

Draft Minutes
Forensic Science Board Meeting
April 10, 2023

Board Members Present

Megan L. Clark, Commonwealth's Attorney, Prince Edward County
Colin Drabert, Designee of the Chair of the Virginia State Crime Commission, Senator John S. Edwards
William T. Gormley, M.D., Chief Medical Examiner
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Michael HuYoung, Esquire, Criminal Defense Attorney
Caroline D. Juran, Executive Director, Board of Pharmacy, *Vice Chair*
Lt. Colonel Timothy Lyon, Designee of Colonel Gary T. Settle, Superintendent, Virginia State Police
George C. Maha, Ph.D., Scientific Advisory Committee Member
Richard P. Meyers, Scientific Advisory Committee Member
Jackson Miller, Director, Department of Criminal Justice Services
Denise M. Toney, Ph.D., Director of the Division of Consolidated Laboratory Services
Robert Tracci, Designee of Attorney General Jason S. Miyares
Delegate Wren Williams, Designee of Delegate Robert Bell, Chair of the House Committee for Courts of Justice

Board Members Absent

Chief Maggie A. DeBoard, Chief of Police, Herndon Police Department, *Chair*
Senator John S. Edwards, Chair of the Senate Committee on the Judiciary

Legal Counsel for the Forensic Science Board

Michelle Welch, Senior Assistant Attorney General

Staff Members Present

David A. Barron, Ph.D., Deputy Director
Mason Byrd, Chief Deputy Director
Deea Chakraborty, Legal Assistant
Sabrina S. Cillessen, Physical Evidence Program Manager
James W. Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Director
Brad Jenkins, Forensic Biology Program Manager
Alka B. Lohmann, Director of Technical Services
Scott Maye, Central Laboratory Director
Jessica B. Norton, Sr. Legal Assistant
Kelly Shelton, Administrative Assistant
Elise Stroble, Grants and Administration Program Manager/Board Secretary
Robyn Weimer, Chemistry Program Manager

Call to Order

Ms. Caroline Juran, Vice Chair of the Forensic Scientific Board (“Board” or “FSB”), called the meeting to order at 9:34 a.m.

Adoption of Agenda

Ms. Juran advised that the first order of business was the adoption of the draft agenda for the meeting, which was previously shared with the Board members. She asked if there were any changes to the draft agenda. Being none, she asked for a motion to approve the draft agenda. Dr. Maha made a motion to adopt the agenda, which was seconded by Ms. Clark. A vote was taken, and the agenda was adopted by unanimous vote.

Approval of Draft Minutes of the January 4, 2023 Board Meeting

Ms. Juran asked if there were any proposed changes to the draft minutes from the January 4, 2023 meeting. Being none, she asked for a motion to approve the draft minutes. Ms. Clark made a motion to approve the January 4, 2023 meeting minutes, which was seconded by Mr. Hade. A vote was taken, and the agenda was adopted unanimously.

FSB Chair’s Report

Ms. Juran stated she did not have a report.

Scientific Advisory Committee Report

Ms. Juran called on Mr. Meyers to give the Scientific Advisory Committee report. Mr. Meyers stated that he did not have a report, as the meeting would occur the following day.

DFS Director’s Report

Ms. Juran called on Director Jackson to provide her report to the Board.

Department Updates

Director Jackson provided updates on various areas of DFS operations, starting with the Central Laboratory capital project. Director Jackson announced that the groundbreaking occurred on March 2, 2023 and thanked the Board members that were able to attend. She also informed the Board that several guests provided remarks, including Secretary of Public Safety and Homeland Security Robert Mosier, as well as Secretaries McDermid and Littel. Project completion is anticipated in late 2025 and move-in is expected to be sometime in early 2026.

Training for Attorneys and Judges

Director Jackson reminded the Board of the agency’s plans to provide training sessions at all four DFS laboratories for attorneys and judges to better understand the underlying science, how the testing works, and to better understand DFS’ reports and the implications behind the test results. The first will be half-day sessions on Controlled Substances in May 2023. In addition, full-day DNA training sessions are planned for the fall of 2023. Information for these courses is posted on the DFS website, and notices have been sent to stakeholders.

Customer Working Group

Director Jackson updated the Board on the Customer Working Group, which was established prior to the pandemic to seek customer service feedback. The first meeting will be held virtually on May 8, 2023. Two items on the agenda for the upcoming meeting are potential changes in Latent Prints Section reporting and DNA Section changes in reporting DNA allele tables in Certificates of Analysis.

