

1 **Minutes**
2 **Forensic Science Board Meeting**
3 **October 14, 2021**

4 **Department of Forensic Science, Central Laboratory, Classrooms 1 and 2**

5
6 **Board Members Present**
7

8 Megan L. Clark, Commonwealth's Attorney, Prince Edward County
9 Denise M. Toney, Ph.D., Director of the Division of Consolidated Laboratory Services
10 Colonel Maggie A. DeBoard, Chief of Police, Herndon Police Department, *Vice Chair*
11 Senator John S. Edwards, Chair, Senate Courts of Justice Committee (participated remotely
12 pursuant to Virginia Code § 2.2-3708.2)
13 William T. Gormley, M.D., Chief Medical Examiner
14 Karl R. Hade, Executive Secretary, Supreme Court of Virginia
15 Delegate Charniele L. Herring, Chair, House Courts of Justice Committee
16 Kristen J. Howard (Designee of the Chair of Virginia State Crime Commission, Delegate
17 Charniele L. Herring)
18 Michael HuYoung, Esq.
19 Linda C. Jackson, Scientific Advisory Committee Member
20 Michael A. Jagels (Designee of Attorney General Mark R. Herring)
21 Caroline D. Juran, Executive Director, Board of Pharmacy
22 Lieutenant Colonel Tracy S. Russillo (Designee of Colonel Gary T. Settle, Superintendent,
23 Virginia State Police)
24

25 **Board Members Absent**
26

27 Shannon Dion, Director of the Department of Criminal Justice Services, *Chair*
28 Richard P. Meyers, Scientific Advisory Committee Member
29

30 **Legal Counsel for the Forensic Science Board**
31

32 Michelle Welch, Assistant Attorney General
33

34 **Staff Members Present**
35

36 Jeffrey D. Ban, Central Laboratory Director
37 David A. Barron, Ph.D., Deputy Director
38 Nancy L. Batterson, Forensic Administrative Specialist III, *Board Secretary*
39 Sabrina S. Cillessen, Physical Evidence Program Manager
40 Katya N. Herndon, Chief Deputy Director
41 James W. Hutchings, Ph.D., Toxicology Program Manager
42 Amy C. Jenkins, Department Counsel
43 Bradford C. Jenkins, Forensic Biology Program Manager
44 Alka B. Lohmann, Director of Technical Services
45 Jessica B. Norton, Legal Assistant
46 Elizabeth Stroble, Grants and Administration Program Manager

47 **Call to Order**

48

49 Chief Maggie DeBoard, Vice Chair of the Forensic Scientific Board (“Board” or “FSB”), called
50 the meeting to order at 9:34 a.m. Chief DeBoard called on Katya Herndon to address the remote
51 participation of Senator John Edwards.

52

53 Ms. Herndon advised that Senator Edwards would be participating remotely pursuant to the FSB’s
54 Policy on Participation of Forensic Science Board Members in Meetings by Electronic Means
55 Pursuant to Virginia Code §2.2-3708.2. Ms. Herndon noted that Senator Edwards would be
56 participating by telephone from Roanoke, Virginia, due to a work commitment.

57

58 Chief DeBoard welcomed a new member to the Board, Michael Jagels, who is the designee of
59 Attorney General Mark Herring. She had members and staff introduce themselves. During
60 introductions, Director Linda Jackson noted that, at the request of the Scientific Advisory
61 Committee (SAC) Chair, she was attending as one of the SAC members on the Board for this
62 meeting due to the recent resignation of one of the SAC members who served on the Board and
63 because a prior commitment prevented the second SAC member who is also a member of the Board
64 from attending.

65

66 **Adoption of Agenda**

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68 Chief DeBoard advised that the first order of business was the adoption of the draft agenda for the
69 meeting, which was previously shared with the Board members. Mr. HuYoung made a motion to
70 adopt the agenda, which was seconded by Dr. Gormley and adopted by unanimous vote of the
71 Board.

72

73 **Approval of Draft Minutes of the July 14, 2021 Board Meeting**

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75 Chief DeBoard asked if there were any proposed changes to the draft minutes from the July 14,
76 2021 meeting. Being none, she asked for a motion to approve the draft minutes. Dr. Gormley made
77 a motion to approve the July 14, 2021 meeting minutes, which was seconded by Ms. Clark, and
78 passed by unanimous vote of the Board.

