

**Smith** *Governmental Affairs*  
**Alling** *Attorneys at Law*  
**Lane**

*Sponsored By*



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 25, 2005 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**

**LAW ENFORCEMENT:** Investigations and prosecutions aided by DNA evidence include:

- Arizona – DNA evidence has linked a man to 3 sex assaults
- California – DNA database hit results in a conviction for a 1996 sex assault, and identifies a suspect in a series of sex assaults / robberies.
- Florida – DNA evidence from a car confirmed a suspect in a hit-and-run incident.
- Illinois – DNA from saliva on an envelope convicted a man of mailing threats to a school.
- Michigan – DNA database identifies a suspect in a double homicide (DNA found on a cash register).
- Minnesota – DNA database links a juvenile to two rapes.
- Nebraska – DNA from a shoe confirmed a murder suspect's identity.
- North Carolina – DNA database identifies a suspect in a burglary and attempted sexual assault case.
- Pennsylvania – DNA from deer meat is vital evidence in linking a suspect to a murder.
- Vermont – DNA database identifies a rape/murder suspect.
- Washington – DNA from a mask and hat identifies a robbery suspect.
- England – DNA from a recovered radio identified a prolific car thief (local car crimes dropped 10% with his apprehension)

**POLICY AND FUNDING ISSUES:** The Illinois House approved a bill to require DNA in all felony arrests in a near-unanimous vote, and North Carolina introduced legislation for all violent felony arrests. New Mexico passed a law to require DNA from all registered sex offenders (retroactive). Texas and San Diego (California) may receive additional funding for crime lab personnel.

**COURT DECISIONS:** Federal courts continue to uphold the constitutionality of DNA database statutes -- US Supreme Court declines to review US v. Kincade, and the 3<sup>rd</sup> District Court of Appeals rules that statutes are constitutional.

**OTHER FORENSIC DNA ISSUES:** A Massachusetts bill extends the statute of limitations for rape cases with DNA, and a Pennsylvania measure would develop standards for rape kits. A post conviction DNA testing bill was introduced in Massachusetts, and a North Carolina county is reviewing potential cases.

**INTERNATIONAL NEWS:** An Australian state is reviewing its crime lab's practices and outsourcing DNA evidence in the interim. England may allow its criminal database to be accessed for purposes of identifying remains from mass disasters. Ireland police are increasing efforts to establish a DNA database. The Philippines has recently received training assistance for the use of DNA in death penalty cases.

## STATE LEGISLATION

### Forensic DNA

1. Hawaii HRes. 103 & HCRes 140 -- Establishes a task force studying the cost of a State DNA laboratory
2. Massachusetts HB 650 – Eliminates the statute of limitations for rape if DNA evidence is available.
3. Massachusetts SB 1241 – Provides for post conviction DNA testing.
4. North Carolina SB 559 – Allows for record expunction for non-violent crimes. Expunction to include DNA database sample.
5. North Carolina SB 588 -- Allows for record expunction for certain “white collar” crimes. Expunction to include DNA database sample.
6. North Carolina SB 746 – Expands offender DNA database to include all violent felony arrests, plus stalking and assault on a handicapped person.
7. Pennsylvania SB 439 – Creates the Sexual Assault Testing and Evidence Collection Act. Provides for the development of rape kit minimum standards.

