

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

Draft Minutes
Forensic Science Board Meeting
January 4, 2018
Department of Forensic Science, Central Laboratory, Classroom 1

Board Members Present

Colonel Maggie A. DeBoard, Chief of Police, Town of Herndon Police Department
Colin Drabert (Designee of Delegate Robert B. Bell, Chair, Virginia State Crime Commission)
Francine C. Ecker, Director, Department of Criminal Justice – *Chair*
Leslie E. Edinboro, Ph.D., Scientific Advisory Committee Member
William T. Gormley, M.D., Chief Medical Examiner
Karl R. Hade, Executive Secretary, Supreme Court of Virginia
Sammy Johnson, Deputy Director, Board of Pharmacy (Designee of Caroline Juran, Executive Director, Board of Pharmacy)
David R. Lett, Petersburg Public Defender
Colette W. McEachin, Deputy Commonwealth’s Attorney, City of Richmond
Richard P. Meyers, Scientific Advisory Committee Member
Lt. Colonel Gary T. Settle (Designee of Colonel W. Steven Flaherty, Superintendent, Virginia State Police)
Denise M. Toney, Ph.D., Director, Division of Consolidated Laboratory Services

Board Members Absent

Vince Donoghue, Essex Commonwealth’s Attorney (Designee of Senator Mark D. Obenshain, Chair, Senate Courts of Justice Committee)
James F. Entas, Assistant Attorney General (Designee of Attorney General Mark R. Herring) (Assistant Attorney General Holly Reeves Wood attended the meeting on Mr. Entas’ behalf)
Richard L. Morris, Delegate (Designee of Delegate David B. Albo, Chair, House Courts of Justice Committee)

Legal Counsel for the Forensic Science Board

Michelle Welch, Assistant Attorney General

Staff Members Present

Sabrina S. Cillessen, Physical Evidence Program Manager
Amy M. Curtis, Department Counsel
Katya N. Herndon, Chief Deputy Director
James Hutchings, Ph.D., Toxicology Program Manager
Linda C. Jackson, Director
Bradford C. Jenkins, Forensic Biology Program Manager
Alka B. Lohmann, Technical Services Director
M. Scott Maye, Chemistry Program Manager
Carisa M. Studer, Legal Assistant

Call to Order

45 Fran Ecker, Chair of the Forensic Science Board (“Board” or “FSB”), called the meeting to order
46 at 10:41 a.m.¹ Ms. Ecker welcomed the Board members and Department of Forensic Science
47 (“Department” or “DFS”) staff, and thanked everyone for their attendance.
48

49 **Adoption of Agenda**

50 The Chair asked if there were any additions or changes to the draft agenda for the meeting.
51 Being none, Mr. Lett made a motion to adopt the agenda, which was seconded by Dr. Gormley
52 and adopted by unanimous vote of the Board.
53

54 **Approval of Draft Minutes of the October 12, 2017 Meeting**

55 The Chair asked if there were any changes or corrections to the draft minutes from the October
56 12, 2017 meeting. Being none, Mr. Lett made a motion to adopt the minutes, which was
57 seconded by Dr. Toney and approved by unanimous vote of the Board.
58

59 **Chair’s Report**

60 The Chair announced that this would be her last meeting as a member of the Board as she will be
61 retiring from the Department of Criminal Justice Services on February 1, 2018.
62

63 Introductions were made of Board members, designees, and DFS staff members who were
64 present. Lt. Colonel Gary Settle, designee for Colonel Flaherty, will be the new Superintendent
65 of the Virginia State Police upon Colonel Flaherty’s retirement.
66

67 **Director’s Report**

68
69 **Facilities:**

70 Director Jackson advised the Board that there is no updated information to share regarding the
71 Central Laboratory building renovation and expansion project. Director Jackson reminded the
72 Board that the Department is the owner/landlord of each DFS regional laboratory building. The
73 Department is working with the Division of Real Estate Services of the Department of General
74 Services to draft a temporary transfer agreement for tenants of the Eastern Laboratory. DFS will
75 then use the Eastern temporary transfer agreement as a template for agreements for all DFS
76 facilities.
77