79

80 **FSB Chair’s Report**

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82 Chief DeBoard stated she did not have a report.

83

84 **DFS Director’s Report**

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86 **Central Laboratory Capital Project**

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88 Director Jackson updated the Board on the progress of the Central Laboratory capital project. She
89 shared that the construction package was presented to the General Assembly capital funding
90 committee. Construction drawings are being prepared for submission to the Division of
91 Engineering & Buildings. Groundbreaking is still anticipated to occur late in the first quarter of
92 2022 with the project scheduled for completion in 2024.

93 Virginia Forensic Science Week

94 Director Jackson advised that Governor Northam had proclaimed September 19-24 as Virginia
95 Forensic Science Week to coincide with National Forensic Science Week. The celebration is an
96 effort to bring attention to the field to increase interest in possible career paths for high school and
97 college students. Staff recognition activities were held at each of the regional labs. Additionally,
98 the Department of Forensic Science (DFS) presented its annual service awards during Virginia
99 Forensic Science Week. Due to COVID restrictions, there was no ceremony; instead, a narrated
100 PowerPoint presentation that included photographs celebrated the seventy staff members who
101 received awards.

102 DNA Data Bank

103
104 Director Jackson informed the Board that the DNA Data Bank, which was established in 1989,
105 achieved its 15,000th hit. A hit occurs when a DNA profile from an unsolved crime is linked or
106 matches a DNA profile from an offender/arrestee or another crime in the Data Bank. The Data
107 Bank currently includes approximately 500,000 samples.

108
109 Accreditation

110
111 The Department's current accreditation expires on September 30, 2022. DFS is preparing to begin
112 the procurement process for a new accreditation services contract.

113 Audits and Reviews

114 Director Jackson noted that the Office of the State Inspector General was getting ready to begin a
115 performance audit of DFS. She also shared that the IT Security Audit of DFS was completed by
116 the Virginia Information Technologies Agency (VITA) and that there had been no findings. The
117 National Institute of Justice Desk Audit of the 2018 Toxicology Research Grant was also
118 completed with no findings. Director Jackson thanked Elise Stroble, Grants and Administrative
119 Program Manager, for her organized record keeping.

120 New Policy Initiatives

121 Every Virginia state agency was required to create a ONE Virginia Plan, a strategic plan for
122 diversity, equity, and inclusion (DEI). Director Jackson discussed several items included in the
123 Department's plan, including providing additional training for staff in the area of DEI, adding DEI
124 language to all employee work profiles (position descriptions), and looking for ways to increase
125 the diversity of applicants applying to the agency. Creating virtual laboratory tour videos that
126 would be accessible to students around the state is a project DFS is pursuing to assist in increasing
127 awareness about careers in forensic science.

128 Director Jackson discussed Executive Order 77 (EO77), which was issued by Governor Northam
129 and addresses reducing solid waste and plastic pollution by state agencies. On September 20, 2021,
130 DFS submitted to the Department of Environmental Quality (DEQ) its plan to work towards
131 reducing the buying, selling, or distribution of all nonmedical single-use plastic and expanded
132 polystyrene objects, which included an inventory of such products regularly used by the agency.

133 DFS did seek a medical exemption for certain items. Director Jackson noted how disposable plastic
134 laboratory consumables are used by DFS to significantly reduce the potential for cross
135 contamination between samples and that they are also part of validated methods. She also
136 explained that current laboratory recycling programs are being evaluated.

137 Laboratory Information Management System (LIMS) Projects

138 Director Jackson discussed the status of various Laboratory Information Management System
139 (LIMS) projects, including the DNA Data Bank Sample Tracking System, Prelog for evidence
140 submission, the Expungement Module, and Power BI for data presentation. The software vendor
141 for these projects was recently purchased, which has delayed implementation.

142 Forensic Training for Attorneys and Judges

143 Director Jackson reminded the Board that DFS began its forensic training program for attorneys
144 and judges in 2018. DNA was the first subject offered, and Driving Under the Influence training
145 (Toxicology and Breath Alcohol) was added in 2019. DFS did not offer any trainings in 2020 due
146 to the pandemic. This year, the Department began offering a Controlled Substances training that
147 is being held virtually. This training consists of pre-recorded presentations, followed by live
148 question and answer periods. It was first offered on October 1 with approximately 60 participants
149 attending. A second session will be held on November 12, 2021, and has approximately 100
150 individuals scheduled to attend.

