

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Division of Forensic Science



Report Document

**COMMONWEALTH OF VIRGINIA
RICHMOND
2005**



COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

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January 11, 2005

TO: The Honorable Mark Warner, Governor of Virginia

And

Members of the Virginia General Assembly

Section 30-158(3) provides the Commission the power to "conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156...and formulate its recommendations to the Governor and the General Assembly."

Enclosed for your review and consideration is the study report on the Division of Forensic Science. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Albo", written over a horizontal line.

David B. Albo
Chairman

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I. Authority

The *Code of Virginia*, §30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters "... including apprehension, trial and punishment of criminal offenders." Section 30-158(3) provides the Commission the power to "... conduct studies and gather information and data in order to accomplish its purposes as set forth in §30-156. . .and formulate its recommendations to the Governor and the General Assembly."

Using the statutory authority granted to the Crime Commission, the staff conducted a study of the Virginia Division of Forensic Science.

II. Executive Summary

In June 2004, Dr. Paul Ferrara, Director of the Virginia Division of Forensic Sciences (DFS), sent a letter to the Office of the Executive Secretary of the Supreme Court urging law enforcement agencies to use field tests to help alleviate the backlog of cases waiting forensic testing (*see Attachment 1*). As a result of the memo and subsequent interviews with local law enforcement officials and Commonwealth's Attorneys, the Crime Commission initiated a data request to the DFS in September 2004 to begin the process of examining the lab's changes in workload, staffing and funding (*see Attachment 2*). Upon receipt of the initial data request, Crime Commission staff met with the DFS Director and senior staff on two occasions to make additional data requests and to ask questions related to the lab's workload.

In summary, there are 4 main issues which have contributed to the backlog of cases and delays at the Forensics Lab. These include:

- Increased workload;
- Lack of funding for requested positions and program expansion;
- Inability to hire staff for approved positions due to salary compression and an inability to provide competitive salary offers; and,
- Staff turnover.

Upon consultation with DFS staff and after analysis of employment and workload data, there are 9 steps that have been identified to alleviate the workload problems at the lab. Seven steps require short-term appropriations and one step will require long-range planning and appropriations:

Funding for the remainder of the FY 05/06 Biennium

- \$2,140,726 for 31 new forensic staff;
- \$3,096,922 to raise lab salaries 26.3% across the board to correct salary compression and allow for competitive hiring with federal forensics labs;
- \$300,000 for the Forensic Professional Achievement Program;
- \$906,000 to restore funding for the Virginia Institute of Forensic Science and Medicine with requirements for contract employment by students;
- \$1,254,000 to expand the Eastern Lab and \$54,000 to pay rent on the new space;

- \$376,500 to begin a mitochondrial DNA testing program; and,
- Funds to acquire land and plan for a new Northern Virginia facility; most recent DFS estimate of land acquisition/planning was \$3,517,000.

Construction in the FY 07/08 Biennium

- Appropriate funds to build a new lab in Northern Virginia; DFS requested \$33,737,000 for new facility in FY 2005.

In addition, the General Assembly should consider two long-term statutory changes in the oversight of the lab to alleviate problems of accessibility and resource needs identification in the future:

- Legislation to make the lab a separate, independent agency within the Secretary of Public Safety with an administrative oversight board and a scientific advisory board; and,
- Mandate the lab provide an annual report to the Senate Finance Committee, House Appropriations Committee and the Crime Commission on workload, resource needs and long range planning for the lab.

III. Background

The Division of Forensic Sciences (DFS) is a division within the Department of Criminal Justice Services (DCJS). The DFS became a division of DCJS in 1996 when it was transferred from the Department of General Services (DGS). The DFS has four regional offices:

- Roanoke (44 FTEs)
- Norfolk (38 FTEs)
- Fairfax (30 FTEs)
- Richmond (132 FTEs).

Current Staff and Funding

DFS is appropriated \$23,586,182 and authorized for 244 FTEs in FY 2005. As Table 1 illustrates, of the 244 current FTEs, 157 FTEs (64%) are allocated for forensic laboratory examiners.

Table 1

Forensic Section Examiners	Richmond Lab	Roanoke Lab	Norfolk Lab	Fairfax Lab
Firearms	7	2	4	2
Drugs	12	8	6	8
Latents	8	5	2	1
Toxicology	8	3	2	1
Trace	8	5	3	0
Questioned Documents	2	3	1	0
DNA	19	5	8	8
Blood Spatter	3	0	0	0
Vacant Positions (10/04)	4	3	4	2
Total Examiners	71	34	30	22

As of October 13, 2004, DFS had 16 vacancies (6.6%); an additional 17 senior forensics staff (7%), including the Director, were eligible for full retirement.

The current FY 2005 appropriation is \$23.6 million. Since FY 1999, DFS appropriations have grown 13.6% and total FTEs have grown 19.6%. However, as Table 2 illustrates, the current FY 2005 appropriation is \$1.97 million less than its FY 2002 appropriation.

Table 2

Fiscal Year	Appropriations	FTEs
1999	\$20,755,126	204
2000	\$22,349,907	220
2001	\$25,245,017	230
2002	\$25,554,797	230
2003	\$25,111,797	238
2004	\$23,212,807	238
2005	\$23,586,182	244

Although a division within DCJS, DFS funds five agency employees to handle administrative functions within the agency (procurement, contracting, finance, human resources and information technology).

IV. Delays in Testing

The average time necessary to test evidence in all types of cases has increased dramatically in the past five fiscal years. As Table 3 illustrates, in FY 1999, cases took on average 39 days to complete; by September 2004, cases were taking an average 95 days to complete. In particular, DNA cases are taking the longest average days to test and complete. As of September 2004, DNA cases were in the DFS system an average of 239 days or approximately eight months, before completion.

Table 3
Change in Average Days for Completion of Testing
FY 1999 versus September 2004

Case Type	Avg. Days in System FY 99	Avg. Days in System September 04
Drugs	27	87
Firearms	60	146
Latent Prints	56	105
Questioned Documents	32	73
Forensic Biology	141	239
Trace Evidence	106	133
Training	195	182
Toxicology	27	30
Case Support	79	51
Average All Cases	39	95

The long time frames for test results are particularly problematic given the speedy trial provisions in §19.2-243 of the *Code of Virginia*. Depending on the case specifics, an accused could potentially escape prosecution if no trial is commenced 150-250 days from the date of arrest, indictment, presentment or finding of probable cause. Virginia's speedy trial statute specifies:

1. Where the district court has found probable cause that the accused has committed a felony and the accused is subsequently held continuously in custody, prosecution is barred if no trial is commenced in circuit court within five months from the date probable cause is found; if the accused is not held continuously in custody, then prosecution will be barred if no trial is commenced within nine months from the date probable cause is found;
2. If there was no preliminary hearing, then prosecution is barred five or nine months from the date of indictment or presentment, depending on whether the accused was held continuously in custody; and,
3. If an indictment or presentment is found, but no arrest is made, prosecution is barred five or nine months from the date of arrest, depending on whether the accused was held continuously in custody.

