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Smith Alling Lane, P.S. provides governmental affairs services to Applied Biosystems. As part of this representation, the firm generates weekly reports on state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports publicly available through this website. The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.

The March 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

A New York proposal would expand the state's DNA database to include all convicted felons, and some Florida proposals are aimed at collection of DNA from probationers and parolees. An Arkansas proposal would limit the crimes for which juveniles are required to submit DNA samples.

Bills to extend the statutes of limitations for certain crimes with DNA were introduced in Florida. A North Carolina bill would provide funding specifically for backlogged DNA evidence, and DNA backlogs in Michigan are a problem. Cold hits on DNA databases made headlines in New York (burglar linked to three sex assaults; burglar linked to another burglary/assault), Alaska (assault inmate linked to a rape), and Alabama (burglary arrest linked to a rape).

Arkansas introduced a post conviction DNA testing bill, and a panel in Florida is concerned with an expiring law. At least one man may have been convicted on faulty DNA evidence testing at a local lab in Texas. An evidence handling problem at a local lab in Arizona may result in some challenges.

In International news...Authorities in Australia, Canada and New Zealand are calling for expanded forensic DNA police powers. Australian judges made headlines – one excluding DNA in a trial, another suggesting DNA sampling of everyone at birth. In the UK, a half-eaten candy bar tied a burglar to a crime scene, and “fast tracking” of burglary DNA evidence analysis is leading to quicker arrests. DNA is being used to identify the dead in the Ukraine and Zimbabwe, and there were calls for more funding for the ICMP's efforts in Bosnia.

## STATE LEGISLATION

### Forensic DNA

1. Arkansas HB 2226 -- Death Penalty Moratorium Act. Creates a commission to research death penalty related issues, including procedures to ensure persons sentenced to death have access to appropriate forensic tests, such as DNA.
2. Arkansas HB 2310 – Limits the number of offenses for which a juvenile is required to submit a DNA sample for the DNA database.
3. Florida HB 725 – Allows “other biological samples” to be collected from probationers and parolees who are required to submit DNA from the database.

4. Florida SB 608 -- The statute of limitations does not apply to sexual battery if the perpetrator is identified by DNA evidence that was not known to or in the possession of law enforcement before the period of limitations expired.
5. Florida SB 1572 – Crimes of aggravated battery, kidnapping, sexual offenses, burglary, or robbery, may be prosecuted within year after the identity of the accused is established through DNA evidence, regardless of whether the period for prosecuting the crime may have otherwise expired.
6. Florida SB 1648 -- Allows “other biological samples” to be collected from probationers and parolees who are required to submit DNA from the database. Clarifies that personnel at jails, correctional facilities, or juvenile facilities are responsible for collection.
7. Missouri HB 636 – Permits up to 10% of funds in the Criminal Record System Fund to be appropriated for the crime lab assistance program.
8. North Carolina HB 154 – Appropriates funds to perform DNA testing on unanalyzed rape kits and other DNA evidence.
9. New York AB 5603 – Expands offender DNA database to include all convicted felons, and requires a study on the feasibility of requiring DNA for fingerprintable arrests.
10. New York AB 5844 – Requires county medical examiners to send DNA samples of unidentified persons.

#### Genetic Privacy / Research

11. Alabama HB 9 – Prohibits human cloning.
12. Arkansas HB 2493 & SB 185 – Provides that a person's genetic information and DNA samples are the property of the person from whom the information and samples originated.
13. Florida HB 285 – Prohibits human cloning.
14. Florida HB 1351 – Creates the Genetic Counseling Practice Act.
15. Florida SB 1726 -- Prohibits human cloning
16. Iowa HB 378 -- Requires informed consent of an individual prior to genetic testing or retention of genetic information, and written authorization prior to disclosure of genetic information.
17. Iowa HB 459 -- Provides for the establishment of an expanded screening program for newborns for specified genetic and metabolic disorders.
18. New York AB 5358 & SB 2721 – Prohibits discrimination based on predisposing genetic characteristics.
19. New York AB 5692 – Protected health care information is defined to include genetic information and biological samples.
20. New York AB 6249 – Prohibits human cloning.
21. New York SB – Creates a personal privacy commission to study the condition of personal privacy in the state, and how best to protect it.
22. Oregon HB 3126 – Gray wolves that are released on federal lands are required to have DNA samples taken which must be forwarded to the state fish and wildlife department.