151 Forensic Training

152
153 Director Jackson provided an update on the Forensic Science Academy (FSA). The 104th FSA
154 Session began on September 13th and is scheduled for graduation on January 31, 2022. The 105th
155 FSA is set to begin on January 31, 2022, and has a full wait list. In filling FSA classes, the Forensic
156 Training Section tries to ensure that each law enforcement agency continues to have a FSA
157 graduate on staff. The FSA Academy Alumni Annual retraining was held virtually on September
158 1-3, 2021.

159 160 Breath Alcohol Testing

161
162 Director Jackson shared that the number of breath tests performed in the field continues to be
163 approximately 20% lower than the number performed in 2019 (pre-pandemic).

164 165 Workload Statistics

166 Director Jackson shared statistics comparing case submissions for each discipline for fiscal years
167 2019, 2020 and 2021. In addition, she shared the backlogs and average case turnaround times for
168 September 2021, by discipline. She reminded members that DFS defines the backlog to include all
169 cases available to be worked.

170 Director Jackson discussed the continued downward trend of Controlled Substances case
171 submissions. There has been a 22% reduction in submitted controlled substances cases from FY19
172 through FY21. Potential explanations for these reductions include reduced drug enforcement due

173 to the pandemic and new criminal justice reform legislation, including legalization of marijuana.
174 While submissions are low, several Controlled Substances examiners are assisting in other sections
175 of the laboratory, such as Firearms, Toxicology and Forensic Biology, but they are maintaining
176 their proficiency in Controlled Substances for when submissions rise.

177 Although FY21 case submissions in Digital & Multimedia Evidence were below those seen in
178 FY19, FY21 submissions were higher than in FY20. During this same time period, there has been
179 a significant increase in Firearms & Toolmarks (+23%) and Toxicology (+18%) case submissions.

180 Director Jackson also presented case statistics from the past five quarters reflecting case
181 submissions and completions, backlog, and turnaround times for each discipline. Turnaround times
182 in Controlled Substances are below the target of a 30-day average, but the average times in
183 Firearms & Toolmarks continue to increase. DNA turnaround times have also increased due to the
184 necessity to switch to manual extractions for a period of time due to the national pipette tip
185 shortage. Turnaround times for Digital & Multimedia Evidence have improved significantly due
186 to the fact all examiners have completed their training and are fully qualified. Latent Prints'
187 turnaround times have also improved. The Trace Evidence Section has seen an increase in
188 turnaround times due to examiners still in training; however, the Section is correctly staffed.

189 Cannabis Update

190
191 Director Jackson advised the Board of a Policy Notice distributed to DFS customers on August
192 19, 2021, which announced the implementation of the new quantitative method for *Cannabis*
193 *sativa* plant material and included a summary chart on Cannabis Submission Guidelines.

194 195 Report on Seized Drugs - CY2020

196
197 Director Jackson discussed the report on *Drug Cases Submitted to the Virginia Department of*
198 *Forensic Science CY 2020*, a joint effort by DFS and the Department of Criminal Justice Services
199 (DCJS), which highlights the frequency with which various selected drugs are submitted, broken
200 out by the seven Virginia State Police divisions and 32 Virginia Court Districts. Changes in the
201 report include the removal of marijuana and the shift in some drug classifications. She shared a
202 graph that illustrated the large increases seen in submissions for illicit benzodiazepines and
203 synthetic opioids and the decreases in submissions for heroin, prescription opioids, and
204 prescription benzodiazepines.

205 206 Forensic Biology

207
208 Director Jackson provided an update on the implementation of STRmix for the analysis of complex
209 DNA mixtures and the national pipette tip shortage.

210 211 Toxicology

212
213 Director Jackson shared a table showing statistics on toxicology submissions by exam type,
214 comparing calendar years 2017 through 2020. The Memorandum of Understanding (MOU) with
215 the Office of the Chief Medical Examiner (OCME) for outsourcing has been extended. The MOU

216 includes the outsourcing of cases for private laboratory testing, paid for by DFS to allow the
217 OCME to meet their required receipt of examiner results within 90 days.

