Draft Minutes
Forensic Science Board Meeting
January 14, 2009
Department of Forensic Science Central Laboratory, Classroom 1

Board Members Present

Ms. Rochelle Altholz (Designee for Leah Bush, M.D.)
Mr. Steven Benjamin
Mr. Joseph Bono, Chair
Dale Carpenter, Ph.D.
Mr. John Colligan (Designee for Mr. Leonard Cooke)
Mr. Alan Katz
Mr. Karl Hade
Sheriff F. W. Howard, Jr.
Mr. Robert Jensen
Lieutenant Colonel Robert Northern (Designee for Colonel W. Steven Flaherty)
Ms. Elizabeth Russell
Mr. S. Randolph Sengel
Ms. Kristen Howard (Designee for Delegate Albo)

Board Members Absent – None

Staff Members Present

Ms. Wanda Adkins, Office Manager
Mr. Henry Bosman, Senior Accountant
Mr. Jeffrey Ban, Central Laboratory Director
David Barron, Ph.D., Technical Services Director
Ms. Guinevere Cassidy, Legal Assistant
Mr. Douglas Chandler, Manager Information Technology Services
Ms. Ann Davis, Physical Evidence Program Manager
Ms. Shelley Edler, Forensic Scientist, Forensic Biology
Ms. Leslie Ellis, Human Resources Director
Mr. Tom Gasparoli, Public Information Officer
Ms. Gail Jaspen, Chief Deputy Director
Mr. Bradford Jenkins, Biology Program Manager
Ms. Alka Lohmann, Training and Calibration Program Manager
Mr. Pete Marone, Director, Department of Forensic Science
Ms. Elizabeth Mirza, Grants Administration/Policy Analyst
Mr. Kevin Patrick, Western Laboratory Director
Mr. Steven Sigel, Deputy Director
Mr. Sherwood Stroble, Policy, Planning and Budget Manager
Ms. Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
Ms. Amy Wong, Northern Laboratory Director

Call to Order:

Chairman Bono called the meeting to order at 9:04 a.m.

Adoption of Agenda:

Chairman Bono asked if there were any additions or changes to the draft agenda. There were none. Mr. Benjamin moved that the draft agenda be adopted. The motion was seconded by Sherriff Howard and adopted without amendment by majority vote.

Adoption of Minutes

Chairman Bono asked if there were any additions or changes to the draft minutes from the October 31, 2008 meeting. There were none. Ms. Russell moved that the draft minutes of the October 31, 2008 meeting is adopted. The motion was seconded by Lt. Col. Northern and adopted without amendment by unanimous vote.

Chairman's Report

Chairman Bono introduced Dr. Dale Carpenter, Chairman of the Scientific Advisory Committee (SAC) and new member of the Forensic Science Board (the Board).

Chairman Bono informed the Board that he sent a letter to the Secretary of Finance requesting that the Department of Planning and Budget (DPB) appear at this meeting of the Board and give a presentation on the scope and nature of a best practices management audit/assessment. No response was received.

Director's Report

Regarding DFS's Budget, Director Marone informed the Board that there has been a restructuring of technical services. The eight Section Chief positions overseeing Drugs, Toxicology, Trace Evidence, Latents/Imaging, Firearms, Nuclear DNA, Breath Alcohol and the Training Academy were restructured into four Program Manager positions overseeing Training and Calibration, Physical Evidence, Chemistry, and Biology. Also, the Director of Administration and Finance position was eliminated; the training academy was reduced from three sessions to two sessions with no subsidy for lodging of participants and open positions are remaining open. A total of five positions were cut as a result of the budget reduction.

Discussion by the Board ensued regarding the impact of the DFS budget reduction. Further discussion ensued regarding the Board's review of all budget and appropriations requests prior to being submitted to the Governor. Mr. Benjamin requested that DFS report to the Board at the next meeting DFS's proposed course of conduct in providing the Board with all budget and appropriations requests for review prior to submission to the Governor.

Regarding grants, Director Marone informed the Board that there are currently two grants from the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ)

that DFS requests Board approval to pursue. The first grant seeks applications for research and development funding to enhance the forensic uses of DNA solicitation technology. DFS has drafted its application titled *DNA Analysis from Compromised Evidence: Fired Cartridge Cases and Submerged Weapons* with a funding request of $110,000.

Discussion by the Board ensued regarding the DNA Analysis from Compromised Evidence grant application. Mr. Benjamin requested that he be provided with a copy of the grant solicitation and application.

Mr. Jensen moved that the Board grant its permission for DFS to move forward with the application process regarding the DNA Analysis from Compromised Evidence grant. Sheriff Howard seconded the motion which passed by majority vote with one abstention.

Director Marone also informed the Board that a second NIJ solicitation seeks applications for funding under the Forensic Science Training Development and Delivery Program. Of the five priority content areas for training development and delivery listed for possible grant funding DFS proposes to apply for funding under the section on Education of criminal justice practitioners and policymakers other than forensic scientists on relevant aspects of forensic science. DFS has not yet drafted an application for this grant.

