

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Draft Minutes
Forensic Science Board
All-Virtual Meeting

July 10, 2024

23
24
25
26
27

Board Members Present

8 Megan L. Clark, Commonwealth's Attorney, Prince Edward County
9 Maggie A. DeBoard, Chief of Police, Herndon Police Department
10 Karl R. Hade, Executive Secretary, Supreme Court of Virginia
11 Kristen Howard, Designee for Charniele Herring, Chair of the Virginia State Crime Commission
12 Michael HuYoung, Esquire, Criminal Defense Attorney
13 George C. Maha, Ph.D., Scientific Advisory Committee Member
14 Richard P. Meyers, Scientific Advisory Committee Member, *Vice Chair*
15 Jackson Miller, Director, Department of Criminal Justice Service, *Chair*
16 Beth O'Halloran, Designee for Caroline D. Juran, R.Ph., Executive Director, Board of Pharmacy
17 Senator Russet Perry, Designee for Senator Scott Surovell, Chair of the Senate Committee on the
18 Judiciary
19 Colonel Gary Settle, Superintendent of the Virginia State Police
20 Denise Toney, Ph.D., Director of the Division of Consolidated Laboratory Services
21 Robert Tracci, Senior Assistant Attorney General, Designee of Attorney General Jason S. Miyares

23
24
25
26
27

Board Members Absent

24 William T. Gormley, M.D., Chief Medical Examiner
25 Delegate Vivian Watts, Designee for Delegate Patrick Hope, Chair of the House Committee on
26 the Judiciary

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Legal Counsel for the Forensic Science Board

29 Sarah Hornberger, Esquire, attending as Counsel to the Board for Michelle Welch

Staff Members Present

32 Elizabeth Ballard, Assistant Forensic Biology Program Manager
33 David A. Barron, Ph.D., Deputy Director
34 Mason Byrd, Chief Deputy Director
35 Deea Chakraborty, Legal Assistant
36 Samantha Glass, Physical Evidence Program Manager
37 James W. Hutchings, Ph.D., Toxicology Program Manager
38 Linda C. Jackson, Director
39 Amy Jenkins, Department Counsel
40 David Koppenhaver, Eastern Laboratory Director
41 Alka B. Lohmann, Director of Technical Services
42 Scott Maye, Central Laboratory Director
43 Jessica B. Norton, Sr. Legal Assistant
44 Ellen Spain, Evidence Receiving Program Manager
45 Elise Stroble, Grants & Administration Program Manager/FSB Secretary
46 Robyn Weimer, Chemistry Program Manager

48 **Call to Order**

49 Jackson Miller, Chair of the Forensic Scientific Board (“Board” or “FSB”), called the meeting to
50 order at 9:31 a.m. and verified that a quorum of the Board was present. Chairman Miller then
51 called on Ms. Stroble to lead the introductions. Ms. Stroble asked members to introduce themselves
52 and to state the seat that they fill on the Board as their names were called.

53

54 **Adoption of Agenda**

55 Chairman Miller asked if there were any changes that needed to be made to the draft agenda. Mr.
56 Byrd stated that a correction was needed to one agenda item: *Arizona vs. Smith* should be *Smith*
57 *vs. Arizona*. A motion was made by Ms. Clark to adopt the agenda with that correction. The motion
58 was seconded and passed with the unanimous approval of the Board.

59

60 **Approval of Draft Minutes of the April 10, 2024 Board Meeting**

61 Chairman Miller asked if there were any proposed changes to the draft minutes of the April 10,
62 2024 meeting that were previously provided. Hearing none, he asked for a motion to approve the
63 minutes. Mr. Meyers made the motion, which was seconded and passed by unanimous vote of the
64 Board.

65

66 **FSB Chair’s Report**

67 Chairman Miller advised the Board that he did not have a report at this time.

68

69 **DFS Director’s Report**

70 Director Jackson provided her presentation related to various new and ongoing activities of the
71 Department. Below are some key points of her presentation.

