

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Final - Minutes
Forensic Science Board Meeting
August 12, 2015
Department of Forensic Science, Central Laboratory, Classroom 1

24
25
26
27
28

Board Members Present

Vince Donoghue, Essex Commonwealth's Attorney and Designee of Senator Thomas K. Norment, Jr., and Senator Mark D. Obenshain, Co-Chairs, Senate Courts of Justice Committee

Francine C. Ecker, Director, Department of Criminal Justice Services

James F. Entas, Esq., Designee of Attorney General Mark R. Herring

Colonel W. Steven Flaherty, Superintendent, Virginia State Police

Jo Ann Given, Forensic Science Board Chair and Member, Scientific Advisory Committee

William T. Gormley, M.D., Chief Medical Examiner

Karl R. Hade, Executive Secretary of the Supreme Court

Kristen J. Howard, Executive Director of the Virginia State Crime Commission and Designee of Senator Thomas K. Norment, Jr., Chair, Virginia State Crime Commission

Caroline D. Juran, Executive Director, Board of Pharmacy

Anthony A. Lippa, Jr., Sheriff, Caroline County

David A. C. Long, Esq.

Alphonse Poklis, Ph.D., Member, Scientific Advisory Committee

Claiborne H. Stokes, Jr., Commonwealth's Attorney, Goochland County

29
30
31

Board Members Absent

Richard L. Morris, Delegate and Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee (Tim Mitchell, Legislative Assistant to Delegate Rick Morris, attended the meeting on the Delegate's behalf)

32
33
34
35
36
37
38
39
40
41
42
43
44
45

Legal Counsel for the Forensic Science Board

Elizabeth Myers, Esq., Assistant Attorney General

46

Staff Members Present

Wanda W. Adkins, Office Manager

D. Jeffery Ban, Central Laboratory Director

David Barron, Ph.D., Deputy Director

Sabrina S. Cillessen, Physical Evidence Program Manager

Amy M. Curtis, Department Counsel

Leslie Ellis, Human Resource Director

Katya N. Herndon, Chief Deputy Director

Linda C. Jackson, Department Director

Bradford C. Jenkins, Forensic Biology Program Manager

Melissa Kennedy, Calibration and Training Program Manager

Alka B. Lohmann, Director of Technical Services

M. Scott Maye, Chemistry Program Manager

Call to Order

47 Jo Ann Given, Chair of the Forensic Science Board (“Board”), called the meeting of the Board to
48 order at 9:10 a.m. The Chair welcomed the Board members and the Department of Forensic
49 Science (“Department” or “DFS”) staff.
50

51 **Adoption of Agenda**

52 The Chair asked if there were any additions or changes to the draft agenda for the meeting. The
53 election of Chair and Vice Chair was added to the agenda under New Business. Dr. Poklis made
54 a motion to adopt the amended agenda, which was seconded by Colonel Flaherty, and the
55 amended agenda was adopted by unanimous vote of the Board.
56

57 **Approval of Draft Minutes of the May 13, 2015 Meeting**

58 The Chair asked if there were any changes or corrections to the draft minutes from the May 13,
59 2015 meeting. Being none, Mr. Donoghue made a motion to adopt the minutes, which was
60 seconded by Sheriff Lippa and approved by unanimous vote of the Board.
61

62 **Chair’s Report**

63 There was no formal report from the Chair.
64

65 **DFS Director’s Report**

66 Director Jackson informed the Board that Governor McAuliffe issued a proclamation
67 recognizing August 9-15, 2015 as Virginia Forensic Science Week.
68

69 Director Jackson advised the Board about two updates posted on the DFS website in July; the
70 Perk Inventory Report and the expanded Breath Alcohol records now available in a searchable
71 format.
72

73 Director Jackson also shared with the Board the Department’s new brochure and noted that a
74 copy was included in the materials provided to each Board member.
75

76 Director Jackson reminded the Board of the July 1, 2015 law that requires adults convicted of
77 nine additional misdemeanor offenses to provide samples for the DNA Data Bank. These
78 additional offenses include: violation of protective order, stalking, violation of stalking
79 protective order, infected sexual battery, unauthorized use, unlawful entry, indecent exposure,
80 obscene sexual display, and resisting arrest.
81

82 **Facilities:**

83 Director Jackson updated the Board on the Western Laboratory expansion and renovation
84 project, which is both on schedule and on budget. The project will double the square footage of
85 the existing laboratory. The Office of the Chief Medical Examiner (OCME) in the Western
86 Laboratory will also gain additional square footage, including a new drive through “sally port.”
87 Given the projected costs to support the expanded Western Lab, the Department will be
88 requesting an increase in funds in the budget to support the operation and maintenance of the
89 larger facility, including one additional facility position.
90

91 The Department was awarded detailed planning money in the budget for the expansion of the
92 Central Laboratory. This project would allow the DFS operations currently housed in Biotech 8

93 to move back into the expanded Central Laboratory. Negotiations are underway with an
94 architect and engineering firm for the Central Laboratory project.