218
219 Budget and Resources

220
221 Director Jackson provided an overview of the Department's FY22 budget.

222
223 Grants:

224 Director Jackson gave an overview of three grants awarded to the agency:

- 225 ● FY 2022 Highway Safety (DMV) Grant for the Breath Alcohol Section
- 226 ● FY 2022 Highway Safety (DMV TREDS Office) Grant for the Toxicology Section
- 227 ● DCJS Byrne Justice Assistance Grant Funding for the Forensic Training Section

228 Director Jackson advised the Committee of two grant awards that were pending, the FY 2021 DNA
229 Capacity Enhancement and Backlog Reduction (CEBR) Grant and the FY 2021 Paul Coverdell
230 Forensic Science Improvement Grant.

231 Director Jackson also advised that the Department received funding for the Firearms Section to
232 purchase additional equipment through the American Rescue Plan Act.

233 Scientific Advisory Committee (SAC) Report

234
235 Director Jackson provided the SAC Report to the Board. She noted that the SAC welcomed three
236 new members, William Demuth (Director at the Illinois State Police Laboratory, who fills the seat
237 for a member of the Board of the Association of Firearms and Tool Mark Examiners), Erin Forry
238 (Quality Manager with the Boston Police Department Laboratory, who fills the seat for a Scientist
239 or other person with education, training or experience in laboratory standards or quality assurance
240 regulation and monitoring), and Peter Vallone, Ph.D. (leader of the Applied Genetics Group at the
241 National Institute of Standards and Technology, who fills the seat for a Molecular Biologist).

242
243 Director Jackson thanked Les Edinboro, Ph.D., for his service to DFS. Dr. Edinboro resigned from
244 the SAC because he retired from his position as the Director of a private or federal forensic
245 laboratory located in the Commonwealth, which was the seat he filled on the SAC.

246
247 Director Jackson advised that, at the SAC meeting on October 13, 2021, she provided a Director's
248 Report to the SAC, and the Committee also heard reports from Director of Technical Services
249 Alka Lohmann and each of the Program Managers.

250
251 The SAC received and accepted reports from three of its Subcommittees, which had been provided
252 materials for review and met in advance of the SAC meeting to discuss those materials.

- 253
254 ● The Controlled Substances Subcommittee met on October 12, 2021, and reviewed one
255 Method Development Summary and three Validation Summaries. After discussion, the

256 Controlled Substances Subcommittee voted to close its review of the method development
257 and method validation summaries.

- 258 ● The Forensic Biology Subcommittee met on October 12, 2021. They reviewed and
259 discussed the STRmix Validation Summary, and then voted to close the review.
- 260 ● The Toxicology Subcommittee met on October 13, 2021. The Subcommittee reviewed and
261 discussed three Validation Plans, two Validation Summaries, and three Limit of Detection
262 (LOD) Experiments. The Subcommittee reviewed and discussed the materials and made
263 recommendations related to the two validation Summaries, then voted to close its review
264 of all of the Validation Plans, Validation Summaries, and Limit of Detection Experiments.
265

266 Director Jackson advised the Board that the SAC Firearms Subcommittee had been provided
267 materials in advance related to the verification of the Cadre Forensics TopMatch - GS 3D Scanner
268 Equipment and the Cadre Virtual Comparison Microscopy (VCM) for Comparison and
269 Screening/Grouping. After reviewing the materials, the Subcommittee had indicated that a meeting
270 to discuss them was not necessary. The SAC heard a presentation from DFS summarizing the
271 materials, and then voted to close the review.
272

273 Director Jackson noted that the SAC selected April 19, 2022, and October 18, 2022, for its 2022
274 meeting dates.
275

276 Chief DeBoard asked for a motion to accept the SAC Report. Ms. Clark made a motion to accept
277 the SAC report, which was seconded by Ms. Juran and passed by unanimous vote of the Board.
278

279 **Old Business**

280 **Proposed Regulatory Amendments**

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282
283 Amy Jenkins, Department Counsel, provided an update on proposed amendments to two of the
284 Department's regulations: 6 VAC 40-30, the Regulations for the Approval of Field Tests for
285 Detection of Drugs, and 6 VAC 40-50, the Regulations for the Approval of Marijuana Field Tests
286 for Detection of Marijuana Plant Material.
287