78 **Agency Updates:**

79 Director Jackson gave an update on the Department’s accreditation. She reminded the Board
80 that ASCLD/LAB merged with ANAB, which issued new accreditation requirements for both
81 testing and calibration laboratories. All currently accredited laboratories must be in conformance
82 with the new requirements by December 31, 2018. DFS has elected to be in conformance as it
83 renews its accreditation. The onsite assessment is scheduled for the week of May 7, 2018. The
84 Department’s current accreditation under ASCLD/LAB expires September 2, 2018.
85

¹ The meeting time was delayed an hour on January 4, 2018, due to inclement weather in the Richmond metropolitan area and state offices opening on a two-hour delay. Board Members were notified by email of the change to the meeting time. The public received notice via an update to the meeting notice on Virginia’s Regulatory Town Hall and an announcement on the Department’s website.

86 Director Jackson reported to the Board that, on December 1, 2017, DFS disseminated a Notice of
87 DFS Policy Change for Controlled Substances to its user agencies. Director Jackson reviewed
88 the policy changes, which were effective as of the date of the Notice. The changes resulted from
89 discussions at a stakeholder meeting held on September 19, 2018, which included
90 Commonwealth's Attorneys and narcotics investigators from across the state. Director Jackson
91 also reported that DFS Controlled Substances examiners each worked 24 hours of mandatory
92 overtime during the last quarter of CY2017 to stem the growing backlog and reduce turnaround
93 times.

94
95 Director Jackson presented upcoming revisions to Controlled Substances reports effective
96 January 8, 2018. The revisions are needed to conform with new accreditation requirements or
97 are a result of the December 1, 2017 policy changes. The new language for the Certificates of
98 Analysis provides gross weights or net weights, the methods used, and a statement with a link to
99 where the Controlled Substances Procedures Manual is located on the DFS website. Director
100 Jackson gave examples of when gross weights will be reported instead of net weights.

101
102 Director Jackson updated the Board on the progress of the Archived Case File Project. She
103 reminded the Board that there are approximately 1 million case files stored at the State Records
104 Center that will need to be scanned as part of the project. The Department has five part-time
105 staff members scanning the Certificates of Analysis and entering case file information into a
106 database. As of November 1, 2018, 100,000 cases have been scanned and entered into the
107 database, which means the project has reached the milestone of being 10% complete.

108
109 Director Jackson reviewed with the Board the new methodologies being researched and
110 implemented by the Department. The Forensic Biology Section has begun the implementation of
111 the new male DNA screening method. The new method is used for Physical Evidence Recovery
112 Kits (PERKs) in sexual assault cases. Each laboratory will be trained in the new method this
113 month, and the new screening method should be online by the end of the month. Also in
114 Forensic Biology, new DNA quantitation chemistries and instrumentation and new automated
115 DNA extractions for sexual assault evidence are in the evaluation stage. In Toxicology, Director
116 Jackson reported that there are currently two research projects. One involves the development of
117 qualitative and quantitative methods for fentanyl analogs. The second is for the development of
118 a QTOF general screening method. New QTOF instruments are expected to be in each laboratory
119 by the end of FY18.

120
121 Director Jackson updated the Board on the compounds that DFS recommended to the Board of
122 Pharmacy for expedited scheduling. At the Board of Pharmacy's September 26, 2017 meeting,
123 nine compounds were approved that became scheduled by a regulation effective on December
124 13, 2017. At the Board of Pharmacy's meeting on December 11, 2017, eleven additional
125 compounds were approved and will become scheduled via regulation effective in the Spring of
126 2018.

127
128 Resources:
129 Director Jackson reviewed the funding changes for DFS that were included in the Caboose Bill.
130 Overtime funding was provided for forensic scientists in the Controlled Substances and Forensic
131 Biology Sections to help address case backlogs. This temporary funding is for the Spring of

132 2018. Examiners in those Sections will be required to work a minimum of 40 hours of overtime
133 between January 1 and May 30, 2018.

134
135 Director Jackson also reviewed DFS funding items in the Governor's Introduced Budget. DFS
136 received funding for six new positions in Controlled Substances, one new position in Digital and
137 Multimedia Evidence, and one new position in Forensic Biology for method development,
138 validation and implementation. Overtime funding for Controlled Substances was provided in
139 FY19 while the new positions are being hired and trained. DFS also received funding for debt
140 services through the Commonwealth's Master Equipment Lease Program (MELP) to replace or
141 update equipment in the Breath Alcohol, Toxicology, and Controlled Substances Sections.