Discussion by the Board ensued regarding the Forensic Science Training Development and Delivery Program grant. Mr. Benjamin requested that he be provided with a copy of the solicitation, and the application when it becomes available.

Mr. Sengel moved that the Board grant its permission for DFS to draft an application for the Forensic Science Training Development and Delivery Program grant. The motion was seconded by Lt. Col. Northern and passed by unanimous vote.

Regarding the Workload Summary, Director Marone reported that the Board received a copy of the 30-60-90 day backlog spreadsheet in the handout packet.

Discussion by the Board ensued regarding the backlog and any foreseeable need to replace open examiner positions.

Regarding Facilities, Director Marone stated that the Northern laboratory construction is on track with move-in expected in April, 2009. Regarding the Eastern laboratory's expansion, we are waiting for the tenants on the 5th floor to move out after their lease expires. The status of the Western laboratory is the same as reported in the last meeting.

Regarding the DNA Data Bank Requirements under VA Code § 19.2-310.2 *et seq.*, Director Marone informed that there are now checks and balances in place utilizing the LIDS system to have multiple checks of in custody individuals regarding their status in the DNA bank from sentencing through incarceration and release.

Regarding compliance with revised quality assurance standards for forensic DNA testing laboratories, Director Marone introduced Brad Jenkins, DFS Biology Program Manager. Mr.

Jenkins informed the Board that the revised standards are effective July 1, 2009. Most of the standards have been expanded and further defined. DFS is currently following many of the new standards but edits to the manuals are needed to document compliance. Validation guidelines have been expanded. Quantitative PCR kits have been added to critical reagents, quality controlled prior to use. The list of critical instruments required to have yearly quality control reviews have been expanded. CODIS review of DNA data has been added. Requirements for outsourcing have been expanded including audits and required on-site visits.

Regarding publication of protocols on the DFS website, Director Marone informed the Board that due to the reduced budget new changes/additions to the website are slow because the webmaster for the DFS website is a subcontractor and a new webmaster is cost prohibitive. David Barron, DFS Technical Services Director informed the Board that the new DNA protocols will be posted in the next couple of days followed by the new breath alcohol protocols a little later. Dr. Barron stated that he would provide the Board with exact dates of when new protocols are slated to be posted to the DFS website.

SAC Chairman's Report

Dr. Carpenter informed the Board that at yesterday's SAC meeting a new subcommittee was formed to review the validations and protocol manuals of the PowerPlex 16 on the 3130xl, the new DNA platform.

The Board broke from meeting proceedings at 10:08 a.m. for a fifteen minute break.

The Board meeting resumed at 10:24 a.m.

Old Business

Regarding the Post-Conviction DNA Testing Program, Chief Deputy Director Gail Jaspen reported on the status of the program and provided the Board with a handout listing current data. The number of case files found with evidence suitable for DNA testing totals 3,054, of which 766 cases have evidence and a named suspect that was known to have been convicted. 830 cases have been sent to the contractor for DNA testing, of which 748 are cases with felony convictions. 406 cases have preliminary case results returned from the contractor; 70 cases have complete case results returned from the contractor; and 355 cases are awaiting contractor testing. 268 contractor case results have been reviewed by DFS examiners from which 41 Certificates of Analyses have been completed and mailed and 27 cases have Certificates of Analyses in the final stages of completion.

There was discussion of the term "qualifying conviction" as used in the Post-Conviction DNA Testing Program. Ms. Jaspen reported that the term was first used in connection with the 31 original cases in the program. Next, the term was used as defined by the state's statute that defines and lists 9 "crimes against persons." This list of crimes against persons became the state criteria for testing. Subsequently, the term has been used as defined by the NIJ grant list of crimes that meet the criteria for testing under the grant. The NIJ criteria crime list is more

specific than the state's criteria list. More recently, the term has been used as defined by the 2008 Budget language, i.e., "individuals convicted of crimes."

Discussion ensued with Ms. Jaspen and the Board regarding the data and definitions of "cases" and "convicted suspects." Ms. Jaspen stated that a "case" is a single criminal event that was investigated. "Convicted suspect" is the individual convicted of the crime that was investigated. A "case," therefore, can have more than one "convicted suspect."

Further discussion ensued with Ms. Jaspen, Mr. Jenkins and the Board regarding the use of the term, "Not Indicated." Mr. Jenkins informed the Board that the term has not/will not be used in Certificates of Analysis. The use of the term is not in compliance with the established protocols. Ms. Jaspen stated that the term has been used as a category definition in reporting to the Board. Ms. Jaspen noted that the Board also used the term in its November 2008 report to the Governor.