Accreditation

Director Jackson let the Board know that DFS recently underwent its internal audit process, which occurred February 21 – March 23, 2023. In addition, DFS is planning to begin its external surveillance document review, which will begin the first week of May. Next year, there will be an on-site review, which occurs every other year.

Forensic Training

Director Jackson noted that the 108th Session of the Forensic Training Academy graduated on March 31st. The two newly hired Forensic Trainers were able to assist with the training, as their employment began prior to the start of the session.

Field Test Regulation Update

Director Jackson reminded the Board that the first public hearing about the marijuana field tests was held earlier that morning. She also provided a brief update on 6VAC40-30 – Regulations for the Approval of Field Tests for Detection of Drugs. Approved field tests are for use in preliminary hearings, but not at trial. She provided a brief history of the regulatory process that has occurred surrounding the approval of these kits. The links to the current published lists can be found on the DFS website and are included in the Director's report presentation.

Director Jackson informed the Board that the approval for the first presumptive mobile instrument for the detection of drugs has been published and that an agency notice was sent to stakeholders. Director Jackson discussed the technology involved in these mobile devices, Raman spectroscopy, which allows users to scan directly through clear packaging to minimize the risk of exposure but warned that users should still use caution when handling suspected drugs. She clarified that Raman spectrometry is useful for indicating the presence of substances in high concentrations within a mixture, but is not ideal for indicating the presence of substances in a low concentration.

Staff Training

Director Jackson reminded the Board that DFS is providing training for forensic scientists that will offer tools for managing stress and vicarious trauma that are inherent in the type of work that they do. The training is being conducted by MindGen, LLC and consists of four 45-minute sessions. Two of the four sessions have been completed and the remaining sessions are scheduled to end in May 2023.

Director Jackson also informed the Board that a three-hour *Supervisor Civility Training* was provided to agency supervisors by Karen Michael, PLC. The training covered federal and state statutes relating to handling difficult situations in the workplace.

Director Jackson let the Board know that DFS has put forward a new agency goal for staff training and that the number of hours of required training for scientific staff was increased from eight to sixteen hours per year. This new goal is in line with the recommendations of *E2917 Practice for Forensic Science Practitioner Training, Continuing Education, and Professional Development Programs*. Other staff within the agency have training goals with varying numbers of hours per year.

Post-Conviction Project

Director Jackson advised the Board that case files identified for review as part of the post-conviction project will be returned to the State Records Center. The Certificates of Analysis and case information have been entered into the historical case file database as part of the agency's historical case file project. Evidence identified in the case files and dried sample extracts will be returned to the submitting agencies to be maintained as they would any other evidence. The transfers will be done in batches, and a notification will be sent to law enforcement agencies in advance.

Director Jackson also made the Board aware of a podcast entitled *Admissible: Shreds of Evidence* that was produced by VPM, the local public radio station, which focused on the work of Serologist Mary Jane Burton during the period of 1973 to 1988. Director Jackson and Brad Jenkins, Biology Program Manager, were interviewed by VPM in early 2022 during which the reporter alleged that they were in possession of documentation showing that Ms. Burton changed serology results in logbooks. After the interview, DFS requested in writing a copy of such documentation, but the request was denied by VPM. Director Jackson noted that it seemed premature to discuss the podcast in depth since only 10 out of 12 episodes have been released and DFS has not been given the opportunity to review any documents possessed by VPM.

Toxicology Updates

Director Jackson advised that DFS is working to hire Toxicology staff, as positions were given to the agency in the most recent budget for this purpose, and she noted that quite a few have already been hired. In addition, beginning January 1, DFS began testing all DUI/DUID samples for a THC (tetrahydrocannabinol) metabolite and for alcohol. Data is now being gathered and will be shared in the future.

A Toxicology Section staffing update was provided in which Director Jackson discussed the various positions that are currently in recruitment or are in training. DFS is working to ensure that the agency meets the requirement that 90% of OCME cases be completed within 90 days. DFS is well above the 90% completion rate in all four of its laboratories and is now over 70% for the percentage of cases completed within 60 days. These percentages do not take into account the cases that are currently being outsourced.

Case Statistics

Director Jackson shared the March workload statistics. She made note of the fact that turnaround time for Forensic Biology (DNA) and that the number of cases has increased significantly. The Section does not currently have the staff necessary, but there are four positions in the Governor's proposed budget and are in the House and Senate budgets. DFS is awaiting the finalization of the budget process to find out if those positions will be granted.

Director Jackson shared quarterly case submission/completion comparisons beginning with the final quarter of 2021 and ending with the first quarter of 2023. Controlled Substances submissions rose significantly this past quarter, with 2800 cases submitted in March, 1000 of which were to the Western Laboratory. Director Jackson asked Lt. Col. Lyon about what has been happening in the field, to which he replied that the task force offices have seen a lot of methamphetamine in the Western district as well as fentanyl. Director Jackson stated that DFS has positions open in anticipation of an increase in submissions post-pandemic.