142
143 Grants:

- 144 Director Jackson presented a summary of current DFS grants, which include:
- 145 • FY15, FY16 and FY17 DNA Capacity Enhancement and Backlog Reduction Grants;
 - 146 • the FY16 Paul Coverdell Forensic Science Improvement Grant;
 - 147 • the NIH Research and Development for Publicly-Funded Forensic Science Laboratories
148 (Toxicology) Grant;
 - 149 • the FY16 Research and Evaluation for the Testing and Interpretation of Physical
150 Evidence in Publicly Funded Forensic Laboratories (Latent Print) Grant;
 - 151 • FY18 Highway Safety Project Grant (DMV) TREDS (Traffic Records Electronic Data
152 System) Program;
 - 153 • FY18 Highway Safety Grant Program (DMV) – DFS Breath Alcohol Training Program;
 - 154 • Opioid Joint Project – pass through funds from the OCME; and
 - 155 • the FY18 Byrne Justice Assistance Grant (JAG) Continuation Funding.

156
157 Director Jackson continued with an update of the two PERK grants. The New York County
158 District Attorney's (DANY) Sexual Assault Kit Backlog Elimination Program Grant has been
159 used to pay for the analysis of untested kits collected prior to July 1, 2014 and included in the
160 PERK inventory conducted by DFS. To date, six agencies have submitted their kits to the
161 private contract laboratory for testing. The private laboratory has sent data from 972 cases to
162 DFS for review. The DANY grant has been extended to 2018 due to the caseload of the private
163 contract laboratory. The National Sexual Assault Kit Initiative (SAKI) FY2016 Competitive
164 Grant is being utilized to outsource the analysis of untested PERKs collected from July 1, 2014
165 through June 30, 2016. The Request for Proposal (RFP) process for the private contract
166 laboratory is underway, and Director Jackson anticipates the contract should be awarded in the
167 near future.

168
169 Workload/Backlog:

170 Director Jackson provided an update on workload/backlog trends in each of the program areas.

171
172 The Controlled Substances Section continues to see increased submissions. There was a 19%
173 increase in submissions from 2016 to 2017 alone. DFS implemented 24 hours of mandatory
174 overtime for all Controlled Substances examiners and support staff in the fall to prevent the
175 backlog from increasing further.

176
177 The Digital and Multimedia Evidence (DME) Section's current turnaround time is over a year.
178 One of the five positions in the Section is currently in recruit, and the Governor's introduced
179 budget includes funding for an additional DME scientist.

180
181 The Firearms Section continues to complete more cases than it has been receiving due to the new
182 National Integrated Ballistic Information Network (NIBIN) Forensic Scientist positions.
183 However, DFS is still not meeting the Bureau of Alcohol, Tobacco, Firearms, and Explosives'
184 recommendation that NIBIN results be completed within 48 hours. As a result, two law
185 enforcement agencies have contacted DFS about acquiring their own NIBIN equipment.

186
187 The Forensic Biology Section recently had four examiners complete their training. There are
188 eight more who are still in training. Once they have all completed their training, it is anticipated
189 that the Section will be reduce the number of cases in the backlog and the corresponding
190 turnaround times.

191
192 The Latent Prints Section saw an increase in submissions in the third quarter, but this increase
193 did not continue for the final quarter of 2017.

194
195 The Toxicology Section has continued to prioritize OCME cases and has been meeting the
196 OCME's accreditation requirements. Director Jackson reported that, with new methods
197 previously implemented, the DUI/D case turnaround times have also decreased.

198
199 The Trace Evidence Section is fully staffed, and all examiners are fully trained.

200
201 The Board discussed the new reporting language on Controlled Substance reports and Director
202 Jackson was able to answer questions about the reporting of weights.

203
204 The Board discussed turnaround times in the Forensic Biology, Controlled Substances, and
205 Digital and Multimedia Sections. Director Jackson informed the Board that the Department
206 would be sending information to customers regarding the extended turnarounds times in Forensic
207 Biology. Now that overtime funding for the Forensic Biology Section was included in the
208 Caboose bill, that information can be included in the notice that is disseminated.

