

*Gordon Thomas Honeywell Governmental Affairs monitors the advancement of DNA database programs globally. We frequently advise foreign and domestic lawmakers on DNA policy, legislation, law, and standards.*

*As part of our continuous effort to keep global forensic DNA community leaders informed of significant international DNA database developments, I am pleased to provide the following updates.*

## ***Today's update focuses on issues and activities in the United States:***

Congress positioning to pass Rapid DNA legislation – In June, the Rapid DNA Act of 2016 (S. 2348) was unanimously passed by the US Senate, and is now under consideration in the US House. This legislation provides Congressional approval for the FBI to proceed with plans to establish standards and procedures for using Rapid technology on CODIS-bound offender samples. The bill does not itself move the FBI's timeline forward for full implementation of Rapid (at booking stations), but is an important "blessing" from Congress and should encourage state adoption of updated records systems necessary for the support of Rapid. Congress is on an abbreviated schedule for the remainder of 2016 (due to the upcoming election season) but GTH anticipates that the Rapid bill has a good chance of enactment in 2016. Even with the passage of this legislation, there are many steps that would need to occur prior to widespread adoption of Rapid DNA in the United States. These steps include enacting important changes needed in state laws, such as passing arrestee DNA testing legislation, and granting permission for local law enforcement to analyze and upload samples. Furthermore, as offender DNA testing migrates from the state crime lab to local law enforcement, local governments may be called on to share the cost burden for Rapid DNA equipment and analysis at booking stations.

Minnesota arrestee DNA sampling effort challenged in court: A Minnesota County renewed arrestee DNA collections in 2015, and is now facing a challenge (Dakota County Sheriff v. Emerson). In 2006, the Minnesota Court of Appeals ruled that the state law permitting the collection of DNA from certain felony arrestees was a violation of search and seizure protections under the 4<sup>th</sup> Amendment of the US Constitution. When the US Supreme Court ruled differently in 2013 (Maryland v. King), Dakota County's legal analysis (with support from the state Attorney General office) determined that the US Supreme Court decision supersedes the Minnesota interpretation of the US Constitution, and accordingly recommenced arrestee DNA collection. The new challenge to this collection is currently before the State Supreme Court.

### Debbie Smith DNA funding remains strong

First enacted in 2004, the Debbie Smith DNA Backlog Elimination Act authorizes \$151 million per year for forensic DNA programs. Since 2004, the Debbie Smith Act has been reauthorized twice, most recently in 2014 (P.L. 113-182) – currently authorizing funding for the nation's DNA crime labs through Fiscal Year 2019. Of this amount "authorized" to be spent, in recent years Congress has approved \$117 million annually for "DNA and related purposes", of which a diminishing amount has been allotted by NIJ into the DNA Backlog Reduction Program (\$72 million in FY 14, \$67 million in FY 15, \$64 million announced for FY 16). NIJ has announced possible changes to the grant structure for the FY 17 solicitation, which could have an impact on the grant application process and amounts available – but with an intent of making the grant more responsive to the needs of forensic DNA labs.

In the meantime, the success of the Debbie Smith DNA grant program can hardly be questioned. According to NIJ, since 2005, the funding provided to local and state crime laboratories through the Debbie Smith Act (called the DNA Backlog and Capacity Enhancement grants) has resulted in: More than 550,000 DNA cases processed, over 247,000 DNA profiles uploaded to CODIS, and 2,000,000 database offender samples uploaded to CODIS. Moreover, as intended by Congress, crime labs have successfully used the grant funds to continuously increase capacity to accommodate the ever-increasing demand from investigators for more DNA testing, across a variety of types of crime.

Debbie Smith remains a committed advocate for this funding, and for recognition of the incredibly important work being completed at crime laboratories throughout the nation. GTH anticipates that the Debbie Smith grant program will continue to receive strong, bi-partisan support from Congress in the coming years – thanks in no small-part to the tireless efforts of Debbie Smith, herself.

Oklahoma passes arrestee DNA testing law – This year in Oklahoma, proponents of arrestee DNA legislation finally won a protracted battle to expand the state’s database. Legislation had been introduced continuously since 2008. Despite strong support from victims, law enforcement and the state crime lab, the bill faced significant hurdles with questions relating to funding and privacy. However, the bill’s sponsors showed strong determination and succeeded in enacting the legislation this year. Oklahoma’s new law (HB 2275) applies to all felony arrests, with collection at booking (but analysis only if the arrest was on a warrant, or probable cause was found by a judge), and expungement is automatic if the person is not convicted.

States enact legislation for rape kit reporting and reform - The 2016 state legislative sessions continued to see a significant focus on efforts related to counting rape kits and creating standardized statewide submission policies. This issue of course has been spurred by the identification of enormous numbers of untested rape kits in evidence rooms throughout the country. In many instances the untested rape kits are a product of a school of thought that DNA analysis was of limited value for cases with named perpetrators, and particularly where the suspect claimed consent. However, advocates for testing of ALL rape kits point out that rapists tend to be serial predators, and a known profile from an acquaintance case may easily be linked to other cases. There is a further feeling that after going through the lengthy sexual assault exam for the rape evidence collection, victims deserve to know their kit has been tested. To date, GTH has tracked the following enacted reforms:

- 25 States – Statewide audits of untested kits
  - o 8 states require annual audits
  - o 3 states require statewide rape kit tracking
- 17 States – Statewide standards for submission to crime labs
- 10 States – Mandate turnaround times for rape kit analysis at labs (often with caveats “upon sufficient funding)
- 8 States – Provide notification rights to victims regarding status of his/her rape kit

Next Generation Sequencing Debate - In today’s crime labs, a notable percentage of DNA casework does not yield a usable profile. Utilization of NGS can reduce this percentage, especially in cases involving mixtures and degraded samples. While the value of NGS to solving crime will be extraordinary, US labs, as in most countries, visualize NGS as a supplemental technology to CE, only when a deeper approach to testing is needed in the criminal investigation. In fact, due to the existing standardization and legal acceptability of CE results, CE will likely remain the primary

platform for forensic DNA analysis for many years to come. Nevertheless, NGS is coming and so are the public policy issues that will need to be addressed prior to seeing widespread acceptance of NGS. Of particular concern to lawmakers and privacy advocates will be the ease with which NGS can test into the coding region and the large amount of markers that can be tested at one time. GTH believes that the best way to accomplish public acceptance of NGS, and avoid reactionary prohibitions against NGS, is to limit the amount of data obtainable from forensic NGS testing. Policies and practices should be developed that encourage crime labs to only test for the markers needed. The development and utilization of mega panels where significant amounts of unnecessary data are collected will expose the forensic labs sciences to overregulation.

GTH to Present at ISHI - GTH's Lisa Hurst will be giving a legislative policy and funding update during the ISHI conference in Minneapolis, Minnesota. Her talk is scheduled for September 29 at 9AM. In addition to explaining the new trends in DNA testing policy and funding initiatives, Lisa will discuss the new policy discussions regarding NGS that are highlighted above.