#### Paternity

23. Minnesota SB 751 – Provides for genetic testing to establish paternity.

## NEWS ARTICLES

### Forensic DNA

1. “Plea for DNA on all.” Northern Territory News, March 12, 2003.  
A magistrate in Australia has called for DNA samples to be taken from everyone, including newborn babies. He said maintaining a DNA profile database of every person would clear up doubts over determining "accurate matches" from statistical data. If DNA for everyone in Australia was present, you wouldn't have to rely on statistics. You could say, 'look, we have the DNA of everyone present in Australia, we can tell you that this is the person. There's only one person in the whole of Australia with that DNA, and that's him, or her'.”
2. “\$1 Billion Proposed for DNA Testing.” The Washington Post, March 12, 2003.  
Attorney General Ashcroft has proposed spending more than \$ 1 billion on DNA analysis in criminal cases over the next five years, vowing to eliminate a massive backlog that has left hundreds of thousands of genetic samples untested nationwide. Some legal advocates immediately criticized the plan, because it offers relatively little funding for DNA testing by criminal defendants seeking to prove their innocence.
3. “Commission identifies body of dead opposition journalist in Ukraine.” Agence France Presse, March 11, 2003.  
An independent medical commission has confirmed that a body found near Kiev two years ago was that of an opposition journalist who disappeared in 2000. The victim edited an online Communist publication and frequently criticized the Ukrainian President. The killing created a political scandal, with the opposition accusing the President of ordering the murder, and triggered mass demonstrations calling for the president's impeachment.
4. “Lab says DNA retesting shows convicted man not involved in rape.” The Associated Press, March 11, 2003.  
An independent lab has concluded that a man who has served four years of a rape sentence was wrongly convicted, and that DNA evidence was incorrectly processed by Houston, Texas police. A review of the lab revealed, among other things, that there were holes in the roof that allowed rain to possibly contaminate samples. Following the audit, the department suspended DNA testing at the lab, and the DNA lab chief voluntarily retired last month.
5. “John Ashcroft Holds News Conference.” FDCH Political Transcripts, March 11, 2003.  
Transcript of Attorney General's news conference announcing the President's Initiative called Advancing Justice Through DNA Technology. The Initiative calls for \$232.6 million federal funding for fiscal year '04 and for continuing this level of funding on a continuing basis for five years, a total commitment of over \$1 billion. Includes questions and answers taken from the press.
6. “Megan's Law's Proper Domain: Legislature.” Albuquerque Journal, March 10, 2003.  
A proposed city ordinance in Albuquerque would require sex offenders to submit to DNA testing if they were deemed by police to be high-risk.
7. “Police Crime Lab Under the Microscope.” Texas Lawyer, March 10, 2003.  
Texas legislators who are looking into problems at the Houston Crime Lab, which has thrown numerous convictions into doubt, are considering a variety of solutions. Two possible proposals are to require DNA labs to be accredited, or to give the state Department of Public Safety oversight of local DNA labs in the state.
8. “Lawmakers aim to close DNA testing loophole.” Times Colonist (Victoria), March 10, 2003.  
Canadian lawmakers want to require more convicted offenders to give blood samples to police for DNA testing. Current law allows judges approve police taking blood samples from convicted offenders, but doesn't oblige a convicted person to provide it. Police say there are currently 118 people with DNA data bank orders against them in Manitoba, from whom police have been unable to obtain blood samples.
9. “Judge bars DNA evidence that was withheld from defense.” The Associated Press State & Local Wire, March 9, 2003.  
In Texas, a judge has barred the use of DNA evidence against a capital murder defendant, citing extreme negligence by the prosecution in not sharing the evidence with the defense. The District Attorney's office took more than a year to share the DNA evidence with the defense. However, the prosecution claims the defense did not

set up a time and place to collect the evidence as is customary in the County.