## NEWS ARTICLES

### Forensic DNA

1. “Taskforce to oversee Tonge forensic review.” Courier Mail (Queensland, Australia), March 23, 2005.  
In Queensland, Australia, a forensic science ministerial taskforce will oversee initiatives aimed at reducing workloads at the John Tonge Centre. The committee -- made up of stakeholders from Premier's, Justice, Health and Police departments -- would ensure plans to outsource routine DNA evidence and second international forensic chemists were realized. The initiative is on top of an independent review into one of the centre's testing procedures.
2. “Court upholds law requiring people on probation to submit DNA.” The Associated Press State & Local Wire, March 22, 2005.  
The 3<sup>rd</sup> District US Court of Appeals has upheld the constitutionality of the federal DNA database law. By a 2-1 vote, a three-judge panel ruled the government's interest in building a tool to help solve crime outweighed the privacy interests of criminal offenders. The defendant in this case was a man who was serving a parole period when the federal law came into effect. Writing for the majority, Judge Jane R. Roth said while a similar intrusion into an "ordinary citizen's" privacy would be unconstitutional, prisoners and people on probation do not enjoy the same level of liberty. An appeal is planned.
3. “Arrest in killing of Burlington woman.” The Associated Press State & Local Wire, March 22, 2005.  
Vermont’s DNA database has identified a suspect in the rape and murder of a woman earlier this month. The DNA evidence on the crime scene matched a registered sex offender who had two prior convictions.
4. “DNA ties suspect to '03 murder, prosecution claims.” The Columbian (Vancouver, WA), March 22, 2005.  
In Washington, DNA collected from a mask and a hat used during a robbery in which a man was killed has been linked to one of the suspects in the case. Because of a backlog at the state crime lab, it was 16 months before DNA from a hat and mask were matched to one of the suspects.
5. “Senate panel revisits '03 cuts.” San Antonio Express-News, March 22, 2005.  
In Texas, the Senate budget proposal would send 50 full-time workers into the state's crime labs to ease a backlog on DNA testing.
6. “Lawyer: Deer DNA no case against hunter in homicide case.” Tribune-Review (Greensburg, PA), March 22, 2005.

In Pennsylvania, a man accused of shooting someone three times in a wooded area in 1997, then stealing a deer that the man had just shot and leaving him for dead. Police used DNA technology to determine that venison found in the suspect's freezer in 1998 was a genetic match to animal entrails and blood found near the victim's body. Based on the lab results, the suspect was arrested and ordered held for trial during a preliminary hearing in November. Lawyers for the defense argue that the DNA evidence alone is not enough to build a case for murder.

7. "Wichita man, once under suspicion in BTK case, seeks destruction of his DNA profile." The Associated Press, March 21, 2005.  
In Kansas, a man whose DNA sample was taken for elimination purposes when he became a potential suspect in the BTK serial murders investigation is asking a court to order his DNA sample destroyed and its profile purged from any database. He is also after an explanation from authorities as to why they entered his home with a search warrant for his DNA. A court hearing is set for April 1. The prosecutor's office has stated that DNA profiles collected during the BTK investigation would not be placed in any database. The samples themselves are evidence in a criminal investigation, and by law, once they are no longer needed, a judge can decide what should be done with them.
8. "City News Service." City News Service, March 21, 2005.  
In California, a former musician and composer pleaded guilty to sexually assaulting a teenage boy in 1996 after kidnapping the victim outside a church. Investigators had no suspect until the evidence was matched on the DNA database to the man who had prior assault convictions in 2001 and 2002.
9. "Gardai Demand New Offence For Thugs Obstructing Attempts To Save Lives." Irish Independent, March 21, 2005.  
In Ireland, at the annual conference of the Association of Garda Sergeants and Inspectors, delegates intend to pressure the Justice Minister to speed up plans to create a DNA database.
10. "Top Court Backs Law Requiring DNA Samples Of Convicts." National Journal's Technology Daily, March 21, 2005.  
The US Supreme Court has elected to let stand a 2004 decision that upheld the constitutionality of a federal law requiring parolees to provide blood samples to the FBI so that it can archive the material in a centralized database. The high court ruled without comment. The case, U.S.A. v. Thomas Cameron Kincade, involves former Navy seaman Kincade, who robbed a bank in 1993 and was convicted to 97 months imprisonment, followed by three years of supervised release. In March 2002, a probation officer asked Kincade to submit a blood sample as required by the law. Kincade refused the request, citing his constitutional Fourth Amendment rights against unreasonable search and seizure.
11. "Accreditation is a must for Texas crime labs." San Antonio Express-News, March 21, 2005.  
Editorial regarding accreditations of labs in Texas. Excerpt reads: "The national accreditation board appears to be doing a good job keeping tabs on operations of the crime labs over which it has oversight. Lawmakers should make accreditation by the national group a requirement for all crime labs in Texas. The state should not reinvent the wheel and attempt to establish its own accreditation measures when effective national standards are already in place. A proposal for creating a Texas Forensic Science Commission to oversee crime lab operations addresses concerns that crime lab directors would be monitoring themselves. The commission proposed by Whitmire would wisely allow a group of professionals outside the crime lab community to investigate misconduct and negligence."
12. "A kid goes bad, and blame is passed around." Star-Tribune (Minneapolis, MN), March 20, 2005.  
In Minnesota, a boy who is now 17 has been connected to two rapes (one in 2003 and another in 2004) through the DNA database. His DNA sample was originally included on the database after he pleaded guilty to an indecent-conduct charge for exposing himself to two female students in July 2003.
13. "Cold case clues." Tulsa World, March 20, 2005.  
Article regarding the Oklahoma legislature's consideration of a law to expand the offender DNA database to include all convicted felons. Article concludes, "Ultimately, a privacy-conscious and justice-minded public will have to make choices about how far it's willing to go in giving law enforcement this powerful crime-fighting tool. What price are we willing to pay to maintain a DNA database and what privacy sacrifices are we willing to make, to catch criminals? The parents of Juli Busken, who had just finished her dance performance degree at the University of Oklahoma and had her whole life before her, would have no problem answering those questions." [Julie Buskin's 1996 murder was solved through a cold hit on the DNA database.]

