

1 Final Minutes  
2 Forensic Science Board  
3 DNA Notification Subcommittee Meeting  
4 July 9, 2009  
5 Patrick Henry Building, Basement Conference Room  
6

7 Subcommittee Members Present  
8

9 Mr. Steven Benjamin  
10 Colonel Steve Flaherty, Virginia State Police (“VSP”)  
11 Ms. Kristen Howard, Virginia State Crime Commission (“VSCC”)  
12

13 Subcommittee Members Absent  
14

15 None  
16

17 Call to Order  
18

19 Kristen Howard, Subcommittee Chair, called the meeting to order at 1:00 p.m.  
20

21 New Business:  
22

23 The requirements of Budget Item 408(B) (2008) and Senate Bill 1391 (2009) were  
24 discussed.  
25

26 Ms. Howard reviewed the work plan and stated that at the May 13, 2009, Forensic Science  
27 Board (“Board”) meeting, the Board approved the following work plan (*see italicized*  
28 *infra*) regarding the creation and duties of the DNA Notification Subcommittee:  
29

30 *1. The Board will create a Subcommittee consisting of the Executive Director of VSCC,*  
31 *Col. Flaherty of VSP, or his designee, and Board member Steven Benjamin. The Executive*  
32 *Director of VSCC will serve as Chair of a Subcommittee and will have the authority to*  
33 *appoint Board members or other individuals as needed for their expertise to perform the*  
34 *duties of the Board as described by SB 1391 (2009).*  
35

36 *2. The Subcommittee shall communicate with the Chief Deputy Director of the Department*  
37 *of Forensic Science (“DFS”), Ms. Gail Jaspen, as may be needed, for day-to-day*  
38 *assistance with agencies, organizations, and other persons participating in the project.*  
39

40 Ms. Howard reported that she has been working with Ms. Jaspen over the past few months  
41 to obtain the necessary information needed to locate and identify persons eligible for  
42 notification.  
43

44 *3. The Office of the Attorney General (“OAG”) will prepare a waiver of liability and*  
45 *confidentiality agreement forms as specified in SB 1391 (2009). All individuals, state*  
46 *agencies, or private organizations volunteering services in the program pursuant to*

47 *section 4 of SB 1391 (2009) shall execute a waiver of liability and a confidentiality*  
48 *agreement on those forms.*

49  
50 Ms. Howard reported that the OAG has prepared the necessary forms in anticipation of  
51 discussion and approval by the Subcommittee.

52  
53 *4. The required training for individuals, agencies and organizations volunteering services*  
54 *in connection with the notification program on the process, manner and conduct of*  
55 *notifications shall be developed by the Mid-Atlantic Innocence Project (“MAIP”) and*  
56 *submitted for approval by the Virginia State Bar (“VSB”).*

57  
58 Ms. Howard reported that the draft training was developed by MAIP and disseminated on  
59 July 1, 2009, to the Subcommittee members for review prior to the meeting, in anticipation  
60 of discussion and approval by the Subcommittee. Additionally, the draft training was  
61 submitted to the VSB for approval on July 1, 2009.

62  
63 Ms. Mary Yancey Spencer, VSB, stated that they will approve the training as quickly as  
64 possible, hopefully by the end of next week.

65  
66 Ms. Howard noted that once training has been approved by the VSB, MAIP will apply to  
67 Virginia CLE for CLE credits.

68  
69 *5. Training shall become available no later than July 21, 2009 and shall be offered live at*  
70 *a minimum of four locations in the Commonwealth and via teleconferencing if possible.*

71  
72 Ms. Howard reported that tentative training location sites included: Richmond; Norfolk  
73 and/or Virginia Beach; Newport News and/or Hampton; Northern Virginia; Roanoke; and,  
74 Charlottesville. They are currently in the process of securing training facilities and training  
75 dates. The Indigent Defense Commission has offered their location as a place to hold  
76 trainings and they have a number of days when their facilities would be available.