95
96 Director Jackson gave an overview of DFS staffing, comparing August 2014 (DFS had 269
97 positions filled with 26 positions in recruit) and August 2015 (DFS has 261 positions filled with
98 28 positions in recruit). The Department's Maximum Employment Level is 310 positions.
99 Director Jackson noted the decrease in full-time and part-time support staff were the result of
100 budget reductions.

101
102 During the 2015 General Assembly Session, the Department was allocated funds to restore
103 funding for eight scientist positions that had been either eliminated or held open in FY15. DFS
104 is currently in the process of refilling these positions. Director Jackson noted that two of the
105 scientist positions restored in the FY16 budget were in Digital Multimedia Evidence (DME).
106 The two DME scientists had accepted trainee positions in another section, but were transferred
107 back to DME, which allowed for the reinstatement of video enhancements effective June 23,
108 2015.

109
110 Director Jackson informed the Board of a policy change in reporting National Integrated Ballistic
111 Identification Network (NIBIN) associations. Effective July 9, 2015, DFS discontinued the
112 concurrent confirmation of NIBIN associations. DFS will now issue a Certificate of Analysis or
113 letter regarding potential NIBIN associations. When confirmation is needed, all evidence
114 relevant to the association will need to be resubmitted by the law enforcement agency. This
115 policy change was implemented to improve efficiency for the Firearms Section.

116
117 All DFS policy notices are posted on the DFS website and sent to the Virginia Sheriffs'
118 Association, the Virginia Association of Chiefs of Police, the Commonwealth's Attorneys'
119 Services Council, the Indigent Defense Commission, the Virginia Association of Criminal
120 Defense Lawyers, and the Criminal Law Section of the Virginia State Bar. The Forensic Science
121 Academy alumni are also often used as a resource for distribution of these notices.

122
123 DFS has awarded a contract to a vendor to upgrade the current Laboratory Information
124 Management System (LIMS) to a newer version. Work on the system began on August 3, 2015,
125 and it is scheduled to "Go Live" by March 31, 2016. The project must be completed by July
126 2016 when the current server reaches the end of its life cycle. New features will include pre-
127 submission data entry for evidence and electronic distribution of Certificates of Analysis, but the
128 system will not immediately include electronic case file record keeping.

129
130 At the May 2015 meeting, Department Counsel, Amy Curtis, informed the Board that the DNA
131 Data Bank regulations (6 VAC 40-60-50) needed to be amended as a result of the DFS agency
132 bill that went into effect on July 1, 2015, and requires the State Police to seek confirmation from
133 the Data Bank about whether any person required to register with the Sex Offender Registry has
134 provided a sample for the Data Bank. The amended regulations will be published on August 23,
135 2015, and become effective on September 23, 2015.

136
137 DFS issued a joint report with the Department of Criminal Justice Services (DCJS), addressing
138 the number of drug cases submitted to DFS in CY2014 (31,345 cases), as well as the types of

139 drugs involved in those cases. This is an update to a report originally issued by DFS and DCJS
140 in 2013.

141
142 Director Jackson advised that DFS will be hiring two wage positions to scan old archived case
143 files (1973-1995) currently not in the LIMS system. Portions of the files will be scanned to a
144 database that will be searchable, and the information from the database will be able to be
145 uploaded into the upgraded LIMS system. There are approximately one million case files to be
146 scanned.

147
148 DFS has purchased three new AccuTOF-DART instruments with Abbott Settlement funds. Now
149 each DFS laboratory has one of these instruments. Staff training on the instruments is scheduled
150 to be completed by September 1, 2015.

151
152 Grants: Director Jackson briefly reviewed the Department's current grants: the FY 2014 DNA
153 Capacity Enhancement and Backlog Reduction Program grant, the FY 2014 Paul Coverdell
154 National Forensic Science Improvement grant, the *Abbott* Settlement Forfeiture grant, and the
155 2015 Highway Safety grant. She also reviewed the four pending grant applications for which the
156 Department is waiting on confirmation of award: the NIJ Research and Development of Publicly
157 Funded Forensic Science Laboratories to Assess the Testing and Processing of Physical
158 Evidence, the 2016 Highway Safety Grant; the FY 2015 Paul Coverdell grant, and the FY 2015
159 DNA Capacity Enhancement and Backlog Reduction Program grant.