Recognizing the backlog in testing, in June 2004 DFS sent a letter to the Office of the Executive Secretary of the Supreme Court urging law enforcement agencies to use field tests to help alleviate the backlog of cases awaiting forensic testing (*see Attachment 1*). Subsequently, in October 2004 DFS sent a letter to law enforcement agencies served by the lab advising them of the following policy changes (*see Attachment 3*):

- requests for DNA analysis of "touch" evidence will not be accepted without written request for testing from the Commonwealth's Attorney; and,
- prior to initial submission of large multi-item (DNA) cases, consultation with a DNA examiner/supervisor will be required before the evidence is accepted.

V. Factors Contributing to Delays in Testing

Four main issues are contributing to the current staff shortages and delays in testing at the Forensics Lab:

- Increased workload;
- Lack of funding for requested positions and program expansion;
- Inability to hire fully qualified, experienced staff for approved positions; and,
- Staff turnover.

Increased Workload

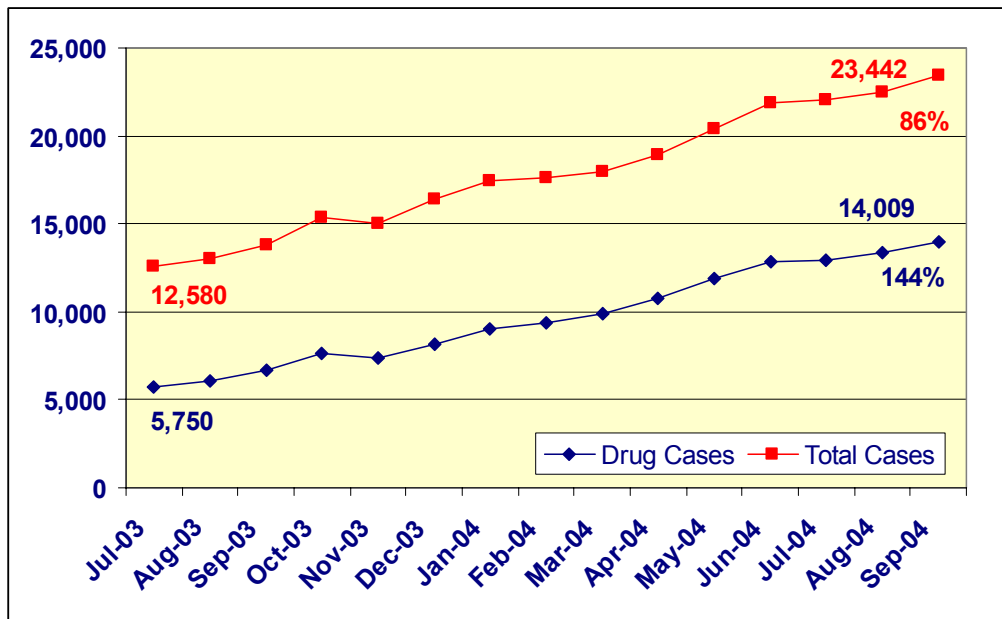
As Table 4 illustrates, the number of new cases submitted to the lab for testing grew 17.8% from FY 1999 to FY 2004. While drug cases remain the largest proportion of cases for testing, the largest percentage of growth by case type occurred for DNA test cases. During the past five fiscal years, the number of new annual DNA cases more than doubled from 2,165 in FY 1999 to 4,576 in FY 2004.

Table 4
Growth in New Cases for Testing
FY 1999 to FY 2004

New Cases Received	FY 99	FY 04	Growth in New Cases
Drugs	39,330	44,947	14.3%
Forensic Photography	1	0	n/a
Firearms	2,706	4,131	52.7%
Latent Prints	5,234	5,877	12.3%
Questioned Documents	801	918	14.6%
Forensic Biology	2,165	4,576	111.4%
Trace Evidence	1,914	1,985	3.7%
Training	19	27	42.1%
Toxicology	8,395	9,066	8.0%
Case Support	718	662	(7.8%)
Total New Cases	61,283	72,189	17.8%

Requests for tests at the lab reached an all time high at the end of September 2004 (*see Attachment 4*). Over 23,000 cases were at the lab during the month of September to receive testing; the largest area of requested testing was for drug cases. As Chart 1 illustrates, since July 2003, the monthly number of total cases awaiting drug analysis has increased 144% from 5,750 cases to 14,009 in September 2004. Additionally, total cases have grown 86% from 12,580 in July 2003 to 23,442 in September 2004.

Chart 1
Total Cases for Testing by Month
July 2003 to September 2004



Denial of Funding Requests

Since 1998, DCJS/DFS has annually requested funds for expansion of lab services. Many of the requests were either not satisfied or were only partially funded (*see Attachment 5*). The lack of sufficient funding for some requests have contributed to the current problems with delays in testing, backlog in workload and staff turnover.

A summary of the major requests and subsequent actions by biennium follows.

FY 2001-2002 Biennium

- \$3.16 million was requested by the agency and included in the introduced budget for each year to fully fund a competitive salary adjustment for forensics staff; \$1.5 million was appropriated for each year.
- \$1.47 million in FY 01 and \$1.76 million in FY 02 was requested by the agency to re-establish funding for the Virginia Institute for Forensic Science and Medicine; the funding was not included in the introduced budget or the final Appropriations Act.
- \$18.1 million in FY 02 was requested by the agency to build a new Northern Virginia lab; however, the funding was not included in the introduced budget or the final Appropriations Act.

FY 2003-2004 Biennium

- \$745,311 in FY 03 and \$691,087 in FY 04 was requested by the agency to fund eight additional forensics staff; requests were included in the introduced budget however, neither the funds nor positions were appropriated;
- 10 additional unfunded positions for both years were requested by the agency and included in the introduced budget; the positions were not authorized by the Appropriations Act;
- \$32.1 million was requested by the agency for FY 03 to build a new Northern Virginia lab, including the Medical Examiner's Office; the funding was not included in the introduced budget or the final Appropriations Act.

FY 2005-2006 Biennium

- \$1.5 million and 23 positions in FY 05 and \$2.5 million and 35 positions in FY 06 was requested by the agency; the funding was not included in the introduced budget or the final Appropriations Act.
- \$33.7 million was requested by the agency for FY 05 to build a new Northern Virginia lab, including the Medical Examiner's Office; the funding was not included in the introduced budget or the final Appropriations Act.

It should be noted that during the 2004 Session, the General Assembly did appropriate \$125,000 and six positions for FY 2005 and \$250,000 and six positions for FY 06 without prior identification of the funding requests in the introduced budget.

Staff Turnover

Since January 1, 2000 the lab has lost 36% of its staff due to turnover. As Table 5 shows, the most frequently reported reason for employees leaving was for a better job. Forensic Scientists reported leaving the lab for higher pay at the DEA, FBI, ATF, Secret Service and the Army Crime Lab. Additionally, some forensics staff left for jobs in other state and local labs in California, Florida, New Jersey, Oregon and Maryland.