10. "San Jose ID program seeks to help the disoriented." *Contra Costa Times*, March 9, 2003.  
The San Jose (California) Police Department is offering to take fingerprints, photographs and DNA swabs of adults with dementia, Alzheimer's disabilities and developmental disabilities. The information could later be brought to police if vulnerable adults are missing.
11. "San Mateo County to debut crime lab." *Contra Costa Times*, March 9, 2003.  
San Mateo (California) is opening a new crime lab this month. The lab is set up to analyze DNA samples as well as blood, drug and human tissue samples for all of the county's law enforcement agencies, which serve 22 cities.
12. "Phoenix DNA Evidence Under Fire." *The Arizona Republic*, March 8, 2003.  
In Arizona, defense attorneys are preparing to challenge DNA evidence in criminal cases based on reports of contamination in a Phoenix Police Department evidence-handling room. An October e-mail from the room's supervisor that warned the contamination could "seriously impact" cases, but officials contend there's no proof that the conditions of the evidence room compromised cases. Defense attorneys are calling for an audit of police records to pin down what cases could be affected. The majority of the problems were reported in 2002 from March to October.
13. "Fast-Track DNA Thwarts Crooks." *Birmingham Evening Mail*, March 8, 2003.  
In an area of the UK, a new 'fast tracking' of DNA evidence from property crimes is slashing the time it takes for DNA analysis to just seven days. Operation Safer Homes is a forcewide initiative to tackle house burglary, and many burglars are winding up in jail only days after committing the crime. Year-to-date figures show that since April offenses have fallen by almost 15 per cent compared to the same period last year, from 29,098 to 24,796 break-ins, leading to 4,302 fewer victims.
14. "Flawed' DNA tests spark pardon plea." *Gold Coast Bulletin (Australia)*, March 8, 2003.  
In Australia, lawyers for a man imprisoned for two armed robberies will ask the Queensland Governor Major-General for a formal pardon after claiming DNA testing used to convict their client was dramatically flawed. A review of DNA evidence in the case found the original testing to be "scientifically incorrect."
15. "Bosnian Serbs Told to Pay \$2 Million for Srebrenica Massacre." *The New York Times*, March 8, 2003.  
A panel of Bosnian and international judges ordered Bosnia's Serb Republic to pay more than \$2 million in compensation for the massacre of 7,500 Muslims at Srebrenica in 1995. But the money is unlikely to help officials identify more victims. The cost of building a planned alone is likely to use most of the compensation payment. A DNA identification program for all unidentified victims of the war, set up 14 months ago by the International Commission on Missing Persons, badly needs money, too, but it is unlikely to get any. Since its inception, the project has identified more than 1,500 of the 30,000 people unaccounted for.
16. "Warning over DNA." *Northern Territory News*, March 8, 2003.  
In Australia, a judge has revealed that he threw out DNA evidence against a man accused of raping a 12-year-old boy because he could not rule out the possibility the man's DNA did not find its way on to the boy's clothing by means of "secondary transfer". When the case was heard four months ago, the court heard the boy had given police a "mixed bag" of clothing on which the suspect's DNA was found. The judge said no scientific evidence had been presented to conclude that the DNA found its way to the boy's clothing by one way, and not the other, and therefore the DNA evidence was "inadmissible as proof of guilt."
17. "Judge gives 165 years to man in sex attacks." *Rochester Democrat and Chronicle*, March 8, 2003.  
In New York, a cold hit on the DNA database has resulted in a 165 year sentence for a man convicted of sexually assaulting two girls and a 67-year-old woman. The man was in prison from a 2000 conviction on unrelated charges of attempted burglary, grand larceny and criminal possession of stolen property at the time the database hit was made.
18. "Guilty pleas as DNA data bites." *The Weekend Australian*, March 8, 2003.  
In West Australia, new data shows police have made 77 arrests and laid 150 charges, among them for serious offences such as rape and armed robbery, under the \$20 million DNA program introduced last year. The program has so far involved collection of 6000 samples from prisoners and a further 6500 from people in police lock-ups, and has helped police clear up crimes going back almost a decade. Some politicians are now calling for DNA

collections from criminals on probation and parole.