In the Digital & Multimedia Evidence Section, there are two examiner positions that were recently vacated, and the positions have been posted. In the Firearms & Toolmarks Section, DFS continues to see a decrease in NIBIN case submissions. In Latent Prints & Impressions, the Section is doing well. For Toxicology, the turnaround time has increased somewhat, but the Section has been working to complete some of the older cases that were in backlog. The Trace Evidence Section has been able to maintain its turnaround time.

Budget and Resources

Director Jackson shared information on the Department's FY23/FY24 Biennial budget, highlighting the introduced non-technical budget changes for 2024. One of the items involves converting a part-time Evidence Receiving Specialist position in the Western Laboratory to full-time to improve efficiency. Other pending items will be discussed in Chief Deputy Director Byrd's legislative update.

Grants

Director Jackson presented several grant applications that required the Board's approval.

- Two DMV Highway Safety grant projects, one for the Breath Alcohol Section and one for Toxicology – DFS applied for these in February with the permission of the Board Chair and Vice Chair.
 - Ms. Juran asked for a motion from the Board to approve the Department to apply for and receive funds under the FY 2023 DMV Highway Safety Grant Program, which includes the two separate applications for the Breath Alcohol Training Project and the TREDs Data Project, if awarded. A motion was made by Lt. Col. Lyon and seconded by Dr. Gormley. The motion was passed by unanimous vote.
- Bureau of Justice Assistance FY 2023 DNA Capacity Enhancement and Backlog Reduction (CEBR) Program for the Forensic Biology Section – DFS will apply for this funding in April.
 - Ms. Juran asked for a motion to approve the Department to apply for and receive these funds, if awarded. A motion was made by Mr. Miller and seconded by Dr. Gormley. The motion was passed by unanimous vote.
- FY 2023 Paul Coverdell Forensic Science Improvement Grant – DFS will apply for funding through the Department of Criminal Justice Services in May. Director Jackson advised the Board that DFS and the OCME typically split this funding evenly and that DFS mainly uses these funds for continuing education of non-DNA staff, as the CEBR grant allows for continuing education of DNA staff.

- Ms. Juran asked for the Department to the Paul Coverdell Forensic Science Improvement Grant Program and to receive half of those funds, if awarded. A motion was made by Ms. Clark and seconded by Dr. Toney. The motion was passed by unanimous vote.
- National Institute of Justice Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly Funded Laboratories – DFS will apply for funding in May for three research projects, two in Chemistry and one in Biology. Director Jackson described each project and what they will entail.
 - Ms. Juran asked for a motion for the Department to apply to the NIJ FY 2023 Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly Funded Laboratories for three grants, the first being the validation of the Biomek i5 workstation for the automated processing of sexual assault samples, the second one dealing with the analysis of psychedelics in biological matrices, and the third is to validate two blood ethanol analyses using nitrogen and hydrogen as carrier gases, and, if funding is awarded to authorize the Department to utilize the funding for those purposes. A motion was made by Lt. Col. Lyon and seconded by Dr. Gormley. The motion was passed by unanimous vote.

Old Business

Ms. Juran called on Mason Byrd, Chief Deputy Director, to provide an update on proposed regulatory actions.

Proposed Amendments to 6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material

Mr. Byrd reminded the Board of the purpose of the proposed amendments, which have been posted on the Virginia Regulatory Town Hall website since March 13, 2023 for public comment. These have been approved by the Secretary's Office, the Office of Regulatory Management, and the Governor's Office. There have been no public comments to date, including during the public hearing earlier in the morning. This action will be carried over until the July 2023 meeting.

6VAC40-15, Parking Regulations – Fast Track Regulatory Action

Mr. Byrd reminded that these regulations were previously approved by the Board. He advised that Ms. Jenkins, Department Counsel, was informed by the Office of Regulatory Management that these regulations are not in keeping with the Governor's goal of regulatory reduction and that cars could be towed pursuant to current statutory authority, with appropriate internal policies. Mr. Byrd requested that the Board withdraw this proposed regulation. Ms. Juran asked for a motion to withdraw the regulatory action previously approved by the Board. A motion was made by Mr. HuYoung and seconded by Ms. Clark. The motion was passed by unanimous vote.

New Business

Legislative Update

Ms. Juran called on Chief Deputy Director Byrd to provide updates on recent legislation. Mr. Byrd provided explanations and updates on several bills that will impact the Department. He

reminded the Board that the reconvene session is scheduled for Wednesday and that some of the proposed items have not yet been decided.