160
161 Director Jackson presented information on two grants that DFS applied for after receiving
162 approval to do so from the Chair and Vice Chair pursuant to the Board's By-Laws. Director
163 Jackson requested the Board's concurrence in the applications and approval to accept the grant
164 funds, if awarded for the following grants: the New York County District Attorney's Office
165 Sexual Assault Kit Backlog Elimination Program and the OAG Asset Forfeiture Transfer
166 Program. Colonel Flaherty made a motion for the Board to approve the Department applying for
167 and accepting the funds for these two grants, if awarded, which was seconded by Ms. Ecker and
168 approved by unanimous vote of the Board.

169
170 Workload/Backlog: Director Jackson presented the Department's statistics in quarterly format
171 using graphs reflecting cases received, cases completed, the caseload, and the average number of
172 days in the system for each Section. Director Jackson pointed out the decrease in case
173 submissions to the Controlled Substances Section since the implementation of the new marijuana
174 policy. She also noted that two new trainees in the Eastern Laboratory Drug Section will
175 complete their training this week.

176
177 The Firearms Section has also noted a decrease in their turnaround time over the last quarter
178 despite the fact that they have received an increase in submissions due to the ATF encouraging
179 law enforcement agencies to submit guns for entry into the NIBIN system.

180
181 Director Jackson informed the Board that there has been an increase in the turnaround time for
182 the Forensic Biology Section over the past year. The increased requirements nationally for
183 forensic biology statistics have contributed to this.

184

185 Director Jackson advised the Board that although the Questioned Documents Section was
186 originally on the list for budget reductions, with two scientists slated to be laid off, DFS was
187 subsequently informed by the Department of Planning and Budget that the Questioned
188 Documents Section was removed from the list of budget reductions. However, it appears that
189 some law enforcement agencies are unaware that these services are still available. Accordingly,
190 the Questioned Documents Section is actively reaching out to DFS customers about the services
191 they provide.

192
193 Director Jackson reminded the Board that, for the last several quarters, the Toxicology Section
194 has been working to reduce its turnaround times. In particular, improving turnaround times for
195 medical examiner cases has been a priority as the Office of the Chief Medical Examiner must
196 have a minimum of 90% of toxicology reports completed within 90 days of their submission in
197 order to meet their accreditation standards.

198
199 Director Jackson also explained that the Trace Evidence Section lost three scientist positions
200 through budget reductions that were restored during the General Assembly Session. DFS is
201 recruiting for these positions.

202 **Old Business**

203 **Status of the Post-Conviction DNA Testing Program and Notification Project**

204
205 Kristen Howard, Chair of the DNA Notification Subcommittee, reminded the Board of the Crime
206 Commission's recommendation that retesting be conducted in the "inconclusive" cases and be
207 prioritized as follows: 1) cases where spermatozoa is present and the suspect is still incarcerated;
208 2) cases where the suspect is still incarcerated; and 3) cases where spermatozoa is present and the
209 suspect is not still incarcerated; and 4) all other cases.

210
211
212 Ms. Howard also reminded the Board of the review procedure it adopted, that was recommended
213 by the Subcommittee, for how the 400+ "inconclusive" cases would be screened to determine the
214 probative value of testing. A legal case file review would be conducted by representatives from
215 the Crime Commission (VSCC), the Mid-Atlantic Innocence Project (MAIP), and the Indigent
216 Defense Commission (IDC) to determine whether retesting the retained evidence in the case file
217 could be probative of the defendant's guilt or innocence. Subsequently, there would be a
218 scientific review by DFS DNA staff of those files recommended for testing during the legal
219 review. For any case where the group conducting the legal review indicates a need for additional
220 information, VSCC staff will contact the Department of Corrections for the presentence report
221 from the case so that the additional information can be used for the legal review and a
222 recommendation as to testing can be ascertained.

223
224 There were a total of 421 "inconclusive" cases (involving 490 suspects) that were reviewed.
225 Sixty of the 421 "inconclusive" cases involved evidence containing sperm; the remaining
226 361 cases did not contain sperm. The review resulted in 33 "inconclusive" cases that were
227 recommended for additional testing (32 of which were sperm cases), and 378 cases where no
228 further testing was recommended. Two cases are awaiting DFS scientist review to determine if
229 additional testing is an option. For five cases, the presentence report has been requested so that a

230 determination can be made as to whether an additional testing should be recommended, and there
231 are three cases that require some type of follow-up before they can be closed out.

232
233 Ms. Howard thanked Catherine Mullins with the IDC and Shawn Armbrust with the MAIP for
234 their time and assistance in conducting the legal review of “inconclusive” case files. Based on
235 the review, Ms. Howard advised the Board that it is anticipated that the \$150,000 provided in the
236 budget should be sufficient to outsource the retesting of all “inconclusive” cases recommended
237 for additional testing.