19. "Alaska digest." Anchorage Daily News, March 7, 2003.  
In Alaska, a judge has sentenced man to 25 years for the rape and assault of university student. When the assault occurred, an innocent man was initially charged after being wrongly identified by witnesses as the attacker. However, a DNA sample from the suspect did not match the evidence and the man was released. Subsequently, police ran the DNA evidence through the DNA database, and it matched another man's DNA who was on the database due to a 1997 assault conviction.
20. "Spit Hits Fan For Convict." Daily News (New York), March 7, 2003.  
In New York, a discarded cigarette led detectives to one of two suspects accused of beating a Manhattan cop and stealing her gun after she caught them burglarizing her apartment last year. DNA testing of saliva residue on the butt linked it to an inmate in an upstate prison. The man is currently serving a four year sentence for another burglary. An investigator praised the law requiring the mandatory DNA testing of certain state inmates, saying it "was critical in solving this case."
21. "Labor maps out more DNA tests." The Daily Telegraph (Sydney), March 7, 2003.  
In New South Wales, Australia, the Labour Party has announced a \$40 million plan, under which police would be given extra powers to do DNA testing. Those charged with an offence would automatically submit DNA samples if they have been convicted of an indictable offence in the past. Under current laws, DNA can only be taken when police have reasonable grounds to believe the DNA would produce evidence in relation to a specific crime.
22. "Combing through the DNA backlog." Detroit Free Press, March 7, 2003.  
In Michigan, demand for DNA testing is overwhelming the 26 DNA scientists who work at seven state police labs across Michigan. The labs, whose backlog of cases numbers in the thousands, are required by law to offer free forensic services to every police and sheriff's department in Michigan. "Addressing the backlog is a priority of ours and the governor. We will look under any rock we can" to find more funding, said a spokesman for the Michigan State Police. In the meantime, some cities are paying private labs to do DNA and other forensic tests. The backlog in the state's DNA labs has reached about 65,000 cases, including active, cold cases and database searches. Thomas said they processed about 2,000 active cases last year.
23. "Death of DNA law seen as fiasco." The Miami Herald, March 7, 2003.  
In Florida, a panel of experts is concerned with a two-year statute of limitations that expires this fall on raising DNA challenges to Death Row convictions. Thus far, the DNA challenges by inmates have been bogged down by disagreements over how the tests should be conducted. Inmates say they want independent examination of the DNA. Agencies, like the Broward Sheriff's Office, say they should do the DNA tests. Of 123 recent death row exonerations, 25 are from Florida.
24. "FISCAL 2004." Federal Document Clearing House Congressional Testimony, March 6, 2003.  
At a congressional hearing, Attorney General Ashcroft details the FY 2004 budget proposal for DNA funding.
25. "Police seek wider DNA use." The Timaru Herald, March 6, 2003.  
In New Zealand, Police Association representatives gave a submission to Parliament's Law and Order Committee requesting permission to take DNA samples from all those arrested for chargeable offences. The association said the move would cut the time taken to identify suspects and also remove dangerous criminals from the streets earlier.
26. "Zambia; Six Train Crush Victims Still in Zimbabwe." Africa News, March 5, 2003.  
Zimbabwean authorities are carrying out DNA tests on the charred remains in an effort to identify victims from a passenger train accident. It is unclear at this time how many passengers were onboard the train.
27. "Amnesty says Bosnia must do more on missing since war to lay "ghosts"." Agence France Presse, March 5, 2003.  
Amnesty International called on Bosnia and the international community to step up efforts to find out what happened to 17,000 people still missing since the country's 1990s war. It also urged continued financial support and expertise by EU countries and the US for the DNA identification program developed by the International Commission for Missing Persons.
28. "Sex, abuse trauma team to lose funds." The Detroit News, March 5, 2003.

In Oakland County, Michigan, a county finance committee told the officials of the Assault Response Team (consisting of forensic nurses) that the \$36,000 they gave last year to help fund the \$150,000-a-year anti-abuse program was only temporary. The county is struggling to cut around \$23 million from its estimated \$510 million budget before the next fiscal year, which begins Oct. 1. The county drafted a resolution last year that said that if the program's officials came back for additional funding the following year, they must first go through the county's purchasing policies to become legal, Moss said. To do that, the nonprofit group must find a county department that will contract for that service.