72

- 73 • Notification letters related to the Burton case review project were sent to 174 law
74 enforcement agencies and 125 localities, and information regarding convictions is being
75 returned. DFS will begin notification of defendants, prioritizing those who are incarcerated
76 (as identified by the Virginia State Crime Commission).
- 77 • DFS has established an honorarium for former employees who are called to appear in court
78 for testimony in cases worked while employed with the agency. This is to limit reanalysis,
79 where possible, especially given that evidence may no longer be available.
- 80 • As of July 1, DNA Certificates of Analysis will no longer include a Table of Typing
81 Results. The relevant statute was amended to include language advising that the case file
82 documentation, including the developed evidentiary and comparison profiles could be
83 obtained with a lawfully served subpoena *duces tecum* (as with any other DFS case).
- 84 • DFS is working on a bid for the outsourcing of DNA “non-person” cases from all DFS
85 locations. The contract lab would provide the certificate of analysis to DFS who would
86 forward that to the submitting agency. A customer notice will be sent prior to
87 implementation.

88

89 Director Jackson also notified the Board that DFS had applied for two formula grants since the
90 previous meeting, with permission from the then-serving Chair and Vice Chair and stated that the
91 full Board’s approval is needed to accept the funds, should they be awarded.

92

93 Chairman Miller asked if there were any questions regarding the grants or Director Jackson’s
94 presentation in general.

95
96 Senator Perry stated that she would like to receive a more thorough briefing on the Mary Jane
97 Burton case review project, which she indicated she was happy to receive at a later time. Ms.
98 Howard provided a high-level overview and offered to provide more information at a later date.
99 Senator Perry stated that a particular concern of hers is in relation to other individuals who were
100 trained by Ms. Burton and what is being done about those cases; Ms. Howard offered to discuss
101 that with her at another time.

102
103 Chairman Miller asked for a motion to allow DFS to accept grant funds from the two programs,
104 should they be awarded. A motion was made by Senator Perry, which was seconded and passed
105 unanimously by the Board.

106
107 A question was raised regarding the potential outsourcing of certain DNA cases and whether DFS
108 would be responsible for testifying if the case goes to court. Director Jackson advised that DFS
109 would not be the ones to testify, but that the contract laboratory would have the responsibility of
110 testifying on behalf of their results. There was also mention of the difficulties surrounding out-of-
111 state subpoenas for testimony. Ms. Jenkins advised that providing testimony in court would be a
112 requirement of any contract for outsourcing and that DFS does not anticipate any issues with that.

113 114 **Old Business**

115 Ms. Jenkins provided an update on 6 VAC 40-40-80 and -90 – DNA Regulations for the
116 Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and
117 Certain Burglaries. This is a fast-track regulation action that was approved by the Board at the
118 April 2024 meeting as part of an ongoing response to the Governor’s Executive Order 19 calling
119 for a reduction of regulatory requirements in state government. The amendments to this regulation
120 were approved in April and are now before the Attorney General’s Office for review. It is
121 anticipated that this will be approved by the end of 2024.

122 123 **New Business**

124 Elizabeth Ballard, Assistant Forensic Biology Program Manager, provided an update on the FBI
125 Rapid DNA Guidelines. To date, Virginia has not decided to implement rapid DNA testing. Ms.
126 Ballard provided detailed information regarding the draft FBI Quality Assurance Standards that
127 were released for public review in June of 2024 and the potential implications for DFS and
128 partnering agencies if the decision is made to move forward with this type of testing by Virginia
129 law enforcement.

130
131 Amy Jenkins, Department Counsel, provided information regarding *Smith vs. Arizona*, a U.S.
132 Supreme Court case involving surrogate testimony where an expert conveyed an absent analyst’s
133 statements in support of his opinion. The case has potential implications for forensic laboratories
134 nationwide for surrogate testimony and for batch processing. Ms. Jenkins advised that surrogate
135 testimony would not necessarily have implications for DFS, as (1) DFS is encouraging the return
136 of its former employees to testify utilizing the new Honorarium Policy and (2) typically re-
137 examination of the evidence would be sought when the original analyst is not available for
138 testimony. The main concern for DFS is batch processing, and DFS is working with the
139 Commonwealth’s Attorneys to work through those potential implications.

140 141 **Public Comment**

142 None.

143

144 **Confirm Next Meeting Date**

145 Chairman Miller stated that the next meeting will be held on October 9, 2024 at 9:30 a.m., and
146 confirmed that the meeting would be held in person at the DFS Laboratory in Richmond.

147

148 **Adjournment**

149 He then called for a motion to adjourn the meeting. The motion to adjourn, made by Ms. Clark,
150 was seconded, and passed unanimously. The meeting was adjourned at 10:40 a.m.

DRAFT