Mr. Byrd discussed HB 2150 at length, which creates “trace evidence collection kits”, known as strangulation kits, to be collected similarly to physical evidence recovery kits (PERKs), but will be used for strangulation in non-sexual assault cases. The bill requires the Division of Consolidated Laboratory Services to store anonymous kits, similar to the way that anonymous PERKs are stored. This bill allows law enforcement entities, in consultation with Commonwealth’s Attorneys, some discretion in determining whether to submit a kit depending on the facts of the case, unlike the requirements surrounding PERKs. The implementation has been delayed until July 1, 2005, to allow for a stakeholder working group to determine the path forward for the creation of these kits.

Mr. Byrd discussed several other House and Senate bills and their impact on the Department:

- HB 2204/SB 1398, requiring the Department of Motor Vehicles to collect a wide range of data related to driving under the influence of alcohol, drugs, or a combination thereof
- Pending Budget Language regarding DUI Toxicology cases beginning January 1, 2024, that contains several requirements for the Department
- HB 2428/SB 1233, concerning advertisements for marijuana, marijuana products, etc. and a definition of “tetrahydrocannabinol”
- HB 2294/SB 903, which contains definition for “tetrahydrocannabinol” that is the same as in HB 2428/SB 903, but with some limits of concentrations in products offered for sale
- HB 2364/SB 894 that permanently placed 15 compounds in Schedule 1 of the Drug Control Act that were previously scheduled by the Board of Pharmacy via regulation

Mr. Byrd asked if the Board had any questions regarding any of the legislation. There was some discussion around the various isomers and derivatives of THC (tetrahydrocannabinol). Director Jackson provided an explanation of the differences between isomers and derivatives and how those distinctions can impact the language of a legal definition. She also explained that “tetrahydrocannabinols” as defined in Schedule I of the Federal Drug Control Act is different from how “tetrahydrocannabinols” were defined in Schedule I of the Virginia Drug Control Act. Derivatives of tetrahydrocannabinols are included in the federal law but not in the state law.

A question was raised about testing on DUI blood samples. Director Jackson explained that toxicology methods are typically behind what can be identified in Controlled Substances, due to limitations of the methodology, but that DFS is close to completing the validation of a new method, which will differentiate between $\Delta 8$ and $\Delta 9$ -THC. The next step will be to expand the method to identify, but not quantitate, some of the other isomers. Mr. Tracci asked if DFS had made a recommendation to the General Assembly to have the Virginia Schedule I language for “tetrahydrocannabinols” resemble the Federal Schedule to encompass tetrahydrocannabinol derivatives. Director Jackson responded that the Department has not made that recommendation, and that SB903 removes “tetrahydrocannabinols” from Schedule I in Virginia. Ms. Juran spoke about how, in Virginia, marijuana is not placed into a Schedule but is defined with associated penalties. This is significantly different than how federal law lists marijuana in Schedule I. Based on the differences between the derivatives, they may or may not be appropriate to schedule.

Discussion continued for several minutes around the various isomers, derivatives, and their impact on the body and the complexity of the issue, especially regarding legislation.

Election of the Chair and Vice Chair

Ms. Juran reminded the Board that the terms for Chair and Vice Chair are for a period of one year, and that the current terms are about to expire. She stated that the Board needs to elect a Chair and Vice Chair for the coming year. She called on Ms. Stroble to provide a statement regarding the eligibility of members for these positions. Ms. Stroble stated that, pursuant to the bylaws, Chief DeBoard and Ms. Juran are both eligible to serve another successive term, as their current term began on July 1, 2022.

Ms. Juran called for nominations for the position of Chair of the Board. Chief DeBoard was nominated by Dr. Gormley for the position of Chair of the Board. Ms. Juran asked Ms. Stroble whether Chief DeBoard had expressed an interest in serving another term if elected. Ms. Stroble advised that Chief DeBoard had made it known that she would be willing to serve another term. There were no other nominations for Chair.

Dr. Gormley also nominated Ms. Juran as Vice Chair. There were no other nominations for Vice Chair.

A motion was made by Dr. Gormley to re-elect Chief DeBoard as Chair and Ms. Juran as Vice Chair, which was seconded by Ms. Clark. The motion was passed by unanimous vote.

Public Comment

No public comment was provided.

Confirm Future Meeting Dates

Ms. Juran reminded the Board that the next meeting dates are scheduled for July 19 and October 12, 2023.

Adjournment

Ms. Juran adjourned the meeting at 10:48 a.m.