Staff turnover at the lab could be further exacerbated if the current, eligible 17 forensics staff chose to retire. The eligible staff tends to be the more senior forensic technicians; additionally, the current DFS Director is also eligible for full retirement at this time.

DFS is hindered in its ability to competitively hire because of salary compression. Due to the lack of comparable raises at the state level over many years, DFS salaries for middle to senior forensics staff are far behind those of other federal, state and private labs. A DFS salary survey in 1999 found DFS forensics staff salaries were 30% behind comparable federal level employees. The lab was appropriated funds for 14.7% increases at that time --- still 15.3% behind what was needed for parity.

Table 5
DFS Staff Turnover
January 2000 to October 2004

Reason Description	Number of Employees Who Left Between 1/1/00 and Present
Better Job/Higher Pay	35
Other	23
Leaving Area	10
Service Retirement	9
School	5
Home Responsibilities	4
Health	1
Disability Retirement	1
Death	1
During Probation	0
Total	89

Table 6 illustrates the summary findings of the 1999 salary and show that DFS forensics staff salaries were on average a minimum of three grades lower than comparable federal government employee salaries.

Table 6
DFS Salary Survey Analysis 1999

Classification Title	Percent of Difference between the State and Federal Labs (Minimum)	Percent of Difference between the State and Federal Labs (Midpoint)	Percent of Difference between the State and Federal Labs (Maximum)	Approx. Minimum Grade Difference between scales
Lab Specialist III	43%	39%	40%	3
Lab Specialist IV	41%	48%	67%	4
Lab Specialist VI	70%	63%	55%	4
Scientist I	20%	21%	23%	2
Scientist II	10%	20%	28%	2
Scientist II / III	63%	53%	42%	4
Scientist IV	85%	72%	54%	5
Scientist Section Chief	52%	46%	33%	3
Science Program Manager	55%	44%	29%	3
Science Lab Director	48%	37%	24%	3
Science Deputy Director	87%	63%	35%	3
Director	58%	40%	18%	3

Since the 1999 salary survey, the federal government has provided pay increases at a faster rate than the state pay increases. Federal lab salaries have grown 11% more than the state lab salaries since the survey was completed. Thus, if the lack of parity funding from 1999 is added to the difference in federal versus state raises since that time, the current DFS forensics staff salaries are at least 26.3% behind those of the FBI, DEA, ATF and U.S. Postal Inspectors scientists. These federal labs have hired several DFS forensics staff since 2000. Additionally, Attachment 6 provides a current November 2004 salary survey of DFS Forensic Scientist II and Forensic Scientist III salaries with those comparable positions in the federal labs for employees with comparable years of experience. This brief survey illustrates that on average the DFS lab salaries are approximately 35% behind the federal salaries for these two position types.

DFS tried to partially address the salary compression issue on its own through the implementation of a professional achievement program last year. With approval of DHRM, they implemented the current program with existing general funds and provided 57 forensic scientists a 10% increase in pay. The professional achievement raises cost \$358,000 and less than a third of the forensics scientists were eligible. However, DFS cannot continue to absorb the costs of this program within its general fund budget as the number of eligible employees continues to grow. DFS estimates the program will require an additional \$300,000 per year to continue this retention program for senior staff.

VI. Resource Needs

Additional Forensics Staff

Given the current rate of requests for testing, DFS has a shortage of forensic scientists. As Table 7 illustrates, utilizing the annual DFS guidelines per caseload/examiner, the DFS needs an additional 58 examiners just to handle the anticipated 2004 workload in the four most numerous and time consuming disciplines.

**Table 7
Need for Additional DFS Staff**

Discipline	Projected 2004 Case Receptions	Annual Guidelines Caseload / Examiner	DFS Capacity	Shortfall	Number of Examiners Needed
DNA	4,798	72	2,640	2,158	30
Latent Prints	5,887	276	4,596	1,291	4.7
Firearms & Tool marks	4,224	216	2,998	1,226	5.7
Controlled Substances	47,140	936	30,576	16,564	17.2

However, given space considerations and the ability to train new staff to DFS protocols and disciplines, the DFS can only absorb 26 new forensic positions and five support positions in FY 06. At current salary levels, the funding for these 31 new positions is estimated to be \$2,140,726 for the next fiscal year.

Northern Virginia Facility

The Fairfax facility is the oldest lab established in 1985, before the advent of DNA testing. This facility is on property adjacent to the 7th Division State Police headquarters. Two lab disciplines, testing trace evidence and question documents, have been moved out of this facility due to lack of room. These samples must now be transported to Richmond for analysis. The current DFS lab is on property adjacent to the State Police divisional headquarters and there is no room for expansion of that facility to meet the long range needs of the DFS.

In 1999, realizing the growing lack of space at the Northern Virginia lab, DFS requisitioned plans for a new lab and submitted a budget request of \$18,109,000 for a new facility during the FY 00/02 budget submission process. The funds were not included in the Governor's introduced budget. The DFS submitted the request again in the FY 2002/04 budget submission request. This request included expanded space for the Medical Examiner and the requested appropriation was \$32,050,000. These funds also were not included in the Governor's introduced budget.

Due to the lack of space at the Northern Virginia lab, a new lab is needed. DFS can acquire the necessary land and begin planning on a new lab during FY 06. In June 2001, DFS estimated that land acquisition and planning would be approximately \$3,517,000. As new construction will be five years after these initial estimates, new funds for land acquisition and

planning will need to be determined by DFS for FY 06. During the next biennium, construction and operational funding will need to be determined and appropriated based on the new plans.

Eastern Virginia Facility

The Eastern Virginia lab is also currently at capacity. There is limited space to place additional needed personnel. The current Norfolk facility has adjacent 6,000 square feet available for expansion and rent. DFS estimates that expansion of the current lab will require \$1,254,000 in FY 06. In addition, the annual rental fee from that point on will be \$54,000 per fiscal year.

Overtime

From January 5, 2004 to February 28, 2004, DFS required forensic staff to work mandatory overtime of eight hours each per pay period in an attempt to alleviate the backlog of cases. DFS used a \$150,000 federal Byrne grant to pay for the overtime. A total of 3,744 mandatory hours of overtime were worked. In addition, staff volunteered and worked an additional 3,889 hours of uncompensated overtime. As Table 8 illustrates, the overtime was effective in reducing some of the backlog at that time. However, in the firearms and trace evidence case disciplines new case receptions outpaced the monthly completions even with overtime work.

Unfortunately, the largest area of backlog, drug analysis, cannot be outsourced to an accredited private lab as is done with DNA testing. Thus, DFS estimates that to once again address immediate backlogs, current staff can work a mandatory eight hours of overtime per pay period from January to April 2005. DFS has received a Byrne grant of \$466,000 through DCJS to pay for the overtime. The grant funds were provided December 9, 2004.

