

DNA RESOURCE REPORT FEBRUARY 14, 2003

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The February 14, 2003 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.

SUMMARY

Bills to expand offender DNA databases were introduced in Connecticut, Louisiana, North Carolina, and Vermont – all felons DNA database bills moved ahead in South Dakota and Mississippi. A possible federal proposal would create a DNA database for terrorists.

Bills to extend the statute of limitations were introduced in New Hampshire and New Mexico. A North Carolina bill provides funding for backlogged rape kits. Cold hits identified suspects in California (1986 murder; 1979 murder) and Indiana (murder). Budget cuts to crime labs and DNA programs are possible in Utah, Kentucky and Washington. Extra DNA testing money is being considered in Los Angeles and North Carolina.

DNA tests on blood taken for DUI tests have revealed a possible case of identity theft in Pennsylvania, and DNA from gold teeth lost at a crime scene identified a bank robber. Increasing numbers of consensual sex defenses may be a by-product of DNA evidence.

Post conviction DNA testing bills were introduced in Maryland, Massachusetts, Nevada, New Hampshire, Tennessee and Washington, and a bill in Oklahoma has moved forward. Post conviction DNA motions made headlines in Idaho and Pennsylvania, and a Missouri prosecutor is proposing legislation to deter “frivolous” requests.

In international news...A challenge to England’s DNA database will be heard in the highest court. In Australia some states are considering amending double jeopardy rules to allow additional trials if new evidence (such as DNA) is found. Canadian men are volunteering DNA in the hunt for a sex offender, and in another investigation, a volunteered DNA sample has led to a suspect. Spain may conduct DNA tests on exhumations from its civil war.

STATE LEGISLATION

Forensic DNA

1. Connecticut SB 868 – Expands offender DNA database to include murder, manslaughter, kidnapping and certain felonious assaults, burglaries and robberies.
2. Louisiana HB 80 – Expands offender DNA database to include all convicted felons, and felony arrests. Retroactive.
3. Maryland HB 575 – Clarifies guidance for court review of post conviction DNA testing issues.

4. Massachusetts HB 750 – Permits greater access to post conviction DNA testing.
5. Michigan HB 4156 – For disposal of suspect DNA samples, the lab must provide a copy of the written record of disposal within 30 days after disposal.
6. Nevada AB 16 -- Permits greater access to post conviction DNA testing for death row inmates.
7. Nevada AB 55 – Volunteered or court ordered DNA samples from suspects may be kept on the database, at the cost of the investigating county.
8. New Hampshire HB 640 -- Permits a person to petition the court for post-conviction DNA testing of biological material under certain circumstances.
9. New Hampshire HB 749 – In cases where a criminal is identified through a DNA match, the statute of limitations is extended to one year after discovery of a match.
10. New Hampshire SB 211 – Provides that only the criminal record for the specific case which has been dismissed shall be expunged from the DNA database.
11. New Mexico HB 547 & SB 470 – Extends the statute of limitations for criminal sexual penetration when a DNA profile exists but has not been matched to a suspect.
12. North Carolina HB 7 – Expands offender DNA database to include all convicted felons, and requires DNA samples upon arrest for violent felonies.
13. North Carolina SB 11 -- Expands offender DNA database to include all convicted felons. Retroactive.
14. North Carolina SB 13 -- Appropriates funds to perform DNA analysis on untested rape kits and other evidence.
15. Tennessee HB 409 & SB 441 – In death penalty cases, the district attorney general must have DNA testing performed on all items of physical evidence which could be relevant to determining the guilt or innocence.
16. Vermont HB 133 – Expands offender DNA database to include all convicted felons. Retroactive to include probation and parole.
17. Washington SB 5723 – Requires requests for post conviction DNA testing to be submitted to the public defenders office instead of the prosecutor.