238
239 Ms. Howard reminded the Board that the VSCC has made the Post-Conviction DNA Testing
240 Program and Notification Project a top priority and agreed to dedicate two staff members to the
241 completion of the project. Now that the legal review of “inconclusive” cases has been
242 conducted, the VSCC staff will be manually reviewing the remaining files from the project to
243 confirm the testing and notification status of each listed suspect in each case and enter the
244 information into a database.

245
246 Director Jackson thanked the DNA Notification Subcommittee for their work on the project, and
247 also Ms. Howard and her staff at the VSCC for the tremendous time and effort they have, and
248 will be contributing in the coming months, to wrap up the project.

249
250 SB658 PERK Inventory Update:

251 Ms. Herndon reminded the Board that DFS was required to submit a PERK Inventory Report to
252 the General Assembly pursuant to Senate Bill 658, which passed during the 2014 Session. The
253 bill mandated that all state and local law enforcement agencies report an inventory to DFS of all
254 physical evidence recovery kits (PERKS) in their custody that may contain biological evidence
255 that were collected but not submitted to DFS for analysis prior to July 1, 2014. DFS submitted
256 its PERK Inventory Report on July 1, 2015.

257
258 Ms. Herndon reviewed the inventory results included in the report. Over 99% (383 of 385)
259 active law enforcement agencies submitted inventories to DFS. Of the 383 agencies reporting,
260 247 reported no kits, and 136 agencies reported a total of 2,369 PERKS in their custody that met
261 the criteria specified in SB658. Ms. Herndon shared additional details from the report with the
262 Board, including information on the number of kits reported by year of offense, the reasons
263 agencies provided as to why the PERKS were not submitted to DFS for analysis, and the primary
264 offense types specified for the kits reported. Noting that DFS would be unable to absorb testing
265 of the kits reported through the inventory with existing resources, Ms. Herndon reviewed “other
266 considerations” included in the report, including information on DFS staffing and resources, as
267 well as potential funding sources to pay for testing of the kits.

268
269 Ms. Herndon also advised the Board that the Governor announced after the PERK Inventory
270 Report was released that a Work Group would be convened to evaluate criteria for PERK
271 evidence testing. Secretary of Public Safety and Homeland Security Brian Moran will chair the
272 PERK Work Group, and its members will include representatives from victim advocacy groups,
273 Commonwealth’s Attorneys, the criminal defense bar, law enforcement and forensic nurses.

274
275 New Business

276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321

DNA Data Bank

Forensic Biology Program Manager Brad Jenkins provided an overview of the DNA Data Bank to the Board. The Virginia DNA Data Bank is the oldest in the country and contains approximately 400,000 samples. Mr. Jenkins shared with the Board the categories of samples that are included in the Data Bank. Mr. Jenkins explained what types of offender samples are included in the Data Bank and how they are uploaded and searched. He reviewed the types of samples from individuals that cannot be uploaded or searched. Mr. Jenkins also provided scenarios to the Board that illustrated the types of cases that are suitable/not suitable for Data Bank searches.

Recommendation to Board of Pharmacy to Add Compounds to Schedule I

Chemistry Program Manager Scott Maye informed the Board that, on July 15, 2015, DFS recommended six additional drug compounds to the Board of Pharmacy for temporary placement into Schedule I. Pursuant to Code § 54.1-3443(D), the Board of Pharmacy has authority to temporarily place new compounds into Schedule I or II through an expedited regulatory process. The Board of Pharmacy will take action on the six new compounds DFS recommended for temporary placement in Schedule I at its September meeting.

Expanded Online Breath Alcohol Records

Calibration and Training Program Manager Melissa Kennedy demonstrated the new search capability for Breath Alcohol records and reports that are now available on the DFS website. The project was funded through a grant from the Virginia DMV Highway Safety Office. These records, which are in “.pdf” format, include additional instrument records, redacted subject test records, operator license information, and statistical reports. Ms. Kennedy noted that printed copies of these records from the website include a disclaimer on the bottom of each page, which reads: “Once printed, the Department cannot authenticate this record as being unaltered, complete, and/or accurate. If authenticated records are required please submit a record request to the Breath Alcohol Section”.

Annual Election of Board Chair and Vice Chair

Mr. Hade nominated Mr. Donoghue for election as Board Chair; the nomination was seconded by Sheriff Lippa and passed by unanimous vote of the Board. Ms. Juran nominated Mr. Long for election as Vice-Chair; the nomination was seconded by Sheriff Lippa and passed by unanimous vote of the Board.

Public Comment

None.

Next Meeting

The Forensic Science Board will meet again on October 15, 2015.

Adjournment

322

323 Ms. Howard moved that the meeting of the Board be adjourned, which was seconded by
324 Dr. Poklis and passed by unanimous vote.

325

326 The meeting adjourned at 11:00 a.m.