**Table 8
Overtime Productivity 2004**

Discipline	Average Monthly Receptions Jan.-Feb. 2004	Average Monthly Completions Jan.-Feb. 2004	Total Hours of Overtime Worked	Percentage Backlog Reduction (Increase)
Drugs	3,722	3,720	2,195	.1%
Firearms	368	362	1,130	(.9%)
Latents	459	596	1,529	18.1%
Documents	70	90	580	42.3%
DNA	360	410	2,193	5.1%
Toxicology	743	908	861	42.8%
Trace	172	138	230	(11.8%)
Blood Spatter	3	3	47	11.1%

Current Staff Salary Adjustments

DFS currently employs 164 highly trained forensic scientists. Due to salary compression, DFS cannot offer potential new employees competitive salaries without providing the new employees higher salaries than many current, long term staff. Unlike other DCJS agency employees, the DFS employees are trained in scientific disciplines that make them highly desirable in the labor market. The DFS must be able to compete and hire qualified staff in a very competitive labor marker. Given the previously discussed results of the 1999 salary survey and the differences between the federal raises and state raises during the past five years, DFS will need to adjust forensic staff salaries at least an average 26.3% to stay competitive with the federal agencies trying to hire the same labor pool. DFS estimates that the 26.3% increase will be \$3,096,922 in FY 06.

Virginia Institute of Forensic Science and Medicine

The Virginia Institute of Forensic Science and Medicine is utilized by DFS to provide training for forensic staff. The Institute's curriculum is one year for all disciplines, except firearms which require two years of training. The Institute is funded by private donations and contracts under federal grants to the Health Department and the DFS. Currently there are two full-time paid positions administrating the various sections of the Institute. Students are paid an annual stipend of \$23,000 to attend the Institute. In September of 2005 the Institute will graduate 18 students who will be eligible for employment in scientific laboratories.

State funding for DFS support of the Institute was eliminated in 2002 and the DFS was instructed to seek federal grant funds to support the training of forensic scientists. At the time funding was eliminated, there were six full-time staff. Based on available information, it appears at that time there was concern that the state was paying for students to attend the institute for training, only to have the students seek employment elsewhere. However, since 1999, of the Institute's 26 graduates, 25 (96%) have been employed by the DFS.

Currently, the majority of the DFS and Health Department grant funds will expire in September of 2005 when 14 fellows graduate. The remaining grant funds for four fellows will expire in September of 2006. DFS estimates that it will need a total of \$906,000 FY 06 to continue operations at the Institute. Annual funding thereafter will be approximately \$1,500,000. To alleviate concerns of students seeking employment elsewhere, DFS can utilize employment contracts similar to those utilized by local law enforcement agencies for new recruits attending academies.

Mitochondrial DNA Testing

Mitochondrial DNA testing is used for typing the DNA in hair strands without a root attached, degraded DNA and skeletal remains. Mitochondrial DNA testing was used to identify the victims of the September 11th attacks and has been used to solve a number of "cold cases" nationwide. DFS does not at this current time perform Mitochondrial DNA testing. The inability of the lab to use this type of testing undermines the intent of the 2001 DNA law allowing for post-conviction access to scientific testing that was "not available" at the time of

trial. When this law was passed in 2001, this type of testing was not available at the lab and is still not available. The longer the implementation of this type of testing is delayed, the more “eligible cases” there will be in the future that can be subject to retesting.

DFS has determined that \$376,500 will be needed to begin a mitochondrial DNA testing program. This appropriation will support three FTEs (salary and benefits) at \$246,500 per year plus \$130,000 for a capillary electrophoresis apparatus and specific testing supplies.

VII. Additional Issues

Based on the Crime Commission’s staff review of the lab, there are two additional issues related to the long-range administration and planning for the DFS lab: the need for independent department status and the need for annual resource identification to the General Assembly.

Department Status

As previously stated, DFS became a division within the Department of Criminal Justice Services under the Secretary of Public Safety in 1996. Prior to that time, DFS was a division within the Department of General Services (DGS) within the Secretary of Administration. Among other services, DGS is responsible for maintaining the buildings at the seat of state government and for administering such internal service funds as the central warehouse, state surplus property and federal surplus property. Given the public safety mission of the lab, both legislative and DFS staff maintain the 1996 move was designed to place the lab under the administrative and financial control of the public safety secretariat where issues related to law enforcement were more easily understood.

DCJS was established in 1982 by combining the Criminal Justice Services Commission (responsible for training standards, and information systems privacy and security) and the Division of Justice and Crime Prevention (responsible for planning, evaluation and administering of federal grant funds).¹ In 1993, the responsibility for licensing and training private security services was given to the agency. DCJS is currently established with four divisions, which are: administration, programs and services, regulation and research and forensic science. According to a September 2004 presentation placed on the website of the Virginia Secretary of Public Safety:

“... (DCJS) has an overarching responsibility to understand how changes in one part of the system will affect other parts, and to work to assure that plans and programs are comprehensive.”

“About 75% of the agency’s \$271.2 million budget (FY 03) is used to provide financial assistance to localities, state agencies and other organizations to support a variety of criminal justice and crime prevention initiatives. For this purpose, DCJS is the ‘pass through’ agency for the Commonwealth.”

¹ Agency Spotlights: Virginia Department of Criminal Justice Services, Virginia Secretary of Public Safety website, September 2004.

According to legislative budget committee staff, DCJS has been appropriated \$240.1 million general funds in FY 06. The largest proportion of the FY 06 general fund appropriations are pass through funds to other state and local entities:

- \$187.1 million (78%) is for “599” funding for localities with police departments;
- \$26.3 million (11%) is for all other financial assistance programs (i.e. local community corrections, regional law enforcement training academies, the School Resource Officer Incentive Program);
- \$23.7 (10%) million is for the lab; and,
- \$2.9 million (1%) is for agency administrative services.

DCJS is currently authorized for 370 total FTEs of which, 66% (244) are employees of the DFS lab. Thus, the operational and financial size of this division greatly out sizes its parent agency.

The September presentation lists six aspects related to the DCJS vision. The DCJS vision includes references to training standards and programs, criminal justice planning, state of the art technology and collaborative partnerships. There is no reference to scientific principles or the lab. While the visionary items provided are laudable areas of attention, they are fundamentally different from the purposes for which the lab was established. The lab is a direct service operation processing over 70,000 cases of evidence annually. The areas of concern involve scientific matters not common to other parts of the DCJS agency and require adequate funding and attention lest trial court processes and justice are delayed. A review of DCJS board agendas for the past two years reflects the agency and board’s attention to grants, training and planning. At no time in the past two years has the operations, workload and resource needs of the lab been a subject on the agenda for any meeting of the DCJS board. While the lab’s workload and delays were growing at unmanageable levels, DCJS did not put the issues or the resource needs before the board for discussion.²

While the move of DFS to the Public Safety Secretariat made sense on a philosophical basis in 1996, moving a large direct service operation within a planning, grants and training agency has created managerial problems that have not allowed direct administrative contact and oversight of the operations by the Public Safety Secretary. DCJS serves a vital role in criminal justice coordination, training and “pass through” funding operations. However, it is not the appropriate entity to oversee the lab. The DFS should become an independent department under the Secretary of Public Safety to allow for direct contact regarding resource needs and operational issues. The new department should have both an administrative board consisting of state and local public safety personnel, as well as a scientific advisory board to provide guidance on issues of quality control and testing. Costs for creating the department should be minimal as the DFS currently funds five administrative positions within DCJS. These positions currently assist in agency procurement, employment and personnel functions that the new department will need.

