly completed collection of DNA from all inmates, as required under a new law, and expansion of South Dakota's database is a campaign issue in the Attorney General's race. The Governor of California signed legislation authorizing the forcible extraction of DNA from prisoners.

Pittsburgh's County Council is holding hearings on the local backlog problem, and Michigan will use a \$1.4 million federal grant to assist with a backlog of 26,000 DNA cases. Missouri will begin construction in 2003 on a \$7.5 million laboratory.

DNA databases identified suspects through cold hits in Wisconsin (rape), California (rape), and Arkansas (serial rapes). In Florida, prosecutors used DNA to link two suspects to 12 residential burglaries. Oklahoma's new law extending the statute of limitations for DNA cases has allowed a suspect in a 15 year old rape case to be charged.

A post conviction testing case in Illinois has confirmed the inmate's guilt, and 17 inmates in Delaware are seeking new DNA tests. A recent Texas court decision has limited the post conviction testing eligibility. 30 state Attorney Generals have signed a letter citing concerns with the Innocence Protection Act being considered in Congress.

In international news ... In England, the Court of Appeals ruled that it is in the best interest of public safety to allow police to keep DNA samples and fingerprints taken from suspects who were prosecuted but never convicted. In a precedent setting ruling in Israel, a district court convicted a man on rape charges solely on the basis of DNA testing. An Australian state scored its first conviction under the state's new DNA laws under which police take samples from prisoners, and New Zealand is debating an expansion of its DNA database.

STATE LEGISLATION

Genetic Privacy

1. Proposed legislation in New Jersey would make it unlawful for an employer to discriminate in hiring based on genetic information, (among other things). In addition, it would make it unlawful for a prospective employer to discriminate because an applicant refused to submit to or make available the results of genetic tests.

NEWS ARTICLES

Forensic DNA

1. "DNA bill encroaches on states." The Atlanta Journal and Constitution, September 17, 2002. 30 state attorneys general who signed a letter to the chairman and ranking member of the Senate Judiciary Committee expressing concern over the proposed Innocents Protection Act.

2. "DNA databank leads to arrest in assault." The Associated Press State & Local Wire, September 17, 2002.
Wisconsin's DNA database has produced a suspect in a sexual assault case. Police said they had no reason until several days ago to tie a man to the sexual assault of a woman. The 38-year-old man has a DNA sample on file with the state's database because he is a convicted sex offender. He is now suspected of being the man who broke into the woman's home through a basement window May 17 and assaulted her when she returned home from working as a bartender. Investigators sent the glove to the state crime lab following the assault, but it wasn't until late last week that technicians found what they believed to be a DNA match.
3. "Blood Stains Are Key In Trial." The Augusta Chronicle, September 17, 2002. In Georgia, bloodstains left on a washcloth nearly 8 years ago could lead to the conviction of a 29 year old man on trial this week. An Assistant District Attorney told the jury that the defendant made one crucial mistake when he killed his 23-year-old neighbor in October 1994. "He cut his own finger," she said. The defendant's attorney, however, told the jury the DNA link could be explained because his client had suffered a nosebleed in the victim's home.
4. "Nabbed By A Cigarette." The Express, September 17, 2002.
A burglar identified from DNA he left on a cigarette end was jailed for four years yesterday. The defendant, 28, had a smoke after breaking into a house in Swansea, South Wales. His discarded cigarette end was DNA matched to his genetic profile.
5. "Trial Judge Lacked Jurisdiction to Order DNA Testing." Texas Lawyer, September 16, 2003.
In Texas last week, the Court of Criminal Appeals ruled that a trial judge didn't have jurisdiction to order DNA testing for a death-row inmate who failed to meet state law requirements for the testing but was willing to pay for the tests. The court held in Texas v. Patrick that a judge's jurisdiction to order DNA testing is limited by Chapter 64 of the Code of Criminal Procedure, a law enacted by the Legislature in 2001 to give inmates access to state-paid DNA tests. But a South Texas College of Law professor who teaches criminal law says the CCA's decision is correct. He says a court's jurisdiction flows from a constitutional provision or a statute. If the law doesn't allow for post-conviction DNA testing except under Chapter 64, the judge can't order it, he says.
6. "DNA laws nab first win." The Australian, September 13, 2002.
WEST Australian police yesterday scored their first conviction under the state's new DNA laws. A juvenile pleaded guilty to a serious sexual assault charge, after a compulsory DNA sample linked him to the crime. The conviction came just hours after police revealed they had fresh leads on 160 unsolved crimes, following the processing of DNA samples from 782 prisoners. It matches the experience from overseas and other Australian states which already take DNA samples from prisoners. West Australian police began taking samples from the state's prison population two months ago, and have already captured 2250 swabs. Of the 782 that have been processed, 15 of the samples have been linked to major crimes, including sex offences, robberies and murders.
7. "Police will be allowed to keep DNA of the innocent." Daily Mail (London), September 13, 2002.
In England the Court of Appeal ruled that police can keep DNA samples and fingerprints taken from suspects who were prosecuted but never convicted. The Court said the practice complied with the European Convention on Human Rights. It was in the public interest for police to have the largest possible database in their fight against crime. The ruling was on appeals from a 12-year-old boy arrested for attempted robbery and later acquitted, and a suspect who was arrested on harassment charges which were dropped when his partner reconciled with him. The court ruled: 'So far as the prevention and detection of crime is concerned, it is obvious that the larger the databank of fingerprints and DNA samples available to the police, the greater the value of the databank will be in preventing crime and detecting those responsible for crime.' If everyone was required to provide the information it would make a 'dramatic contribution' to the detection of crime but Parliament had not allowed this blanket approach, the court added.