14. "NSW government admits DNA backlog problem." AAP Newsfeed, March 19, 2005.  
In Australia, the NSW government has admitted the state has a DNA processing backlog but predicts a \$26 million funding boost for equipment and personnel, recently announced, would help solve the problem. There have been 3,084 NSW offenders and suspects linked to crime scenes through DNA evidence since the state government in 2001 introduced a law whereby all prisoners had to submit a sample for a state database.
15. "Skydiver Talked About Committing The Perfect Murder, Girlfriend Says." The Independent (London), March 19, 2005.  
In England, an inquiry into the death of man who was killed in a parachuting incident has found that DNA taken from a pair of scissors found in a victim's suspect's car showed that they had been used to cut the straps on the parachute and that only his DNA was found on the scissors. An acquaintance of the man's who was on the final jump with him had been arrested for murder but was subsequently cleared.
16. "DNA Analysis Training For Forensic Experts." Manilla Standard, March 19, 2005.  
The United Kingdom recently assisted in training Philippine forensic experts on DNA analysis to aid local police authorities in pursuing cases against criminals facing the death penalty. The week-long training, called "Forensic and Legal Applications of DNA Technology," involved the participation of representatives from the Natural Sciences Research Institute of the University of the Philippines and Chris Aspen, former executive director of the US National Commission on the Future of DNA Evidence.
17. "Tougher Sex-Offender Rules OK'd." Albuquerque Journal, March 18, 2005.  
The New Mexico Senate unanimously passed tougher registration requirements for convicted sex offenders, sending a bill to Gov. Bill Richardson, who will likely approve. The measure, HB 165, expands the definition of sex offenders required to register with county sheriffs, adds more crimes that would require registration and makes it a felony for some offenders not to register. The bill would also require offenders to notify their employers of their convictions and to submit DNA samples upon registration. The DNA provision applies retroactively to anyone who is a registered sex offender in the state.
18. "Man arrested after DNA evidence links him to 3 sexual assault cases." The Associated Press State & Local Wire, March 18, 2005.  
In Arizona, police have arrested a man in connection with three sexual assault cases and one attempted sexual assault, thanks to DNA evidence. The man was originally was arrested after police responded to a suspicious-activity call north of the University of Arizona campus. Officers found him in a vehicle and arrested him on a number of outstanding misdemeanor warrants. Investigators took a DNA sample from him which was later matched to samples from three sexual assaults. The women who were assaulted were UA students at the time, according to police who said the assaults occurred over an eight-month period from May 2004 to January. Police said other physical evidence linked him to an attempted sexual assault reported in February.
19. "DNA match results in "cold case" arrest." The Associated Press State & Local Wire, March 18, 2005.  
In North Carolina, authorities in Alamance County have arrested a man in a burglary case that was nearly 2 years old, using a DNA match through a national database. The man was charged with first degree burglary and an attempted first degree sex offense. A Sheriff's department spokesman said that on July 25, 2003, someone broke into a house and tried to sexually assault a mentally disabled woman who was at home that night. Investigators took a DNA sample from the house, but they were unable to name a suspect until now.
20. "Ex-Con Will Be Tried In Slaying." The Daily News of Los Angeles, March 18, 2005.  
In California, a registered sex offender has been accused of kidnapping, sexually assaulting or robbing four women who worked as prostitutes from 1999 to 2003, and of killing one of them. The suspect was released from prison in 1997 after serving a sentence for assault with a firearm. He was linked to the slaying last year by an ongoing check of the state DNA database containing samples from convicted felons. Detectives also reviewed other local killings of women who worked as prostitutes - of which at least five were between 1994 and 1999 - but in every case where there was DNA evidence, the current suspect was eliminated.
21. "Opinions; For third year, crime lab faces fiscal problems." Daily Advertiser, March 18, 2005.  
Editorial in Louisiana urges funding for the Acadiana crime lab. "Expertise in DNA sampling and in other advanced techniques for solving crimes and establishing guilt or innocence is crucial to law enforcement. We have that expertise at the Acadiana Crime Lab, and it has been used effectively to enhance the pursuit of justice. This