209
210 **Old Business**

211
212 Status of the Post-Conviction DNA Testing Program and Notification Project:
213 Colin Drabert provided a brief update on the case file review that staff members from the
214 Virginia State Crime Commission (VSCC) are conducting of cases from the Post-Conviction
215 DNA Testing Program and Notification Project. No new notifications letters have been sent
216 since the last Board meeting. VSCC staff will begin reviewing the inconclusive cases to
217 determine if any further notifications are required. VSCC staff will also review cases where
218 multiple notifications have been sent with no response to determine if due diligence has been
219 met.

220
221 Forensic Science Training Program Update:

222 Katya Herndon, Chief Deputy Director, reminded the Board that a stakeholder meeting was held
223 on August 16, 2017, to discuss the idea of DFS offering a training program to attorneys on the
224 underlying science utilized by the various laboratory disciplines. A second stakeholder meeting
225 was held on October 23, 2017. In advance of the meeting, a fifteen-question needs assessment
226 survey was sent to Commonwealth's Attorneys and criminal defense attorneys. Over 500
227 individuals completed the survey. At the October meeting, the stakeholders group reviewed the
228 results of the survey. After discussion, it was the consensus of the group to recommend that
229 DNA be the first subject offered by DFS when it starts the training in 2018, which it plans to
230 offer at each regional lab this year. DFS sought volunteers from the stakeholder group to assist
231 with the following: development of the curriculum for the DNA training; development of an
232 application and screening process for selecting individuals to attend the training; and
233 coordination of the logistics for scheduling and promoting the training. The first work group to
234 meet will be the curriculum group. The next stakeholder meeting will be after the General
235 Assembly Session.

236

237 Serology Case Review Update:

238 Brad Jenkins, Forensic Biology Program Manager, gave an update on the Serology Case Review.
239 Each case is being reviewed by two scientists. The first review of the 100 cases from the Eastern
240 Laboratory is complete, and the second review of those cases is underway. The first review of
241 the 100 cases from the Northern Laboratory has begun and should be complete by the end of
242 January.

243

244 Microscopic Hair Comparison Case Review Update:

245 Amy Curtis, Department Counsel, gave an update on the Microscopic Hair Comparison Case
246 Review. Ms. Curtis advised that the University of Richmond School of Law's Actual Innocence
247 Clinic would most likely not be providing assistance this spring. However, Ms. Curtis will have
248 a Legal Intern who starts on January 16, and he will be able to assist in researching conviction
249 information and locating transcripts. DFS is continuing to identify positive probative
250 associations.

251

252

253 Other Old Business:

254 Ms. Curtis advised that, after the October Board meeting, she and Michelle Welch, Legal
255 Counsel to the Board, followed-up with a procurement expert at the Office of the Attorney
256 General about the offer for an IT services donation by means of a grant awarded by Microsoft to
257 pay for services to be provided by The Computer Solution Company (TCSC). After discussing
258 the grant process with the Attorney General's Office, the Department notified TCSC not to
259 pursue this grant.

260

261 New Business

262

263 Outlook for 2018 Legislation:

264 Katya Herndon, Chief Deputy Director, advised that the Department has one agency bill for the
265 2018 General Assembly Session. Under current law, law enforcement agencies that receive a
266 Physical Evidence Recovery Kit (PERK) must, within 60 days, submit the kit to DFS for
267 analysis unless one of four exceptions apply. Delegate Watts will introduce a bill, on behalf of

268 DFS, to create a fifth exception to the mandatory submission provision that would allow an
269 agency that receives a PERK to transfer it to another law enforcement agency that has taken over
270 responsibility for the investigation of the offense. This would apply when a PERK is received by
271 a law enforcement agency, but the offense occurred in another jurisdiction or a Federal law
272 enforcement agency was taking over the investigation.
273

274 Ms. Herndon reviewed a couple of other bills of interest to the Department. Delegate Garrett
275 will introduce a bill that will permanently place in Schedule I compounds temporarily placed
276 there through the Board of Pharmacy's expedited regulatory process since the 2017 Session. The
277 Department of Health Professions (DHP) will introduce a bill that would make fentanyl
278 derivatives Schedule I drugs by creating a fentanyl structural class. It will be similar what is
279 currently in the Code for cannabimimetic agents. Several states have already adopted similar
280 legislation. The bill would eliminate the four to six month lag time that it takes for the Board of
281 Pharmacy expedited regulatory process. If enacted, DFS would specifically report the compound
282 as a fentanyl derivative and a Schedule I controlled substance with reference to the specific
283 subsection of the Code.
284