Genetic Privacy / Research

18. Arkansas SB 185 – Prohibits human cloning.
19. California AB 267 – Removes the prohibition on human cloning.
20. California SB 133 – Redefines the definition of human cloning. Removes a prohibition on engaging in human reproductive cloning.
21. Maryland HB 792 – For health insurance, genetic information may not be treated as preexisting condition in the absence of a diagnosis.
22. Michigan HB 4167 -- For health insurance, genetic information may not be treated as preexisting condition in the absence of a diagnosis.
23. New York AB 3295 -- Cloning Prohibition And Research Protection Act.

24. Pennsylvania SB 171 -- Prohibits discrimination in health insurance on the basis of genetic information or a request for genetic services.
25. Rhode Island SB 353 -- Provides guidelines regarding the release and disclosure of genetic information by insurance companies.
26. New York AB 2850 – Allows posthumous genetic paternity testing under certain conditions.
27. Wisconsin AB 17 -- Regardless of a child's best interest, a judge or court commissioner may not refuse to order genetic tests and may not dismiss a paternity action if the man who is presumed to be the father of the child because he is the mother's husband desires to rebut the presumption that he is the father.

NEWS ARTICLES

1. "Parolee arrested in girl's 1986 slaying." Copley News Service, February 12, 2003.
In California, a cold hit on the national DNA database has helped police to identify a suspect in a 1986 rape and murder of a child. The man had been released from prison recently in California for a rape he committed four years ago, and had moved to Indiana. The man has a lengthy history of sexual assaults dating to 1981.
2. "Patriot Act: The Sequel." The Washington Post, February 12, 2003.
A "sequel" to the 2001 USA Patriot Act that has been drafted by the US Justice Department proposes a DNA database of terrorists and suspected terrorists.
3. "Archaeologists find remains thought to be Jamestown leader, discoverer of Cape Cod." Associated Press Worldstream, February 11, 2003.
Archaeologists believe they may have discovered the skeleton of the man considered the main force behind the first permanent English settlement in America. The skeleton of Capt. Bartholomew Gosnold was said to be "remarkably" well preserved. The Association for the Preservation of Virginia Antiquities, which began excavating the fort area in 1994, is arranging DNA tests to compare the remains to Gosnold's descendants.
4. "Police designate investigators for unsolved killings." The Associated Press State & Local Wire, February 11, 2003.
In North Carolina, the Charlotte-Mecklenburg Police Department is assigning a six-member cold case squad to investigate some of its more than 360 unsolved homicide cases on file. A newspaper recently reported that the unsolved crimes span nearly 40 years and relatively few have been actively investigated in recent years. Some cases may have DNA evidence that can now be tested with new technology. In others, witnesses may be more willing to come forward now that time has passed.
5. "Prosecutor wants charges dropped in DUI arrest." The Associated Press State & Local Wire, February 11, 2003.
In Pennsylvania, a prosecutor has asked a judge to dismiss charges against a man who underwent DNA testing after he said his identity was stolen and used by someone to avoid a drunken driving charge. The man maintained that someone took his car without his knowledge and gave his name to police after being stopped for driving erratically. He paid \$600 for a DNA test at a private laboratory which did not match the DNA of the blood sample taken for blood-alcohol testing.
6. "Appellate court denies new trial in Blackfoot killing." The Associated Press State & Local Wire, February 11, 2003.
In Idaho, a man paroled after spending 22 years in prison for a 1977 murder has been denied a new trial by the Idaho Court of Appeals. The man believed that new DNA evidence would convince a jury to acquit him. DNA tests conducted on him in 1997 did not match the DNA of semen samples taken from the victim's body. The courts have ruled that DNA testing only proves that the man did not sexually assault the victim, but does not disprove his guilt in the murder.
7. "Beattie backs jeopardy law reform." The Australian, February 11, 2003.
In Australia, the government of New South Wales is moving to eliminate the double jeopardy rule, saying that it was "common sense" to follow moves in Britain and abolish double jeopardy for serious crimes in an age when

DNA could shed new light on investigations. The state of Queensland is also now considering a review of its double jeopardy law.