Annual Reports

² The only instance where the lab’s operations were even addressed was in the area of proposed changes in regulations.

Currently, there is no mandate that the DFS annually appraise the General Assembly of changes in workload and resource needs. Like any other division within any other executive branch agency, DFS annually has had to go through numerous administrative reviews for inclusion in funding in the Executive Budget. DFS staff does not know exactly where in the budget process its numerous requests for the past six fiscal years have been denied. While all requests made by the Crime Commission during this most recent review have been readily and fully satisfied, the General Assembly needs a formal process to be advised annually as to the status of operations and resource needs at the lab. Delays in testing have resulted in longer pretrial incarceration in local jails, continuances in criminal cases and dismissal of charges due to speedy trial provisions. Numerous state agencies annually advise the General Assembly of their operational needs. DFS should by statute be required to report annually to the Senate Finance Committee, House Appropriations Committee and the Crime Commission on workload, delays, resource needs and long-range planning.

VIII. Summary

Since its inception, the Virginia Division of Forensic Sciences has been a national model for modern forensics laboratory system. In 1989 the DFS became the first state run forensics lab to provide DNA testing. When the DFS first began DNA testing, the first year's workload was 37 cases. This number has grown to 4,576 new cases in FY 04. Testing for all types of evidence has sharply increased over the past five fiscal years while DFS resources have not grown to meet the demands. The average DFS case is currently taking 95 days which is more than double the time required in FY 99. DNA cases are currently taking an average of eight months to complete. The DFS has had to institute changes in the policy for touch evidence, in addition to seeking voluntary efforts on the part of law enforcement to assist in reducing the number of submissions to the lab.

The DFS is in need of both resources and administrative changes to begin to manage the large workload and establish a framework to prevent such problems in the future. With this in mind, the Crime Commission staff makes the following recommendations:

Recommendation 1

Appropriate the following funds for the remainder of the FY 05/06 biennium:

- \$2,140,726 for 31 new forensic scientists;
- \$3,096,922 to raise lab salaries 26.3% across the board to correct salary compression and allow for competitive hiring with federal forensics labs;
- \$300,000 for the Forensic Professional Achievement Program;
- \$906,000 to restore funding for the Virginia Institute of Forensic Science and Medicine with requirements for contract employment by students;
- \$1,254,000 to expand the Eastern Lab and \$54,000 to pay rent on the new space;
- \$376,500 to begin a mitochondrial DNA testing program; and,
- Funds to acquire land and plan for a new Northern Virginia facility; most recent DFS estimate of land acquisition/planning was \$3,517,000.

Recommendation 2

Appropriate the appropriate funds during the FY 07/08 Biennium to construct a new lab in Northern Virginia; DFS requested \$33,737,000 for new facility in FY 2005.

Recommendation 3

Sponsor legislation to make the lab a separate, independent agency within the Secretary of Public Safety with an administrative oversight board and a scientific advisory board; incorporate within the legislation the requirement that the lab provide an annual report to the Senate Finance Committee, House Appropriations Committee and the Crime Commission on workload, resource needs and long range planning for the lab (*See Attachment 8 for introduced legislation; Delegate David Albo's HB 2216 was identical to Senator Kenneth Stolle's SB 1153*).

IX. Acknowledgements

Department of Criminal Justice Services

Lenoard Cooke
Bobby Mathieson

Department of Planning and Budget

Michael Maul
Mike McMahan

Division of Forensic Science

Gene Colburn
Paul Ferrara
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Division of Legislative Services

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Senate Finance Staff

Dick Hickman

Virginia Compensation Board

Anne Wilmoth

Virginia Institute of Forensic Science and Medicine

Linda Carne
Ramona Thiss

Citizens

Steve Benjamin
Betty Layne DesPortes
Margaret Edds

Attachment 1

**Memo: Office of the Executive Secretary
of the Supreme Court**



COMMONWEALTH of VIRGINIA

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

OFFICE OF THE DIRECTOR
DIVISION OF FORENSIC SCIENCE
A Nationally Accredited Laboratory

700 NORTH 5TH STREET
RICHMOND, VIRGINIA 23219
(804) 786-2281 FAX (804) 786-6857

MEMORANDUM

To: Guy K. Tower, Director of Educational Services
Office of the Executive Secretary, Supreme Court of Virginia

From: Paul B. Ferrara, Ph.D., Director

Date: June 22, 2004

RE: **UPDATE FOR DISTRICT COURT JUDGES - BACKLOGS AT THE
DIVISION OF FORENSIC SCIENCE HAVE REACHED
UNPRECEDENTED LEVELS**

Despite the implementation of mandatory overtime for eight weeks earlier this year, the Division is currently facing unprecedented backlogs in every section. Given the sheer volume of drug cases, our drug backlog will be the most significant to the District Court Judges. Drug case submissions have been rising continuously over the years; however, based on first quarter submissions, we project our drug case reception for 2004 to be almost 48,000 cases, a greater than 10% increase over 2003 alone. Moreover, at current staffing levels, our capacity is only about 32,000 cases per year, a level far outstripped by these submissions. In fact, our drug backlog now exceeds 9,400 cases and is growing daily. Based upon the current drug backlog, many cases simply cannot be completed within 90 days, and some cases will be in our system up to or exceeding 120 days.

We are unaware of any accredited private or public forensic laboratory that would be capable of handling a significant number of our drug cases; therefore, outsourcing is not a viable option. We are, however, aware of the voluntary court processing guidelines and the fact that the status of our drug case backlog will often prevent compliance with these recommendations. Unfortunately, given the limited staff and resources the Division has, it is not possible for us to process the high volume of drug submissions to allow courts to meet these deadlines.

The Division staff is working diligently and, at the same time, searching for avenues to assist in reducing our backlogs. One way that we are attempting to get a reprieve from the tide

of increased drug submissions is by encouraging law enforcement agencies to utilize field test kit results at preliminary hearing. Code § 19.2-188.1 provides that:

“[i]n any preliminary hearing . . . any law enforcement officer shall be permitted to testify as to the results of field tests which have been approved by the Division of Forensic Science . . . regarding whether or not any substance the identity of which is at issue in such hearing is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247.”

We have recently published an updated list of approved field test kits that can be found online at: <http://www.dcjs.virginia.gov/forensic/documents/approvedFieldTestKits.pdf>.

One other type of case that District Court Judges regularly try and that is affected by our backlogs is the DUI blood test case. With the current backlog facing our Toxicology Section, it can take up to three months to complete a DUI-D case involving multiple drugs.

If you or any of the judges have any questions about this situation, please do not hesitate to call me at (804) 786-2281. I sincerely appreciate your time and assistance helping us to update the judges on this situation.