285 Mr. Drabert also pointed out that bills have been filed to allow law enforcement officers to
286 testify as to the results of marijuana field tests in trials for misdemeanor distribution of marijuana
287 cases.
288

289 Consideration of NOIRA for Field Tests:

290 Amy Curtis, Department Counsel, presented a recommendation to the Board that it consider a
291 Notice of Intended Regulatory Action (NOIRA) to the Regulations for the Approval of Field
292 Tests for Detection of Drugs (6 VAC 40-30). In October 2017, DFS received a request from a
293 law enforcement agency for the Department to approve a handheld Raman spectrometer for the
294 detection of drugs as a field test. The Department is currently not able to approve these devices,
295 or other handheld instruments for the detection of controlled substances, because the regulations
296 only address the approval of presumptive chemical tests. Ms. Curtis provided a landscape study
297 of the Raman spectrometers to the Board. The Raman spectrometer provides for testing of a
298 suspected controlled substance by utilizing a monochromatic laser that will test through clear
299 plastic and glass packaging to conduct a presumptive field test on the substance. It utilizes a
300 probabilistic modeling algorithm to identify up to two compounds that are potentially present.
301 While presumptive chemical field tests are typically limited to one substance, the Raman
302 spectrometers cover multiple compounds utilizing its finite library of compounds. Like the
303 presumptive chemical tests, there can be false positive and false negatives, but these types of
304 instruments do not destroy any of the sample during the field test and law enforcement would not
305 have to remove any sample from the packaging. This is important for the safety of law
306 enforcement officers with the increasing safety concerns regarding handling synthetic opioids.
307 DFS would need to amend the definition of field test and set up a process for approval to
308 consider any manufacturer's request in the regulations.
309

310 Ms. Curtis reminded the Board of Virginia Code §19.2-188.1, which states that law enforcement
311 can be permitted to testify to the results of field tests in preliminary hearings only if the field
312 tests or field test kits have been approved by DFS. Ms. Curtis also reviewed the definition of
313 field test and field test kits from 6 VAC 40-30-10, which would need to be amended by the

314 Board if it ultimately decided to include Raman spectrometers and other presumptive mobile
315 instruments. She advised that the definition should not be limited to only Raman spectrometers
316 so that the Department could potentially approve other presumptive mobile instruments that may
317 become available and feasible as technology develops. Any proposed amendments would also
318 need to include the approval procedures to allow for the evaluation of these instruments, as the
319 process would need to be different from what is currently provided for in the regulations for
320 presumptive chemical tests.

321
322 Ms. Curtis reviewed the process for the NOIRA and the remainder of the stages that would be
323 required under the APA if the Board were to proceed with amending 6 VAC 40-30. The Board
324 discussed the timeline of the process and setting a time for a public hearing.

325
326 Ms. McEachin made a motion that the Board approve the NOIRA to consider amendments to 6
327 VAC 40-30, which was seconded by Dr. Gormley, and approved by unanimous vote of the
328 Board. The Board agreed to have a public hearing prior to the next Board meeting. Ms. Curtis
329 will ensure the publication of the NOIRA in the Virginia Register of Regulations if approved by
330 the Governor's Office and bring any public comments submitted via Virginia's Regulatory Town
331 Hall to the Board for review. The Board discussed with Department staff how presumptive
332 chemical field test kits are currently approved by DFS.

333
334 **Public Comment**

335 None.

336
337 **Future Meeting Dates**

338 The Forensic Science Board will hold a public hearing on Wednesday, May 16, 2018 at 9:30
339 a.m.

340
341 The Forensic Science Board will meet on Wednesday, May 16, 2018, at 10:00 a.m.

342
343 Further Board meeting dates include Wednesday, August 22, 2018, and Wednesday, October 17,
344 2018 at 9:30 a.m.

345
346 **Adjournment**

347
348 Ms. McEachin made a motion that the meeting of the Board be adjourned, which was seconded
349 by Mr. Lett, and passed by unanimous vote.

350
351 The meeting adjourned at 12:10 p.m.