8. "Toronto police search for man on video in investigation into sex assault." The Canadian Press (CP), February 11, 2003.
In Toronto, Canada, more than 200 men have volunteered DNA samples clearing them in two brutal sex assaults. DNA has linked the two assaults to the same unidentified perpetrator. One of the victims was a child.
9. "LAPD Print Check Sought." Los Angeles Times, February 11, 2003.
In Los Angeles, California, a Councilman has introduced a motion asking the council to consider full funding for analysis of DNA from rape cases. Currently, the cold case homicide unit has been running DNA from rape cases through the state's \$50-million "cold-hit program." The LAPD said it was encouraged by the attention that cold cases and the crime lab have been getting, even if some publicity has been negative. The LAPD also has over 6,000 fingerprints that are backlogged. New technology is coming on-line soon, but staffing is expected to be a continuing problem.
10. "Wrongful imprisonment recovery bill advances." Oklahoma Business News (Oklahoma City, OK), February 11, 2003.
A bill in Oklahoma that would allow the wrongfully convicted to recover up to \$200,000 from the state has passed by the House Judiciary Committee. Similar legislation has been introduced for the past two years, and the bill actually passed the Legislature last year but was vetoed by the Governor. A new Governor is now in office and the bill's sponsor expects this Governor to sign the bill into law. The \$200,000 cap in the bill is comparable to the maximum a person can receive in a medical negligence case.
11. "Public Safety, Courts and Corrections to Lose \$7.9 Million." The Salt Lake Tribune, February 11, 2003.
In Utah, difficult budget cuts to public safety may include significant cuts to the offender DNA testing program.
12. "DA faults prosecutor for filing sex charges." San Jose Mercury News, February 11, 2003.
In California, a District Attorney has concluded that a prosecutor should have waited for the results of DNA tests and pushed police for better evidence before filing charges in two sex cases that were dismissed after DNA tests cleared both suspects. The assessment is the result of an internal review ordered last fall after questions were raised about the way police and prosecutors handled the cases.
13. "DNA collection measure advances." The Associated Press State & Local Wire, February 10, 2003.
In South Dakota, a bill that would expand the offender DNA database to include all convicted felons has passed the House of Representatives on a unanimous vote. Currently about 350 samples are taken from offenders per year, and the bill would increase that number to 2,000 per year. The legislation is expected to cost about \$4,000 a year for the kits used to obtain DNA, and actual testing of the DNA at a Texas laboratory will cost \$38.
14. "DNA Tests for Inmates Debated." Los Angeles Times, February 10, 2003.
A prosecutor in St. Louis, Missouri is drafting legislation to deter "frivolous" requests for post conviction DNA testing. The proposal would require inmates to pay for the analysis unless they are exonerated, and testing requests would serve as a black mark for probation and parole boards. Inmates whose guilt is confirmed through DNA testing would also be subject to an existing statute barring frivolous lawsuits which adds 60 days to a sentence. Twice last month, DNA tests confirmed the guilt of convicted rapists. Two other tests, last year and in 2001, also showed the right men were behind bars for brutal rapes committed a decade or more earlier. The prosecutor's staff spent scores of hours and thousands of dollars on those tests, and victims were distraught to learn that their traumas were being aired again. One victim became suicidal and then vanished; her family has not heard from her for months.
15. "TV'S Whodunit Effect Police Dramas Are Having An Unexpected Impact In The Real World." The Boston Globe, February 9, 2003.
Discusses the "CSI Effect" -- a phenomenon in which actual investigations are driven by the expectations of the millions of people who watch TV detective shows. It has contributed to jurors' desire to see more forensic testimony from the stand. Academic programs are springing up to accommodate people who now want to be forensic scientists. And it has spurred a phenomenon that defense lawyers call "junk science," in which high-paid, under qualified consultants are hired to lend a little razzle-dazzle to a case. DNA testing is used as an example

where TV shows have speedy testing results whereas it can take many months in real life. The Massachusetts state lab is interviewed. Discusses the significant amount of funding which is lacking at crime labs.