vital resource, however, constantly faces money problems. For the third year, the lab is struggling to meet the expenses of a constantly growing case load. Last year, the lab was hit by a deficit of more than a half-million dollars, caused by the need for more costly technology and a decrease in revenue from court fees... We remain convinced that a permanent tax is needed to support the lab. Spread over eight parishes, the tax on individuals would be very small... Considering the importance of the lab in making our area safer, residents of the district should vote to provide the financial base needed to keep the lab fully operative. Approving such a measure would be in the best interests of citizens of all the parishes.”

22. “A One-Man crimewave was responsible for more than one in 10 car break-ins in the city.” Manchester Daily News, March 18, 2005.  
In England, police revealed that a one-man crimewave was responsible for more than one in 10 car break-ins in a local area. Police say when they caught the perpetrator, the number of recorded offences plummeted. Officers realized the 30-year-old was involved in a car radio crime spree which netted him thousands of pounds. Police say his spare time was spent touring hotspots looking for Fords belonging to unsuspecting owners who had left the radios inside. But he was snared when DNA evidence found on recovered radios was matched to samples taken from him. Police say after his arrest car crime rates in the city center and north Manchester plunged by more than 10 per cent. When the car crook appeared in court he admitted six offences and asked for a further 86 crimes to be taken into consideration.
23. “DNA Panel Gets About 35 Requests 2,100 Letters On Test Go Out To Inmates.” Winston-Salem Journal, March 18, 2005.  
In North Carolina, about 35 inmates who think that DNA testing could prove their innocence are trying to get help from a new Forsyth County Bar Association committee that might offer them another chance. More than 2,100 inmates convicted in Forsyth County received letters several weeks ago letting them know that the bar association's DNA screening committee will be accepting requests for DNA testing. The committee will ask for court orders if it believes that such testing could exonerate an inmate. Though inmates can request a court order for DNA testing, the committee can provide easier access to testing, especially for those inmates without an attorney. The bar association's president said he expects to hear from more inmates in the coming weeks.
24. “Britain proposes legal change to help police identify tsunami victims.” Agence France Presse, March 17, 2005.  
In England, the British government proposed changing the law to allow police to use the national fingerprint and DNA databases to identify British victims of December's Asian tsunami. "As the law currently stands, neither the fingerprint nor DNA databases can be used for purposes not related to crime," a Home Office spokeswoman said. However, she said the government is proposing an amendment to the Serious and Organized Crime and Police Bill to change this "anomaly". Around one-fifth of adult men in Britain have either their DNA or fingerprints logged on the databases, which mainly holds the details of those with criminal convictions or who have been arrested, but released without charge.
25. “DNA links man to 1996 knife killing in Lathrup Village.” The Associated Press State & Local Wire, March 17, 2005.  
In Michigan, DNA analysis of several drops of blood found at the scene of a knife-slaying of the owner of a popular suburban Detroit men's store has led to the arrest of a suspect. The blood drops were found on the cash register and belonged to someone other than the victim, who's throat had been cut. The suspect was identified through a cold hit on the DNA database, and county deputies then arrested the man in Detroit on a felony warrant for skipping bond in a child support case. Once in custody, the man's statements and a new DNA test led to his being charged with felony murder.
26. “Capitol Briefs: Child-care workers begin vote on unionizing.” Copley News Service, March 17, 2005.  
The Illinois House of Representatives has passed a measure to require DNA from all arrested felons on a 105-1 vote.
27. “DNA lab forced to farm out tests.” Courier Mail (Queensland, Australia), March 17, 2005.  
In Australia, the John Tonge Centre will outsource up to 10,000 DNA property-related cases but it will not reduce the backlog of drug cases. "I am committed to ensuring that the DNA-sample backlog is cleared as soon as possible, and outsourcing these cases will allow our scientists to focus on major crime scene cases," the Health Minister said. "Queensland Health Scientific Services (John Tonge Centre) will work closely with the Queensland Police Service and the courts to ensure the security, integrity and continuity of examples and samples is maintained." A spokeswoman for the Minister said almost one-third of cases on waiting lists may have already

been solved through criminal confessions or other means. She wouldn't reveal how much funding would be directed at the initiative because it could "influence the market".