8. "DNA Tests Help Nab Couple Suspected In 12 Home Burglaries." Sun Sentinel (Fort Lauderdale, FL), September 13, 2002.
In Florida prosecutors were able to use DNA evidence to link a pair of suspects to 12 residential burglaries when one of the perpetrators cut herself while smashing a glass door to gain entry.
9. "Collection of DNA from inmates almost complete." The Associated Press State & Local Wire, September 12, 2002.
In Utah, statewide collection of DNA samples from its 5,400 inmates is almost complete. The collection of DNA from 11,000 residents on probation or parole also continues. A law enacted by the Legislature last year requires that DNA be taken from all convicted felons, with the genetic material to be entered into a national database. The samples are sent to the state crime lab, which will ship them off to a private laboratory for analysis when the federal government decides which contract laboratory states will use. That will happen later this year or in early 2003, said the state lab's deputy director. The state crime lab is hoping more funding will be available so it can hire workers to review and evaluate the data. The inmates and parolees have to pay a \$75 fee for the swabbing of their mouths.
10. "DNA Tests Requested In Virginia Death-Row Case." The Boston Globe, September 12, 2002.
In Virginia, inmate-aid groups are requesting more DNA testing that might be able to show whether a convicted killer executed a decade ago was, in fact, guilty. A lawyer representing the Globe, The Washington Post, and other newspapers, and another lawyer representing Centurion Ministries Inc., the inmate-aid group, told the justices of the state supreme court that allowing DNA testing of preserved semen samples from the Roger Keith Coleman case would give the public a rare and important opportunity to test the accuracy of the death penalty system.
11. "Jury Believes DNA Evidence, Convicts Moneta Man Charged With Shooting Black Bear ." Roanoke Times and World News, September 12, 2002.
In Virginia, a farmer who said he killed a black bear last year to protect his livestock was convicted of illegally shooting the bear. DNA lab techniques yielded evidence that the prosecution used to show the bear was more likely killed on a neighboring farm rather than where the farmer told authorities he shot the 190-pound bear Nov. 7. The man was fined \$500, had two hunting rifles permanently confiscated and must pay a \$1,500 cost for replacement of the bear and \$300 in court costs for the jury trial, which he requested.
12. "Regina RCMP forensics lab off gov't chopping block." The Star Phoenix (Saskatoon), September 12, 2002.
In Canada, contrary to speculation that Regina's RCMP forensics laboratory is slated for closure, the Solicitor General said this week that the facility is set to expand and enjoy an elevated status as a "national firearms forensics centre." "The final result is that the lab will be there," he said. He pointed to the increase in full-time employees from 33 to 35 -- and the consequent expansion of the lab's DNA section -- as a sign that "after about a year and a half of negotiating, we've come up with an even better situation for Regina than was previously there.
13. "Burglary law debated." Waikato Times (Hamilton), September 12, 2002.
In New Zealand, Members of Parliament have begun debating legislation allowing compulsory DNA testing of burglary suspects which the National party claimed the Government had announced it would do seven times to gain publicity. The Criminal Investigations (Bodily Samples) Amendment Bill extends compulsory DNA testing to serious offenders currently in prison who were convicted before a 1996 law change allowing police use of DNA testing, and gives police the power to obtain DNA samples from burglary suspects.
14. "Convict's DNA adds up to life term." The Arkansas Democrat-Gazette, September 11, 2002.
In Arkansas, a 1997 state law requiring sexual and violent criminals to give a DNA sample to the state's DNA data bank helped send a man to prison for life without the possibility of parole. The suspect was required to give a sample after being convicted of attempted rape on May 25, 2000. While he was incarcerated, his DNA was matched to three unsolved rapes -- two of which happened less than a month before the attempted rape. The third happened in 1999. A May 20, 2000, rape that