16. "Crime Lab Staggers Under Load Of Cases." Lexington Herald-Leader, February 9, 2003.
The Kentucky state crime lab receives about 40,000 new cases a year, about half of which have been drug-identification cases. The labs still have 9,000 overall cases left over from 2002. The 2002 General Assembly approved the hiring of 26 new lab employees over two years, but provided just \$500,000 to hire 11 workers before last year's job freeze. Some prosecutors have had cases dismissed due to backlogged crime lab analysis.
17. "Shifting strategies." Milwaukee Journal Sentinel, February 9, 2003.
As more and more "cold hits" on DNA databases are identifying rapists, an increasing number of perpetrators are contending it was consensual sex. As a result, prosecutors in Wisconsin are making sure that victims know that a trial is likely, and determine whether they are willing to testify -- to relive the incident and see the case through. This article presents several such cases.
18. "Focus; DNA Could The Latest Science Solve These Murders And 1,500 Rapes?" Sunday Express, February 9, 2003.
Article discusses a sampling of the successes of England's DNA database. Every week more than 1,000 DNA matches are made, either connecting a suspect to a crime or linking crimes, and there is more than a 40 per cent chance of DNA found at a crime scene matching a name on the database. In 2000-2001, 14,785 crimes were detected using the DNA database compared with 8,612 the previous year.
19. "Lawyer battles to stop police keeping DNA." Yorkshire Post, February 9, 2003.
A lawyer in England will take his case to the House of Lords in an attempt to outlaw the practice of retaining fingerprints, DNA and other samples from people who have been tried and acquitted by the courts. The lawyer, who specializes in human rights, has heard that the House of Lords would consider the case later this year. The case has already been heard at the Court of Appeal, and although the hearing was lost, the fact that one of the three senior judges disagreed with his colleagues made it clear that the legal avenues were not closed. In one case, the client is a 12-year old boy, who was arrested and charged with attempted robbery when he was 11.
20. "Convict turns to state law for DNA test." The Associated Press State & Local Wire, February 8, 2003.
In Pennsylvania, a former high school teacher serving a life sentence for killing a 16-year-old student is seeking DNA tests now provided under state law and wants the girl's body exhumed. The man admitted that he murdered the girl, but has always claimed he did not rape her -- which would mean that his sentence could be reduced. Under the law, the inmate must show that the DNA test would answer questions about identity and could prove innocence. If on death row, inmates can also try to use DNA testing to reduce their sentences.
21. "Fighting Terror / Forensics." The Boston Globe, February 8, 2003.
The Federal Bureau of Investigation has turned over DNA profiles believed to belong to the hijackers. Medical examiners are trying to separate the remains of the Sept. 11, 2001, terrorists from those of their victims. Remains that match the hijacker profiles will be removed from the city's Memorial Park, where unidentified and unclaimed remains are kept. Of the 2,792 people listed as missing in the attack, the remains of 1,464 have been identified. Nearly 20,000 body parts were recovered in all, and most remain unidentified.
22. "Senate delays action on bill putting cameras at highway work zones." The Associated Press State & Local Wire, February 7, 2003.
In Mississippi, the state Senate has passed a bill to require DNA from all convicted felons.
23. "Inmate linked through DNA to deadly rape." Contra Costa Times, February 7, 2003.
In California, a man has been booked into jail after a cold hit to Colorado's DNA database linked the man to an unsolved rape and murder of a child in 1979. The man had been serving a sentence in Colorado for a 1998 sexual assault. The evidence in the 1979 case was brought out of storage when the Contra Costa County Sheriff's crime lab received a state grant to look into cold cases.
24. "DNA link to rape." Northern Territory News, February 7, 2003.
In Australia (Northern Territory), a man is in custody after DNA evidence linked him to a rape three years ago. Local police arrested the man in October on another matter and a DNA sample was taken.