28. "San Diego police chief requests 100 new officers." The San Diego Union-Tribune, March 17, 2005.  
In California, the San Diego police chief is requesting funding to hire 100 officers and 100 civilian personnel. The budget request was made in a report to the San Diego City Council Public Safety and Neighborhood Services Committee during a 2006 budget session. Civilian employees will include those needed for crime lab work.
29. "Neighbor arrested in hit-and-run death." Sarasota Herald-Tribune, March 17, 2005.  
In Florida, DNA evidence collected from an impounded car was found to match that of an 8 year-old girl who was killed in a hit-and-run incident. The car had been impounded since the day of the incident, as a witness identified it. Police arrested the suspect in the February 11 incident on March 16, after the DNA match was confirmed.
30. "Police chief says crime lab should be accredited within 90 days." The Associated Press State & Local Wire, March 16, 2005.  
In Texas, the Houston Police Chief said the department's troubled crime lab - with the exception of its DNA section - should be accredited within 90 days. The Legislature has charged the Texas Department of Public Safety with making sure all laboratories in the state are accredited by September. If labs are unable to meet the deadline, their evidence must be shipped to an accredited lab for it to be admissible at trial. The DNA section has not operated since 2002 and likely will not be operational for months. The department is using private vendors to analyze DNA evidence at a cost of about \$1.5 million a year.
31. "Man who mailed threats to schools gets 10-year term." Chicago Tribune, March 16, 2005.  
In Illinois, a registered sex offender was sentenced to a maximum 10 years in prison for mailing threats to fatally shoot pupils and teachers at five Chicago public schools in September 2003. Police used DNA testing of saliva from an envelope seal to identify the man as the letter writer. He has been jailed since his arrest in January 2004. He was given the maximum prison term in part because he has a lengthy criminal record. He was sentenced to 6 years in prison in Cook County in 1992 for aggravated criminal sexual abuse and armed robbery.
32. "Pot made townhouse a target." Omaha World-Herald, March 15, 2005.  
In Nebraska, DNA evidence taken from a shoe found in a victims' apartment has confirmed the identity of a murder suspect. The victim was known to sell drugs from his home and was considered to be an easy place to rob. When he fought the armed intruders, the robbery turned into a homicide.

#### Genetic Privacy / Research

33. "F.D.A. Issues a Guide to Gathering Genetic Data That May Personalize Drug Therapy." The New York Times, March 23, 2005.  
The Food and Drug Administration has issued guidelines for pharmaceutical companies intended to encourage them to gather and submit information about how genetic variations affect the way people respond to their drugs. Drug companies have been somewhat reluctant to do this, agency officials said, from fear that the government might use the information to limit the market for their drugs. Drug makers have also worried that the F.D.A. might block approval if, say, a drug was shown in a laboratory test to activate a gene that might be involved in cancer. To reassure drug companies, the F.D.A. has said that most of the genetic information will not be considered in regulatory decisions. Instead, the agency said, the information will be used to help the agency learn about the new science of tying genetic variations to drug response, a field called pharmacogenomics or pharmacogenetics.
34. "Bass breeders turn to DNA analysis." The Dallas Morning News, March 17, 2005.  
Texas Parks and Wildlife agency will use DNA technology to improve its ability to selectively breed the best of the Budweiser ShareLunkers. When the biologists find a fish that's growing beyond the norm, they will take a fin sample of the fish. Through DNA analysis of the tissue sample, they can identify the all-star fish's parents. That's the only way to know which of the big brood fish and which parent combinations are passing along their growth potential.

#### Paternity

35. "Paternity damages decision toppled." The Australian, March 18, 2005.

In Australia, an appeals court has overturned a lower court's decision to award \$70,000 in damages to a man who was duped into paying child support for two children for whom DNA tests indicate he was not the biological father. The Victorian Court of Appeal found the ex-wife had not intended to her husband. The man is considering an appeal.