the suspect was linked to through DNA was set to go to trial, but his attorney said his client would probably plead guilty to that attack as well.

15. "Jerusalem court uses DNA testing to convict rapist." The Jerusalem Post, September 11, 2002. In a precedent-setting ruling, the Jerusalem District Court convicted a man on rape charges solely on the basis of DNA testing. Doctors at Shaare Zedek Hospital in Jerusalem took fluid samples from the victim's after the rape. The woman later discovered she was pregnant and had an abortion. Doctors took DNA samples from the fetus as well. The woman was unable to identify the rapist and the case was left unsolved. Two years later, however, police picked up the suspect in connection with another incident, and took samples of his spit. A police biologist who had examined the genetic samples of the rape victim and her fetus, noticed similarities. Judges ruled that "DNA evidence is sufficient on its own to serve as certain incriminating evidence and does not require backup evidence."
16. "HERA designs \$7.5 million forensic lab for city police." St. Louis Business Journal, August 23, 2002. In Missouri, construction is expected to start in early 2003 on a \$7.5 million, 28,500-square-foot laboratory. It's expected to open in spring 2004. The lab will provide the facilities for the police department to re-examine older unsolved crimes using DNA technology that might not have been available at the time of the original crime. Other projects being developed by the same company include a \$162 million, 322,000-square-foot DNA processing facility for the chief medical examiner in New York; a \$120 million, 460,495-square-foot headquarters lab for the FBI in Quantico, Va.; a \$96 million, 326,162-square-foot combined facility for the Los Angeles police and sheriff departments; a \$19.8 million, 62,000-square-foot medical examiners' office and parking structure for Maricopa County in Phoenix; and a \$14 million \$16 million, 80,000-square-foot crime lab for the city of Mesa, Ariz.
17. "Grant to help the state tackle its DNA backlog." Detroit Free Press, September 17, 2002. The Michigan State Police has a backlog of 26,000 DNA cases waiting to be processed and entered into a crime-solving database that could provide the breaks needed in murder and rape cases across the state. A \$1.4-million federal grant announced Monday will help process about 1,200 of them -- but a huge backlog remains, with some cases dating back 15 to 20 years. "The predicament we're in is national in scope," said the commanding officer of the State Police Forensic Science Division in Lansing. "No one anticipated the value that DNA analysis was going to have in identifying criminals."
18. "Allegheny County Council Hearing on forensics lab." Pittsburgh Post-Gazette, September 17, 2002. In Pennsylvania, the Pittsburgh County Council will hold a public hearing Oct. 7 to discuss chronic backlogs in the county's forensic laboratory. The Forensic Lab Deputy Director told council's public safety committee that the backlogs are the result of staff shortages and high turnover caused by low pay. He said 80 percent of his employees have less than 10 years of experience. He said most stay one to three years before moving on to more lucrative private-sector jobs. The average salary of a county lab employee is \$33,000. In the private sector it is \$44,000, he said. The lab is facing a backlog of 680 drug cases, 700 firearms cases, 250 fingerprinting cases, and 300 serology and cases.
19. "Davis Signs 2 Key Measures Against Crime." Los Angeles Times, September 18, 2002. In California, the Governor signed legislation to authorize the forcible extraction of DNA specimens from prisoners. "I guarantee you, when we have those samples, a host of crimes will be solved," Davis said as he signed the DNA bill. "It will bring peace of mind and closure to victims." The DNA bill (SB 1242) authorizes county jail and state prison authorities to use "reasonable force" to extract DNA samples from criminals who refuse to give them up voluntarily. Currently, officials must get a court order at a cost of about \$15,000 each to forcibly extract a specimen. The Department of Corrections said there are about 400 such felons in state prisons, down from about 900 earlier in the year. It is a misdemeanor for a prisoner to refuse to provide a DNA sample from blood and saliva as well as a thumb and palm print. But a misdemeanor conviction has virtually no impact on a convict already serving a long prison sentence, officials say. In the last four years, officials say, the state's DNA databank has connected 83 cases of unsolved violent crimes to felons who served time behind bars.