25. "Westerfield conviction cost \$270,000." The San Diego Union-Tribune, February 7, 2003.
Prosecutors in San Diego spent nearly \$270,000 convicting David Westerfield of kidnapping and killing 7-year-old Danielle van Dam – which does not include the salaries of the prosecutors and district attorney's investigators involved in the case, or the money spent by police and other law enforcement agencies that investigated the girl's abduction. The biggest expense for prosecutors was DNA analysis, with the office spending \$152,712.
26. "Pr. George's Prosecutors Drop Murder Charge Against Woman." The Washington Post, February 7, 2003.
In Maryland, Prince George's County prosecutors dropped a murder charge against a DC woman after forensic tests proved that she was not responsible for a murder. DNA testing on evidence collected at the crime scene did not match the suspect.
27. "Senate bill would try to reduce "rape kit" backlog." The Associated Press State & Local Wire, February 6, 2003.
A bill introduced in North Carolina would North appropriate funding for DNA analysis on a backlog of rape kits. A recent study found that evidence collected in as many as 20,000 rape kits sit on shelves in police evidence rooms statewide. The State Bureau of Investigation laboratory says it is so overloaded with testing requests that it generally examines kits only when investigators have identified a suspect without the sample. The bill does not place an amount sought to perform testing on the sexual assault kits, but could be amended later to add the amount.
28. "Spain begins to confront its past." The Christian Science Monitor, February 6, 2003.
In Spain, a campaign has begun to dig up the mass graves of thousands murdered during the civil war of the 1930's. This fall the Association for the Recovery of Historical Memory asked the United Nations to request that Spain open its archives so that surviving relatives could find out what happened to family members and where their bodies are buried. The group also wants the government to help defray costs, including DNA testing and dignified reburials. Since the association's effort began last spring, it has received more than 3,000 requests for exhumations and has disinterred 59 bodies.
29. "Locke pushes for construction budget." The Columbian (Vancouver, WA), February 6, 2003.
In Washington, the Governor has urged lawmakers to quickly pass a \$ 2.5 billion jobs-creating construction budget, the centerpiece of his plan for pulling Washington out of its economic slump. However, the proposal did not include \$ 13.3 million for a Washington State Patrol crime lab in Vancouver. Southwest Washington lawmakers say they will try to get the project included in the budget before it's adopted by the Legislature.
30. "DNA sample drives arrest." The Hamilton Spectator, February 6, 2003.
In Canada, a volunteered DNA sample from "a person of interest" already known to police through a tip has matched DNA collected at the crime scenes of two violent sex assaults. The man had been arrested on property charges at the time that he volunteered a sample.
31. "Kleis wants permanent felon DNA database." St Cloud Times (St. Cloud, MN), February 6, 2003.
A Minnesota legislator has introduced a bill to make sure the collection of DNA evidence from convicted felons continues. The legislator is the author of last year's bill that expanded the database to include all convicted felons, but only for one year. The Minnesota ACLU said it opposes the collection of DNA on civil liberties grounds, but believes it's probably within the bounds of the law.
32. "Lost Teeth Help Lead To Man's Conviction." Sun-Sentinel (Fort Lauderdale, FL), February 6, 2003.
In Florida, a man has been convicted by a federal jury of robbing a bank. Federal authorities linked the man to the robbery using DNA on two of his teeth that were knocked out when he ran into the van's path. The man's gun went off when he was returning it to his waistband after holding up a teller, but the bullet missed him and he managed to escape from the bank unscathed. However, as he ran out, a truck delivering school lunches ran into him. As he stumbled to his getaway car he left behind two teeth, his gun and his hat.
33. "Cooper:Local law officers on homeland security's front line." The Asheville Citizen-Times, February 5, 2003.
North Carolina's Attorney General wants the state to expand its DNA database and add DNA analysts. North Carolina has five DNA analysts compared with 38 in Virginia. But local agencies are feeling the crunch from the lack of resources. In cases where there's no suspect, DNA evidence collected in rape cases may sit on the shelf, according to one police chief. "We need to have the capability to analyze every piece of DNA collected in this state, and we do not have that capability because of legislative cuts," he said.