Attachment 2

**Memo: Crime Commission
Request for Information**



COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

Delegate David B. Albo, *Chairman*
Senator Kenneth W. Stolle, *Vice Chairman*

Executive Director
Kimberly J. Hamilton

Director of Legal Affairs
G. Stewart Petoe

General Assembly Building, Suite 915
910 Capitol Street
Richmond, Virginia 23219

September 21, 2004

804-225-4534
Fax: 804-780-7872

Dr. Paul Ferrara, Director
Division of Forensic Sciences
700 North 5th Street
Bio Tech Building II
Richmond, VA 23219

Dear Paul:

As you are aware, the Virginia State Crime Commission is a criminal justice agency, authorized under the *Code of Virginia*, § 30-156, to study, report and formulate recommendations to the Governor and the General Assembly on all areas of public safety and protection. Additionally, § 30-158(3) provides the Commission with the power to "conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156."

The Crime Commission was recently provided a copy of the attached June 22, 2004 memo from you to the Office of the Executive Secretary of the Supreme Court. I, and Crime Commission Chairman Delegate Dave Albo, am very concerned by both the delays in testing and the staff capacity levels you detail in your memorandum. Therefore, I am writing to request several types of information from your division. First, I would like information on your staff levels and turnover for the past 6 years. Specifically, the starting dates, salary, title and ending dates of all persons employed on July 1, 1998 through September 21, 2004. If the person has ended their employment at DFS, I would like to know the stated reason for the departure and where they sought subsequent employment if you have the information available to you. Additionally, if you have any information on caseload standards per technician that you have derived or used for budgetary or workload purposes, I would like that information as well.

Second, I would like to have a list of all requests to DFS for testing services from July 1, 2004 through September 21, 2004. This would include testing for:

- DNA analysis;
- Drug analysis;

Page Two
September 21, 2004

- Alcohol/toxicology analysis;
- Finger print analysis;
- Firearms comparison analysis;
- Hair/fiber analysis;
- Trace evidence analysis; and
- Any other scientific evidence testing.

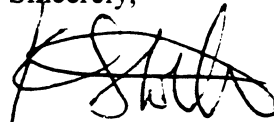
For each request, I would like the date the testing was requested, the date the testing was completed, the type of analysis(s) requested and the requesting agency name.

Third, I would like information on the DFS budget from FY 99 to FY 05. Specifically, I would like the total division budget for each of these fiscal years, the total FTEs allocated to the DFS for each fiscal year and the total amount budgeted for staff for each year. Also, I would like to know if you have sought, and not received, any additional staff or agency funding during these 7 fiscal years.

Finally, I am interested in the amount of resources it would require for Virginia to begin using mitochondrial DNA testing. As you know, during the 2001 Session, the General Assembly enacted my legislation permitting scientific testing and post-conviction relief based on scientific examination or methodology not available at the time of trial. Mitochondrial DNA testing was cited in our committee discussions as an example of testing not then being conducted by DFS. I want Virginia to have the resources necessary to use the most advanced testing available. It is my understanding that this type of testing is newer and allows for testing of degraded evidence.

The Division of Forensic Science, under your leadership, has led the nation in DNA and forensic testing. I, along with the members of the Virginia State Crime Commission, want to ensure that you have the resources necessary to meet the demands we have placed upon your agency. Please do not hesitate to contact either me, or Kim Hamilton, if you have any question concerning this request. I would like the requested information no later than October 15, 2004.

Sincerely,

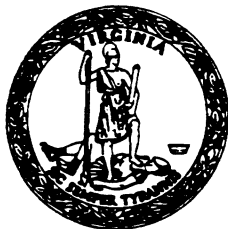


Kenneth W. Stolle

Cc: Delegate David B. Albo
Robert M. Blue
The Honorable John W. Marshall
Leonard G. Cooke

Attachment 3

Memo: DFS Trace Evidence



COMMONWEALTH of VIRGINIA

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

OFFICE OF THE DIRECTOR
DIVISION OF FORENSIC SCIENCE
A Nationally Accredited Laboratory

700 N. 5TH STREET
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(804) 786-2281 FAX (804) 786-6857

NOTICE OF DFS POLICY CHANGE

To: All Agencies Serviced by Division of Forensic Science Laboratories
From: Paul B. Ferrara, Ph.D., Director
Date: October 4, 2004
RE: DFS Backlogs and Proposed Solutions

Given the overwhelming backlogs facing the Division of Forensic Science, we met recently with representatives from the Commonwealth's Attorneys' Offices serviced by our Northern Laboratory in order to discuss creative solutions to this crisis. Pursuant to these discussions, the following two policies are being implemented effective immediately:

1. REQUESTS FOR DNA ANALYSIS OF "TOUCH" EVIDENCE WILL NOT BE ACCEPTED WITHOUT WRITTEN REQUEST FOR TESTING FROM THE COMMONWEALTH'S ATTORNEY

No request for DNA analysis shall be accepted or performed on "touch" evidence unless there is a specific written request from the Commonwealth's Attorney for such analysis.

"Touch" evidence is evidence resulting from limited casual contact by an individual with a surface or material. This would include primarily objects touched by an individual's hand, such as cigarette lighters, keys, door handles, gun grips, triggers, light switches, drawer handles, countertops, gear shift knobs, steering wheels, etc. This does not refer to items of evidence on which blood is observed or other biological fluids would expect to be found (for example, items of clothing, gloves, etc. are not considered "touch" evidence and will be analyzed in an attempt to identify the wearer of these items; additionally, evidence that has allegedly come in contact with the mouth {bottles, cans, cigarette butts, etc.} are also not deemed "touch" evidence).

2. PRIOR TO INITIAL SUBMISSION OF LARGE MULTI-ITEM (DNA) CASES, CONSULTATION WITH A DNA EXAMINER/SUPERVISOR WILL BE REQUIRED BEFORE EVIDENCE IS ACCEPTED

Large evidence submissions will be reviewed by DNA examiners/supervisors via telephone communication or in-person meetings in order to identify the most probative evidence for the respective case and evidence submission will be limited to those items.

Determination of probative evidence will be decided based on a number of factors including the type of case, the evidence collected, the number of victim(s) and perpetrator(s), etc. In the event that additional evidence submission is necessary, communication between the assigned examiner and the Investigator will occur to facilitate this process and the examination of the subsequent submission in a timely manner.