20. "Long proposes more DNA testing." The Associated Press State & Local Wire, September 17, 2002. Expanding DNA testing to all felony cases would help reduce crime in South Dakota, Republican attorney general candidate Larry Long said. South Dakota now tests DNA only in cases involving sex crimes or violent crimes. Democratic opponent Ron Volesky said it's an idea worth studying and one that may be worthwhile if it's cost effective. The state crime lab, by the end of the month, will be able to meet the judicial requirements to be able to present DNA evidence in South Dakota courts.
21. "Congressional bill would give boost to rape victim assistance program." The Associated Press State & Local Wire, September 17, 2002.
A New York state program that treats sexual assault victims and gathers evidence against their attackers would be expanded under a bill that has been approved by the U.S. Senate. The bill would pay the money over five years to the Sexual Assault Forensic Examiner program, or SAFE, which operates in 57 locations in 35 counties. The money could be used to expand existing SAFE offices and set up new ones. The bill, sponsored Sen. Joseph Biden, D-Del., passed the Senate and now goes to the House for consideration. The bill also includes money to speed up testing of hundreds of thousands of DNA samples from unsolved rape cases in hopes of reducing a national backlog. The backlog is particularly severe in New York City.
22. "Senate bill would speed DNA testing in rape cases." The Associated Press State & Local Wire, September 14, 2002.
A plan to speed testing of hundreds of thousands of DNA samples from unsolved rape cases to reduce a national backlog of untested evidence is headed for the House after the Senate passed it without dissent. The DNA samples, which could identify or clear suspects in hundreds of thousands of sexual assault cases, now sit untouched at police laboratories across the country because of a lack of money. It would authorize \$335 million for state and local laboratories to analyze evidence in up to 500,000 untested rape kits, as well as provide funding for offender DNA samples.
23. "DNA key factor in convicting suspect in '93 La Jolla rape." The San Diego Union-Tribune, September 14, 2002.
In California, police have linked the perpetrator of a rape that happened almost 10 years ago to an indecent exposure incident near a school in Tucson, Arizona. Police had nothing to positively identify rapist other than DNA from semen he left on the victim's skirt and skin. Police in Arizona recently responded to an indecent exposure call near a school bus stop. From a driveway, they collected semen and the DNA profile was matched to the La Jolla rapist through the DNA database.
24. "Inmate charged in 1987 rape under new DNA evidence law." The Daily Oklahoman, September 11, 2002.
In Oklahoma, a suspect in a 15-year-old rape case was charged under Oklahoma's new law that extends the statute of limitations when DNA evidence is available. The County District Attorney said the suspect is the first person charged since the Legislature passed the law that went into effect Sept. 1. It was DNA evidence that earlier this year freed an inmate who had been convicted of the rape before DNA testing was available. The inmate was arrested and convicted of the rape in 1989. He was exonerated in February on the basis of the DNA evidence. A short time later, the Legislature passed the law that extended the statute of limitations in cases involving DNA evidence. "
25. "Seventeen convicted criminals petition for DNA tests." The Associated Press State & Local Wire, September 17, 2002.
In Delaware, the Public Defender's Office is asking state courts to reopen the cases of 17 people to examine evidence using DNA testing that wasn't available when they were convicted. The petitions were filed under a law passed in 2000 by the General Assembly that allowed the public two years to seek Superior Court approval to reopen cases. The deadline was Sept. 1. Prosecutors are working to respond to the petitions and judges will soon decide whether to allow DNA tests.
26. "DNA test ties man to 1986 sex assault." Chicago Tribune, September 13, 2002.