34. "Judge give life sentence to man who suffocated 86-year-old." The Associated Press State & Local Wire, February 5, 2003.
In Indiana, a man convicted of suffocating an 86-year-old widow with her own bed pillow during a burglary has been sentenced to life in prison without parole. A "cold hit" was made to the crime after his DNA was collected for a burglary conviction.
35. "Middletown, Ohio, Council Approves Study of Interstate Interchange." Middletown Journal, Ohio, February 5, 2003.
The Middletown, Ohio City Council approved a one-year, \$ 39,500 contract with Miami Valley Regional Crime Lab, for laboratory services related to the police department. A staff report states that the regional lab is more cost-effective and efficient than the state crime lab in London.
36. "DNA leads to arrest in '86 murder case." The Orange County Register, February 4, 2003.
A cold hit on California's DNA database has led to the arrest of a man for a murder committed in 1986. The man's DNA sample had been collected in 1992 for a sexual assault conviction, but the evidence from the unsolved murder was only recently reviewed for possible DNA evidence.

Genetic Privacy / Research

37. "Judiciary Committee to Mark-up Human Cloning Prohibition Act Wednesday." US Newswire, February 11, 2003.
The US House Judiciary Committee was scheduled to mark-up the Human Cloning Prohibition Act. The Human Cloning Prohibition Act would ban human cloning, but not restrict the use of cloning technologies to produce molecules, DNA, tissues, and cells other than human embryos. The bill would not prohibit stem cell research that does not require cloning of humans. A similar measure passed the House last year.
38. "UW scientists swap genes in human stem cells." The Associated Press State & Local Wire, February 10, 2003.
University of Wisconsin-Madison scientists say they have found a way to swap genes in and out of human embryonic stem cells to help make the cells a valuable tool for studying and treating diseases.
39. "Gene study aims to follow 30,000 babies for years." Ottawa Citizen, February 7, 2003.
The Canadian Lifelong Health Initiative, which could start in 2005, would compare the babies' health with all kinds of factors in their lives. It will hunt for the many factors, including genes, that combine to give people strong or weak hearts, or asthma, or diabetes.
40. "A cloning ban vies with research needs as Congress grapples with thorny issues." The Hill, February 5, 2003.
In depth description of the cloning prohibition options being considered by Congress, along with associated debate.
41. "Public, laws fail to keep up with genome advances." Ottawa Citizen, February 6, 2003.
"But when governments keep such intimate records on their people, it can make people nervous. That's not the only side of genetics that scares the public, experts say. There are fuzzy laws on human cloning, stem cell research and whether growers of genetically modified foods should be forced to label them. Yet for all the public nervousness, there's precious little being done about these vital issues, the experts say."

Paternity

42. "Court bans forced DNA testing in paternity suits." The Jerusalem Post, February 10, 2003.
A Jerusalem appellate court has ruled that men cannot be forced to take DNA tests to prove or disprove paternity, reversing a lower court decision. In 1978, the Supreme Court ruled that the courts could not force a man to have a blood test to determine paternity because it violated his personal freedom. One of the key issues in the current case was whether the fact that the advances in science which made it possible to examine tissue by means that are no longer invasive or painful would have an effect on the 1978 ruling.
43. "Unborn baby summonsed to appear before court." Irish News, February 5, 2003.
In Ireland, an unborn baby has been summonsed to appear before a court in Belfast in what is believed to be the first case of its kind. Court papers have been served on the expectant mother in a legal dispute centering on

whether or not her estranged partner is the child's father.