Regarding the Post-Conviction DNA Notification Project, Ms. Jaspen reported on the status of the project and provided the Board with two handouts listing the various data categories and current statistics. To date, the total number of convicted suspects eligible to be notified under 2008 Budget Language is 1,051 of which 206 are determined to be deceased and 845 are living. Of the 845 living suspects entitled to notification, 196 are currently incarcerated and 58 have undetermined addresses. To date, 317 suspects have confirmed receipt of the notification letter of which 169 were hand-delivered to incarcerated suspects and 148 suspects returned the confirmation post card or were confirmed by Mid-Atlantic Innocence Project (MAIP). An additional, 100 green certified mail return receipts have been received signed by the suspect addressee but with us other confirming information. 528 notification letter were returned as "undeliverable" or no confirmation postcard was received.

Discussion by the Board ensued.

Ms. Jaspen introduced Col. Kemmler of the Virginia State Police (VSP) who reported to the Board on VSP's identification of current addresses of convicted individuals for the Post-Conviction DNA Notification Project. Col Kemmler informed the Board of the multiple step or tiered investigation that took place to acquire the most current address for a convicted suspect. Ms. Jaspen noted that this was a very time and labor intensive project for VSP.

Discussion by the Board ensued. Chairman Bono thanked Col. Kemmler and VSP for all their work in acquiring addresses for the Post-Conviction DNA Notification Project.

Ms. Jaspen then introduced Shawn Armbrust of the Mid-Atlantic Innocence Project (MAIP) who reported on the numbers and types of contacts made to MAIP as a result of notification letters sent to the convicted suspects in the Post-Conviction DNA Notification Project. Ms. Armbrust stated that to date she has been contacted by 172 people, 99 of whom required a follow-up call and 20 with whom she has not yet contacted. 130 of the 172 stated that they are the person the letter is addressing, 19 are unsure and 3 believe they are not the person addressed in the letter. Ms Armbrust indicated that she has encountered the following issues: (1) there is continued confusion by the recipients regarding the notification letter; (2) the letters continue to have

conviction accuracy problems; and (3) there are inconsistencies and confusion regarding what a "qualifying conviction" as relates to testing status.

Discussion by the Board ensued. Chairman Bono thanked Ms. Armbrust and MAIP for all their work in assisting the individuals receiving the notification letter in the Post-Conviction DNA Notification Project.

Regarding the NIJ Post-Conviction Grant and the cooperative agreement, Ms. Jaspen informed the Board that it is common with NIJ grants that in the award letter there is a request to sign an accompanying cooperative agreement.

Regarding the review and approval from the Board for DFS to submit an application and enter into the cooperative agreement regarding the latest NIJ grant, Ms. Jaspen reported to the Board that in early 2008, NIJ posted the grant solicitation. On February 12, 2008, DFS discussed the grant with Chairman Bono. DFS records do not reflect approval by Chairman Bono. In March 2008, DFS submitted its grant application to NIJ. At the May 7, 2008 Board meeting, DFS presented the NIJ grant with other grants that were available. The Board took action to approve moving forward with all the available grants. In July 2008, DFS received the pre-award letter. At the August 8, 2008 Board meeting, DFS reported that the NIJ grant was pending. In September 2008, DFS received the official NIJ grant award letter with the cooperative agreement. On September 24, 2008, Director Marone signed the cooperative agreement. At the October 8, 2008 Board meeting, Director Marone reported that DFS was awarded the NIJ grant. Ms. Jaspen further stated that the grant review and approval process needed to be tightened up and that is should be a shared responsibility DFS and the Board. To dated DFS has incurred $10,392.13 in expenses regarding the NIJ grant, and no receipts have been submitted to NIJ for reimbursement.

Discussion by the Board ensued. Mr. Benjamin and Mr. Jensen requested that they be provided with copies of DFS's reports to NIJ regarding the grant prior to submission.

Mr Sengel moved that the Board retroactively approve DFS's application for the NIJ grant. Mr. Katz seconded the motion. The motion passed by majority vote with two abstentions.

Mr. Katz moved that the Board retroactively approve DFS's acceptance of the grant award. Mr. Sengel seconded the motion. The motion passed by majority vote with two abstentions.

Regarding the NIJ – Urban Institute Study, Ms. Jaspen informed the Board that DFS has been approached to participate in the study. The Institute would like to draw demographic data from the Post-Conviction DNA Testing Program and Notification Project. DFS is currently in discussion with the Urban Institute regarding what data they are seeking. The Urban Institute Study is part of the NIJ Post-Conviction Grant.

<u>New Business</u>

Regarding the Crime Commission's action on legislation relating to the DNA Notification Project and the Board's membership, Ms. Howard informed the Board that there are two pieces

of legislature recommended by the Crime Commission slated to be considered at the upcoming General Assembly. The first is legislation to allow the Board to utilize the services of *pro bono* volunteer attorneys in the Post-Conviction Notification Project. The patron of this legislation is Senator Stolle. The second is legislation to add two legislators as members to the Board. The patron of this legislation is Senator Howell.

Discussion by the Board ensued.

Public Comment

None

Next Board Meeting

The next meeting of the Board will be Wednesday, May 13, 2009, to begin at 9:00 a.m.

Adjournment

Mr. Sengel moved that the meeting be adjourned. Mr. Bono seconded the motion which passed by unanimous vote. The Board meeting adjourned at 12:30 p.m.