288 At its July 14, 2021 meeting, the Board approved an exempt regulatory action for amendments to
289 6 VAC 40-30 to reflect the addition of a second definition of marijuana under the Cannabis Control
290 Act (Virginia Code §§ 4.1-600 et seq.). Because the amendments are necessary to conform the
291 regulation with the new Cannabis Control Act, which went into effect on July 1, 2021, the
292 regulatory action was exempt under Code § 2.2-4006(A)(4)(A) of the Administrative Process Act.
293 These amendments were published on August 30, 2021 in the Virginia Register of Regulations
294 and became effective on September 30, 2021. No public comments were received on this action.
295

296 The Notice of Intended Regulatory Action (NOIRA) for 6 VAC 40-50 was considered and
297 approved with one minor change by the Board at its July meeting. The approved amendments to
298 6 VAC 40-50, the Regulations for the Approval of Marijuana Field Tests for Detection of
299 Marijuana Plant Material, would permit the Department to approve non-Duquenois Levine field
300 tests, as well as other technology that may evolve that could distinguish marijuana from industrial
301 hemp. The approved NOIRA was submitted for Executive Branch approval through the Virginia

302 Town Hall website. The NOIRA will be published in the Virginia Register of Regulations once it
303 has been approved by the Governor's Office.

304

305 Microscopic Hair Comparison Case Review

306

307 Ms. Jenkins provided a review of the Microscopic Hair Comparison Case Review for new Board
308 members. The Department has continued to send out requests to the Clerks of Court for conviction
309 information and transcripts for positive probative associations identified as part of the Historical
310 Case File Review Project. Responses have slowed due to the pandemic, in addition to the
311 unavailability of transcripts for these older cases. A Review Team, consisting of a Public
312 Defender, a prosecutor, and a DFS forensic scientist who previously conducted microscopic hair
313 comparison examinations, will meet on November 15, 2021, to review five transcripts. The FSB
314 Hair Review Subcommittee will review their recommendations to determine what notifications
315 should be made for each case. Ms. Clark and Mr. HuYoung have agreed to serve on this
316 Subcommittee along with Lt. Col. Russillo, who has been a member of the Subcommittee. A
317 Subcommittee meeting will be set after the Review Team has met and made their
318 recommendations.

319

320 New Business

321

322 Forensic Science Board 2021 Annual Report

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324 Katya Herndon, Chief Deputy Director, noted that the draft of the Forensic Science Board 2021
325 Annual Report was previously provided to the Board members for review. Ms. Herndon explained
326 that, because of that, she would not be reviewing the report in detail. She did, however, review the
327 seven topics required to be addressed in the report, which is due by November 1 each year. Ms.
328 Herndon noted the section of the report that would need to be updated to reflect the actions taken
329 at the October 14, 2021 SAC meeting. She gave a deadline by which the members could provide
330 her with any suggestions and/or edits to the draft report.

331

332 Chief DeBoard asked for a motion for the Department to update the report to reflect the actions of
333 the SAC from its meeting held on October 13, 2021, and to make any other edits, as needed, and
334 then to submit the report pursuant to the statute. Ms. Clark made the motion, which was seconded
335 by Dr. Gormley, and passed by unanimous vote.

336

337 Public Comment

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339 No member of the public was present to provide comment.

340

341 Select 2022 Meeting Dates

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343 The Board was advised that the SAC had selected April 19 and October 18 for its 2022 meeting
344 dates and that, because the Board typically holds its April and October meetings on the day
345 following each SAC meeting, it was recommended that the FSB meetings be held on April 20 and
346 October 19, 2022. Ms. Howard noted that the Virginia General Assembly would be holding its
347 reconvened session on April 20, 2022. After discussion, the Board selected Thursday, April 21,

348 2022, for its April meeting date. Ms. Herndon advised the FSB that staff would follow up with the
349 SAC members about moving the SAC April meeting to April 20, 2022. In addition to April 21, the
350 Board selected January 5, July 13, and October 19 for its 2022 meeting dates.

351

352 **Adjournment**

353

354 Chief DeBoard called for a motion to adjourn. Ms. Clark made a motion to adjourn the meeting,
355 which was seconded by Mr. HuYoung and passed by unanimous vote of the Board. The meeting
356 adjourned at 10:45 a.m.

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