77  
78 The Chair of the Subcommittee and MAIP are developing methods to publicize training, to  
79 include listserv announcements, press releases, flyers, website announcements, and,  
80 advertisements in publications.

81  
82 *6. The Subcommittee will secure, coordinate, and implement the assistance described in SB*  
83 *1391 (2009). The Chair of the Subcommittee will designate a member of the subcommittee*  
84 *to be the pro bono attorney point of contact. The Subcommittee may utilize the volunteer*  
85 *service of other individuals or private organizations, including MAIP, to help recruit and*  
86 *manage assignments to pro bono attorneys and others, and to serve as a conduit of*  
87 *information to volunteers and for collection of information from volunteers. A*  
88 *memorandum of understanding (“MOU”) shall memorialize the responsibilities of MAIP.*

89  
90 Ms. Howard has designated Steve Benjamin as the pro bono attorney point of contact, who  
91 will utilize the services of MAIP to help recruit and manage assignments to pro bono  
92 attorneys and to serve as a conduit of information to volunteers and for collection of

93 information from volunteers. A draft MOU has been prepared to be reviewed and  
94 approved by the Subcommittee.

95  
96 *7. The Board, DFS and VSP will provide to the Chair of the Subcommittee the information*  
97 *that is needed to discharge the responsibilities described in SB 1391 (2009). This*  
98 *information will include, at a minimum, the information described on page two of the work*  
99 *group's work plan, and will be provided for use by pro bono attorneys and others, subject*  
100 *to the terms of the waiver of liability and confidentiality agreement approved by the Board.*

101  
102 Ms. Howard reported that the Crime Commission had received on June 11, 2009, the  
103 database of case files that were found to contain biological evidence believed to be suitable  
104 for DNA testing. Data requests will be made to the VSP and other agencies as required.

105  
106 *8. The pro bono attorneys and other volunteers will report on a continuing and ongoing*  
107 *basis to the Subcommittee on the results of their notification efforts and other particulars*  
108 *of the program. The Subcommittee will report these results and particulars to the Board on*  
109 *or before October 1, 2009 and at such other times as may be appropriate.*

110  
111 Ms. Howard noted that pro bono attorneys will report on a continuing and ongoing basis  
112 the results of their notification efforts to MAIP, who will report to her on a continuing and  
113 ongoing basis the results of notification efforts. Ms. Howard stated that she will report to  
114 the Board at its August 12 and October 14, 2009, meetings and will also provide an  
115 additional update via letter and/or email on the results of the notification efforts on or  
116 before October 1, 2009.

117  
118 *9. The Board will make a final report to the General Assembly, the Governor, and the*  
119 *VSCC detailing the program, including the notification procedures used, the number of*  
120 *individuals contacted, responses made by contacted individuals, resources utilized and*  
121 *aggregated results of any DNA testing performed as a result of the notifications and*  
122 *responses, no later than December 1, 2009.*

123  
124 Ms. Howard will coordinate with MAIP to draft the final report and will submit it to the  
125 Board for approval.

126  
127 Discussion regarding the training and notification materials ensued. In regard to the work  
128 product of the pro bono attorneys, Col. Flaherty stated that he would like to ensure that  
129 their work would be returned to the Board.

130  
131 Ms. Howard stated that there was a notification reporting form in the training packet that  
132 the pro bono attorneys will be required to fill out. The forms will be reported to MAIP,  
133 who will report to Ms. Howard, who will then report to the Board.

134  
135 Col. Flaherty asked if the method of reporting would change if they found a new address  
136 for a defendant. Mr. Benjamin said he didn't think that was the case and that the only thing  
137 that is reported is whether notification was made, and if notification is not made, then  
138 additional information would be reported.