In Illinois, DNA testing performed on behalf of a Chicago man convicted of a 1986 rape returned positive results, prosecutors said, leading a judge to drop further proceedings. The man, 42, was convicted of the assault 15 years ago and sentenced to 60 years in prison. Last year, he requested that DNA material collected from the 18-year-old victim's jeans be tested. A Cook County Assistant State's Attorney said the results were considered a statistical match for the man, leading the state to move for the dismissal of further proceedings.

Genetic Privacy

27. "Dutch policy guidelines, budget reflect slain politician's anti-immigration views." Associated Press Worldstream, September 17, 2002.

In The Hague, the new Dutch government released budget and policy guidelines that toughened immigration controls and left behind more liberal, tolerant policies that governed the Netherlands over the past few decades. The new center-right government plans to reduce immigration by 25 percent in its first year; make entry into the country without a visa a criminal offense; imprison would-be immigrants who have been rejected while they await deportation; take DNA fingerprints of asylum-seekers who arrive without a valid passport; and expel any foreigner- with or without a visa- who commits a crime while in the Netherlands.

28. "Hundreds face being retested for genetic disorders after Dundee hospital blunder." Sunday Herald, September 16, 2002.

In Australia, a Dundee hospital laboratory that examines blood for genetic disorders such as Huntington's Disease and cystic fibrosis may have produced the wrong tests on hundreds of patients over a three-year period. Over the next three months, 1000 samples from patients taken between 1995 and 1997 will be retested. The error was only spotted after one patient developed an inherited and progressively degenerative brain disorder having been told, following a genetic test in 1996, that they were "not at risk".

29. "Genetic Privacy: House Subcommittee Hears Testimony On; Potential Law." American Health Line, September 13, 2002.

A US House of Representatives Subcommittee heard testimony on legislation that would prevent genetic discrimination against people in the United States by their employers and insurers. Privacy advocates told the House Judiciary Subcommittee on the Constitution that employers could use genetic information as the basis for hiring, firing or promoting a worker, while insurance companies might use such information to determine charges for specific services or to deny coverage for particular illnesses.

30. "All Britons should give DNA profiles." Daily Mail (London), September 13, 2002.

A leading British scientist has said that every Briton should be compelled to give their genetic information to a national database. Professor Sir Alec Jeffreys, who pioneered DNA fingerprinting, said it would be a great help to police investigations and better than the present 'discriminatory' system. Britain's GBP 187million criminal DNA database holds the genetic profiles of 1.5million people and is scheduled to have three million by April 2004. 'But recently it was extended to allow the inclusion of people who had been cleared of any criminal offence, and at that point I become very uncomfortable,' said Sir Alec. The Court ruled that the keeping of DNA samples and fingerprints taken from unconvicted people did breach their right to respect for private life, but it was justified by the legitimate aim of preventing crime.

Paternity

31. "Bills could end child support payments from men who aren't biological dads." The Associated Press State & Local Wire, September 16, 2002.

In Michigan, A package of bills sitting in a state Senate committee could free men from paying child support for children they did not father. The proposals also would penalize a mother who deceives a man into believing he is the biological father of her child. A dentist is pushing legislators to vote the

bills - passed last year by the state House - into law. Shortly after the end of his 25-year marriage, DNA tests proved he was not the father of the fourth child born to he and his wife. He presented the DNA evidence to a judge, but was told to continue paying child support, which amounts to more than \$18,000 a year. Currently, when a man who is not married signs paternity papers, he waives his right to a DNA test. If the man has any doubts, he should raise them before signing, not years later.

Industry News

32. Biotech companies are using DNA in the war on terrorism. Machines are being made that can search for snippets of DNA common to certain bioweapons, thus detecting minuscule quantities of pathogens leached into the air around a bioweapons factory. These DNA scanners can also be engineered to detect designer pathogens altered to be more deadly. San Diego-based Nanogen is adapting its electronic DNA chips, currently used in medical diagnostics and pharmaceutical research, for use in a machine capable of performing real-time surveillance of dozens of different biowarfare pathogens.
33. In California, a new method to make very small patterns of DNA molecules on surfaces has been developed by chemists at the University of California, Davis, and Wayne State University, Detroit. The technique could allow faster and more powerful devices for DNA sequencing, biological sensors and disease diagnosis. The technique, called nanografting, can be used to make patterns of DNA that are up to a thousand times smaller than those in commercially available microarrays