Attachment 4

**Changes in DFS Workload
July 2003 to September 2004**

New Cases Received	Change July 2003-September 2004															
	7/2003	8/2003	9/2003	10/2003	11/2003	12/2003	1/2004	2/2004	3/2004	4/2004	5/2004	6/2004	7/2004	8/2004	9/2004	
Drugs	3,677	3,613	3,535	3,791	3,012	3,593	3,620	3,819	4,482	4,204	3,556	4,045	3,871	3,814	3,870	5.25%
Forensic Photography	0	0	0	0	0	0	n/a	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Firearms	367	340	308	344	321	303	387	348	389	354	312	358	344	319	415	13.08%
Latent Prints	543	470	444	553	415	486	467	448	585	485	463	518	479	471	570	4.97%
Photo Processing	0	0	0	0	0	0	n/a	0	0	0	0	0	0	0	n/a	n/a
Questioned Documents	52	87	73	74	49	50	65	74	112	101	98	83	63	55	79	51.92%
Security	0	0	0	0	0	0	n/a	0	0	0	0	0	0	0	n/a	n/a
Forensic Biology	457	409	360	416	314	330	333	383	405	407	335	427	449	454	398	-12.91%
Trace Evidence	189	150	134	219	153	174	151	177	188	135	151	164	179	164	146	-22.75%
Training	6	3	0	0	1	5	2	3	2	1	1	3	5	0	3	-50.00%
Toxicology	736	681	773	789	602	915	752	730	799	695	693	901	767	762	792	7.61%
Case Support	56	27	58	62	103	29	73	35	49	49	59	62	47	49	43	-23.21%
TOTAL NEW CASES	6,083	5,780	5,685	6,248	4,970	5,885	5,850	6,017	7,011	6,431	5,668	6,561	6,204	6,088	6,316	3.83%
Total Cases At Lab																
Drugs	5,750	6,115	6,651	7,632	7,356	8,162	9,044	9,350	9,907	10,793	11,892	12,807	12,918	13,368	14,009	143.63%
Forensic Photography	11	11	11	11	11	11	n/a	11	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Firearms	1,134	1,196	1,233	1,345	1,427	1,514	1,602	1,583	1,618	1,670	1,730	1,825	1,872	1,868	1,955	72.40%
Latent Prints	1,677	1,677	1,635	1,830	1,798	1,969	2,045	1,931	1,901	1,897	1,972	2,178	2,177	2,222	2,397	42.93%
Photo Processing	10	10	10	10	10	10	n/a	10	10	9	10	9	9	9	n/a	n/a
Questioned Documents	131	152	155	174	166	164	166	154	172	200	236	245	226	217	217	65.65%
Security	3	3	3	3	3	3	n/a	3	3	3	3	3	3	3	n/a	n/a
Forensic Biology	2,200	2,250	2,282	2,380	2,336	2,380	2,389	2,435	2,367	2,386	2,398	2,482	2,553	2,608	2,659	20.86%
Trace Evidence	466	484	470	575	577	596	584	662	679	633	670	705	726	714	676	45.06%
Training	11	14	12	8	6	10	10	12	10	8	9	12	16	12	13	18.18%
Toxicology	1,118	1,069	1,252	1,359	1,178	1,520	1,523	1,448	1,241	1,245	1,355	1,510	1,469	1,411	1,421	27.10%
Case Support	69	56	76	80	137	79	87	55	67	68	81	107	92	84	95	37.68%
TOTAL CASES AT LAB	12,580	13,037	13,790	15,407	15,005	16,418	17,450	17,654	17,975	18,912	20,356	21,883	22,061	22,516	23,442	86.34%

Average Days in System	7/2003	8/2003	9/2003	10/2003	11/2003	12/2003	1/2004	2/2004	3/2004	4/2004	5/2004	6/2004	7/2004	8/2004	9/2004	
Drugs	23	26	32	35	41	44	53	47	48	55	60	69	84	82	87	278.26%
Forensic Photography	0	0	0	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Firearms	74	74	78	87	87	85	103	127	92	85	94	102	110	122	146	97.30%
Latent Prints	100	81	82	82	79	121	107	108	93	84	82	112	106	108	105	5.00%
Photo Processing	0	0	0	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Questioned Documents	45	114	44	45	51	63	64	40	31	39	43	53	57	67	73	62.22%
Security	0	0	0	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Forensic Biology	234	258	231	198	194	222	191	241	181	251	213	192	235	322	239	2.14%
Trace Evidence	54	77	74	91	89	96	114	102	87	107	92	119	134	118	133	146.30%
Training	0	87	76	125	293	123	53	180	69	n/a	n/a	15	94	165	182	109.20%
Toxicology	22	21	24	26	27	30	32	26	28	26	34	30	30	25	30	36.36%
Case Support	30	45	38	29	42	57	52	49	52	46	49	49	64	92	51	70.00%
AVG DAYS IN SYSTEM	47	52	51	52	55	64	68	69	62	72	70	77	91	94	95	102.13%
Backlog over 30 days																
Drugs	369	712	1,125	1,648	2,113	2,522	2,570	2,387	2,798	4,462	5,531	5,417	6,133	6,572	7,154	1838.75%
Forensic Photography	11	11	11	11	11	11	n/a	11	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Firearms	592	679	758	845	948	1,007	947	953	1,016	1,129	1,218	1,255	1,297	1,292	1,300	119.59%
Latent Prints	782	859	917	957	1,137	1,225	1,110	987	989	1,113	1,282	1,302	1,391	1,444	1,581	102.17%
Photo Processing	10	10	10	10	10	10	n/a	10	10	9	10	9	9	9	9	n/a
Questioned Documents	35	31	41	66	73	63	39	20	22	51	86	95	116	96	92	162.86%
Security	3	3	3	3	3	3	n/a	3	3	3	3	3	3	3	3	n/a
Forensic Biology	1,477	1,616	1,666	1,684	1,756	1,795	1,742	1,644	1,639	1,701	1,756	1,734	1,776	1,858	1,964	32.97%
Trace Evidence	219	242	258	273	328	332	349	379	400	393	434	437	437	426	362	65.30%
Training	7	9	8	5	5	7	8	6	5	7	8	9	7	10	8	14.29%
Toxicology	75	120	136	152	234	200	229	139	108	231	194	176	186	211	201	168.00%
Case Support	19	11	8	23	48	12	16	20	18	15	26	40	28	35	34	78.95%
BACKLOG OVER 30 DAYS	3,599	4,303	4,941	5,677	6,666	7,187	7,010	6,559	7,008	9,114	10,548	10,477	11,383	11,956	12,696	252.76%

Ending Backlog of Cases	7/2003	8/2003	9/2003	10/2003	11/2003	12/2003	1/2004	2/2004	3/2004	4/2004	5/2004	6/2004	7/2004	8/2004	9/2004		
Drugs	2,505	3,115	3,844	4,346	4,573	5,437	5,645	5,429	6,604	8,318	8,770	9,060	9,557	10,142	10,901		335.17%
Forensic Photography	11	11	11	11	11	11	n/a	11	n/a	n/a	n/a	n/a	n/a	n/a	n/a		n/a
Firearms	859	929	1,006	1,107	1,212	1,220	1,237	1,231	1,328	1,413	1,469	1,531	1,550	1,543	1,611		87.54%
Latent Prints	1,210	1,196	1,280	1,384	1,486	1,610	1,476	1,318	1,431	1,494	1,667	1,708	1,760	1,830	2,071		71.16%
Photo Processing	10	10	10	10	10	10	n/a	10	10	9	10	9	9	9	n/a		n/a
Questioned Documents	66	82	101	117	114	104	87	60	98	137	163	163	163	138	148		124.24%
Security	3	3	3	3	3	3	n/a	3	3	3	3	3	3	3	n/a		n/a
Forensic Biology	1,846	1,925	1,975	2,025	2,053	2,074	2,039	1,968	1,993	2,053	2,063	2,109	2,158	2,265	2,320		25.68%
Trace Evidence	336	341	359	428	446	459	455	513	524	507	546	547	560	535	473		40.77%
Training	11	12	8	5	5	9	9	8	7	8	9	11	12	10	11		0.00%
Toxicology	388	482	571	579	606	776	712	444	548	658	611	705	650	633	683		76.03%
Case Support	32	13	20	33	51	15	20	21	26	20	47	52	35	53	47		46.88%
BACKLOG OVER 30 DAYS	7,277	8,119	9,188	10,048	10,570	11,728	11,680	11,016	12,572	14,620	15,358	15,898	16,457	17,161	18,265		151.00%