139 Col. Flaherty noted that in rare cases the Board may not find the defendant where they  
140 expect to, but they may develop information and later on decide to come back and try to  
141 contact that defendant through other means. Col. Flaherty stated that it would be prudent  
142 to capture that information. Mr. Benjamin agreed, noting that the form asks that if they  
143 were unable to locate the defendant at the address listed then they need to list what other  
144 addresses they may have tried. He stated that the pro bono attorneys should be required to  
145 list any leads or new information that was not investigated upon, and that should be added  
146 to the reporting form.

147

148 Mr. Frank Ferguson, OAG, stated that according to statutory requirements, all notification  
149 efforts must be reported fully. Ms. Howard stated that she would work with MAIP in an  
150 effort to keep the database as up to date as possible. Mr. Benjamin stated that they need not  
151 provide updated address information to the state so long as the notification is made  
152 because they don't have a statutory mandate to do so and because there are privacy issues  
153 involved.

154

155 Mr. Benjamin stated that they could add a section to the form that would state that the  
156 defendant was notified and whether they wish to receive a certificate of analysis at the  
157 following address. Mr. Benjamin also stated that pro bono attorneys are not necessarily  
158 statutorily required to report all information found, but are only required to report results of  
159 the notification and the essential result is whether notification was made.

160

161 Col. Flaherty stated that he thought that the state records needed to be updated with this  
162 information.

163

164 Mr. Ferguson noted that the defendant should not be able to pick and choose what  
165 information they want to have reported. He didn't want to limit the form as far as what  
166 would be reported back to the Board. He said that the Board has a need for the  
167 information, not a prosecution or a law enforcement need, but a need to provide the  
168 individual any information they have that is relevant to the test.

169

170 Mr. Benjamin asked that if a certificate of analysis was generated to send to an individual,  
171 would the certificate itself have the person's address. Ms. Jaspén stated that it would not;  
172 the only identifying information would be their name.

173

174 Mr. Benjamin asked if the database has everyone's most current address. Ms. Howard  
175 stated that they haven't confirmed or validated the addresses, but that they have all the  
176 addresses that DFS had received.

177

178 Mr. Benjamin suggested that the notification form be changed to add two additional  
179 blocks. One block would be checked if notification was made at an address that was  
180 currently on file. The other block would say that notification was made at an address other  
181 than what was initially provided and the attorney has retained all records pertaining to that  
182 notification. The information would be available, but possibly not subject to FOIA. Issues  
183 were raised as to whether the information was subject to FOIA.

184

185 Ms. Howard noted that the VSCC is exempt from FOIA and suggested that the VSCC  
186 could maintain the database. All new information could be reported to the VSCC so that it  
187 could still be captured, yet protected from FOIA. All of the addresses would be in one  
188 location and up to date. The VSCC could work with DFS if there are problems locating  
189 individuals for their certificates of analysis.

190  
191 Mr. Ferguson noted that the Act calls for reporting to be made to DFS. Ms. Howard stated  
192 that as Chair of the Subcommittee she is required to report to the Board and that she could  
193 fully report without listing everyone's addresses, which wouldn't violate any  
194 confidentiality issues.

195  
196 Mr. Petoe, Director of Legal Affairs, VSCC, stated that the VSCC would still have to vote  
197 on whatever plan of action was approved. Also, that the pro bono attorneys should not  
198 promise the defendants that their addresses will never be given out as that is a promise that  
199 the Commission may not be able to keep in the future. He noted that the VSCC is exempt  
200 from FOIA, but not from a subpoena, so that if the VSP approached the VSCC and needed  
201 an address they might have the right to obtain that address.

202  
203 Mr. Benjamin moved to approve the reporting form with the modification that the  
204 additional check box be inserted, stating that notification was made and the defendant asks  
205 that the certificate of analysis be provided to them at the following address. The motion  
206 was seconded by Ms. Howard and passed by unanimous vote.

207  
208 Mr. Benjamin moved to amend the wording that states that if they were unable to obtain a  
209 correct address to list the addresses used. The motion was seconded by Col. Flaherty and  
210 passed by unanimous vote to approve the reporting form.