29. "Keeping Sane." The Post Standard (Syracuse, NY), March 5, 2003.  
Editorial urges Syracuse, New York to save the local SANE program, saying that "SANE empowers victims and it arms prosecutors. It should be saved." Notes that only 65 percent of DNA samples in non-SANE kits were properly collected -- that compares to 91 percent in SANE kits. A university hospital has agreed to continue paying for SANEs, another hospital said it cannot afford to, and two other hospitals are still considering the matter.
30. "Crime lab bill gets cool hearing." Springfield News-Leader, March 5, 2003.  
In Missouri, a bill proposing construction of a regional crime lab in Springfield drew mixed responses primarily over whether the legislation could create competition between existing crime labs. The bill would create a statewide crime laboratory system by linking up existing labs in Kansas City, St. Louis, Joplin, Jefferson City and elsewhere to better process evidence in criminal cases. Southwest Missouri law enforcement officials have complained that DNA evidence would have to be sent to Jefferson City's lab where it could sit for a year or longer before being processed.
31. "Trial Against Brit's Alleged Rapists Is Delayed." African Eye News Service (South East Africa), March 4, 2003.  
In South Africa, the rape trial against four South African youths accused of abducting and raping British tourist was postponed for two months to allow for further forensic and DNA tests. The article reports that "the costly tests, which are seldom ordered in normal rape investigations, will help police positively identify Stevens' rapist, as well as link suspects to blood found in her hijacked vehicle."
32. "DNA proves to be link in rape case." The Montgomery Advertiser, March 4, 2003.  
In Alabama, a cold hit on the DNA database has resulted in a guilty plea from a man charged with first-degree rape and first-degree burglary. The case remained unsolved for several years until the man was arrested on burglary charges and consented to allowing police to take a DNA sample by a mouth swab.
33. "Sindh Cabinet/ Decisions." The Pakistan Newswire, March 4, 2003.  
Reports on discussions by Pakistan's Sindh Cabinet includes the following, "It was felt that Sindh has no facility to carry out DNA tests and the province had to approach Punjab for it. The CM directed the finance department to ensure that provision is made at least of one such laboratory in Karachi."
34. "Mars A Day Gets Burglar Jailed." South Wales Evening Post, March 4, 2003.  
In the UK, a half eaten candy bar left at a break-in was used to connect the perpetrator to the crime. Saliva found on the candy bar was analyzed for DNA and matched a suspect. A spokesman for the candy bar company said they were pleased one of their products had been of help in solving a crime "We are surprised he managed to resist the other half but we are sure the police must be pleased he did," said a spokesman.

#### Genetic Privacy

35. "Bioethics Bill To Restrict DNA Testing." The Korea Herald, March 11, 2003.  
A South Korean proposed bioethics bill would ban a great deal of DNA testing such as that linked to gene research to help physical growth and improve the brain's capability. The government-drafted bioethics bill, which would also ban human cloning.
36. "Iowa bill would prohibit genetic discrimination." Telegraph Herald (Dubuque, IA), March 8, 2003.  
Iowa is considering a bill that prohibits discrimination by insurers against a person or their family members on the basis of genetic information or genetic testing. It also prevents genetic-based discrimination in the workplace. Iowa doctors are concerned that women may opt out of predictive breast cancer tests in fear of insurance repercussions.
37. "Genetic discrimination bills facing an uncertain future." The Hill, March 5, 2003.

The issue of genetic discrimination in health insurance has been placed in front of Congress once again by Senate Minority Leader Tom Daschle (D-S.D.), but some predict that the measure either is unnecessary or won't pass.

### Paternity

38. "Father Who Took DNA Paternity Fraud Case to U.S. Supreme Court Wins at State Level." US Newswire, March 10, 2003.

In a case with great national significance, a Georgia man who had been court ordered to pay child support for a child proven by DNA testing not to be his biologically, won his case at the state level. This win means that he is no longer legally responsible for future child support payments and arrears. The man had previously taken his paternity fraud case to the U.S. Supreme Court, but the high court had refused to hear it.

### **CONGRESSIONAL RECORD**

1. US House of Representatives, February 25, 2003. Introduction of H.R. 889 "A bill to eliminate the backlog in performing DNA analyses of DNA samples collected from convicted child sex offenders." By Representative King.
2. US Senate, February 13, 2003. Senator McCain questions the \$1 million appropriation for a bear DNA sampling study in Montana. "Approach another bear: Two hikers had their food stolen by a bear, and we think it is you. We have to get the DNA. The DNA doesn't fit, you got to acquit, if I might. I think it is important to appreciate that this \$1 million for a DNA bear sampling study could solve a lot of crime in Montana. It is a pretty high-crime area. It seems to me that is, indeed, a very worthwhile expenditure of the taxpayers' dollars."
3. US House of Representatives, February 12, 2003. FY 2003 earmarks for DNA programs at crime labs.
4. US House of Representatives, February 5, 2003. Introduction of H.R. 537 "A bill to authorize the grant program for elimination of the nationwide backlog in analyses of DNA samples at the level necessary to completely eliminate the backlog and obtain a DNA sample from every person convicted of a qualifying offense." Introduced by Representative Andrews.