211  
212 A discussion of the waiver of liability and confidentiality forms followed. Concerns were  
213 raised regarding the blank line. Mr. Ferguson stated that if there are specific risks for  
214 approaching someone's property that they need to be included. Mr. Petoe raised concerns  
215 with the broad indemnification language in the third paragraph. Mr. Ferguson stated that it  
216 was standard language.

217  
218 Mr. Benjamin moved to delete the third paragraph. Mr. Ferguson stated that a motion did  
219 not need to be made because he could change the language.

220  
221 Ms. Howard summarized the Subcommittee's recommendations as: strike "including but  
222 not limited to travel risk and or," fixing a typo, and removing the entire third paragraph.

223  
224 Mr. Benjamin moved to approve the MOU that MAIP had drafted. The motion was  
225 seconded by Ms. Howard and passed by unanimous vote.

226  
227 A preliminary overview of the DFS Database was provided by Christina Barnes, Senior  
228 Methodologist, VSCC. Ms. Barnes stated that a letter request was received by the DFS on  
229 May 21st regarding information desired by the Co-Chairs of the VSCC and pursuant to the  
230 requirements of Senate Bill 1391 (2009). A CD containing database information for

231 Forensic Science laboratory case files that were found to contain biological evidence  
232 believed suitable for DNA testing was hand-delivered on June 11, 2009. The following is a  
233 preliminary summary of the information provided to VSCC staff by DFS. The database is  
234 comprised of information from a number of sources, including DFS case files and records  
235 from the VSP, Virginia Department of Corrections, Commonwealth's Attorneys' Offices,  
236 local law enforcement and Clerks of Court.

237

238 Ms. Barnes reported that the database contains information relating to 6,275 individuals  
239 involved in 3,052 cases. 5,187 (83%) of these individuals were not convicted of a crime in  
240 connection with an investigation. 1,088 (17%) of these individuals were convicted of a  
241 crime in connection with an investigation.

242

243 Ms. Barnes reported that the 952 notification-eligible cases involved 1,087 offenses as  
244 follows:

245 Rape/Sexual Offenses-522

246 Murder- 358

247 Malicious Wounding-94

248 Robbery-45

249 Hit and Run-14

250 Burglary-13

251 Break and Enter-10

252 Assault and Battery-7

253 Abduction-5

254 Shooting-5

255 Death Investigation-5

256 Larceny-3

257 Car Accident-2

258 Car Jacking-1

259 Indecent Liberties-1

260 Property Damage-1

261 Other-1

262

263 Ms. Barnes reported the top 10 jurisdictions in which the 1,088 convicted persons  
264 committed an offense and/or were prosecuted:

265 City of Richmond- 118 persons

266 City of Norfolk- 92 persons

267 City of Newport News- 64 persons

268 City of Alexandria- 55 persons

269 City of Virginia Beach- 51 persons

270 City of Fairfax/Fairfax County- 47 persons

271 City of Charlottesville- 37 persons

272 Henrico County- 35 persons

273 Arlington County/City of Arlington- 36 persons

274 City of Petersburg- 27 persons

275

276 74 of the 115 jurisdictions included in the database have 5 or fewer convicted persons to  
277 notify.

278

279 Ms. Barnes also reviewed the summary of the DFS Notification Update provided to the  
280 VSCC at their June 25, 2009, meeting:

281 Number of convicted suspects eligible to be notified: 1,088

282 543 convicted persons have been confirmed as being notified or deceased:

283 207 determined to be deceased

284 336 confirmed notification received

285

286  $1,088 - 543 = 545$  convicted persons who require notification according to DFS.

287

288 Adjournment:

289

290 Ms. Howard stated that she would send the amended reporting form to the VSB. Ms.

291 Howard stated that the Subcommittee was on track to complete all of their requirements.

292 There being no further business, Ms. Howard moved to adjourn the meeting. The

293 Subcommittee adjourned at 2:00 p.m.