Attachment 5

DFS Budget Requests

**Department of Criminal Justice Services
Division of Forensic Science
Budget Requests/Approved Appropriation Adjustments FY 1999-2006**

Description	Agency's Request			Appropriation Act			Difference		
	FY 1999 Appropriation	FY 2000 FTE	FY 2000 Appropriation	FY 1999 Appropriation	FY 2000 FTE	FY 2000 Appropriation	FY 1999 Appropriation	FY 2000 FTE	FY 2000 Appropriation
New and Replacement Forensic Equipment Forensic Laboratory at Norfolk Public Health Center DNA Program Enhancement Operation and Maintenance of Biotech II Delete 1998 Relocation Funding Eliminate Biotech II Site Improvements Forensic Science Breath Alcohol Appropriation and Cash Transfer	650,000 1,045,083 4,475,856 5,566,818 (400,000) (167,373) 100,000	6.00	650,000 3,437,737 4,141,708 5,307,102 (400,000) (157,291) 100,000	375,000 382,254 3,873,727 Note 1 (400,000) (167,373)	6.00	2,334,528 3,601,027 Note 1 (400,000) (157,291)	(275,000) (662,829) (802,129) - - (100,000)	0.00	(650,000) (1,103,209) (540,661) - - (100,000)
Subtotal FY 99-00	11,270,184	6.00	13,079,256	3,863,608	6.00	5,378,264	(1,839,958)	22.00	(2,393,890)
Description	Agency's Request			Appropriation Act			Difference		
Competitive Salary Adjustment Additional Forensic Scientist Positions Virginia Institute of Forensic Science and Medicine New Northern Virginia Forensic Laboratory	FY 2001 Appropriation	FY 2002 FTE	FY 2002 Appropriation	FY 2001 Appropriation	FY 2002 FTE	FY 2002 Appropriation	FY 2001 Appropriation	FY 2002 FTE	FY 2002 Appropriation
	3,160,000 772,671 1,469,000	10.00	3,160,000 704,891 1,764,000 18,109,000	1,500,000 395,110 Note 2 Note 2	10.00 10.00	1,500,000 704,890	(1,660,000) (377,561)	0.00	(1,660,000) (1)
Subtotal FY 01-02	5,401,671	10.00	23,737,891	1,895,110	10.00	2,204,890	(2,037,561)	10.00	(1,660,001)
Description	Agency's Request			Appropriation Act			Difference		
Provide Additional Enterprise Funds for Breath Alcohol Program Additional Unfunded FTE Positions Increase Forensic Science Staff Item 429 11c (Fees for Increase DNA Testing) Forensic Laboratory Information Management System Upgrade Procure Evidence Storage Facilities Management Savings Management Savings (713-0000) New Northern VA Forensic Science and Medical Examiner's Facility	FY 2003 Appropriation	FY 2004 FTE	FY 2004 Appropriation	FY 2003 Appropriation	FY 2004 FTE	FY 2004 Appropriation	FY 2003 Appropriation	FY 2004 FTE	FY 2004 Appropriation
	1,039,998 745,311 700,000 280,000 (1,092,000) (750,000) 32,050,000	10.00 8.00 2.00	1,039,998 691,087 300,000 350,000 (2,183,850) (750,000)	805,998 307,000 (1,092,000) (750,000) Note 2	10.00 8.00 3.00	805,998 307,000 (2,183,850) (750,000)	(234,000) (745,311) 307,000 (700,000) (280,000) -	0.00 -8.00 0.00 0.00 -2.00 0.00	(234,000) (691,087) 307,000 (300,000) (350,000) -
Subtotal FY 03-04	32,953,309	20.00	(552,766)	(729,002)	21.00	(1,620,652)	(1,632,311)	-10.00	(1,268,087)

Department of Criminal Justice Services
Division of Forensic Science
Budget Requests/Approved Appropriation Adjustments FY 1999-2006

10/15/2004

Description	FY 2006 Agency's Request		FY 2006 Appropriation Act		Difference	
	Appropriation	FTE	Appropriation	FTE	Appropriation	FTE
Matching Funds for Congressional Earmark Grant	248,375		248,375			
DNA Backlog Funding	1,495,559	23.00	125,000	6.00	125,000	6.00
Increase in Forensic Science Staff	33,737,000		2,533,843	35.00		
New Northern VA Forensic Science and Medical Examiner's Facility						
Subtotal FY 06-06	36,480,934	23.00	2,782,218	35.00	125,000	6.00
Total FY 99-06	65,108,098	59.00	39,048,800	88.00	(5,394,830)	(4.00)

Legend

Note 1: Debt Services Transferred to Treasury Board for Biotech II Facility
 Note 2: Italicized items were included in Agency's Request but not the Governor's Introduced Budget.

Attachment 6

November 2004 Salary Survey

DFS vs DEA Salary Progression Comparison

Actual DFS salaries for current employees with the indicated number of years experience.

Years Svc	Forensic Scientist II vs Federal Journeyman Scientist					
	Statewide VA vs Federal Richmond			Northern VA vs Federal Fairfax		
	DFS	Federal	% below	DFS	Federal	% below
1	\$42,023	\$40,903	-0.03	\$50,222	\$41,815	-0.17
2	\$44,879	\$49,490	0.10		\$50,593	
3	\$49,366	\$59,316	0.20		\$60,638	
4	\$44,879	\$61,293	0.37		\$62,659	
5	\$45,890	\$63,269	0.38		\$64,680	
6	\$45,890	\$65,246	0.42		\$66,701	
7	\$46,924		0.39			
8	\$50,478	\$67,223	0.33		\$68,722	
9						
10		\$69,200		\$49,855	\$70,743	0.42
11						
12	\$47,981	\$71,177	0.48		\$72,764	
13						
14				\$55,729		0.31
15	\$50,980	\$73,152	0.43	\$53,301	\$74,785	0.40
16						
17						
18		\$75,130			\$76,806	
19						
20						
21/top	\$50,978	\$77,109	0.51	\$65,131	\$78,826	0.21
Average % below Federal			0.33	0.23		

Years Svc	Forensic Scientist III vs Federal Senior Scientist					
	Statewide VA vs Federal Richmond			Northern VA vs Federal Fairfax		
	DFS	Federal	% below	DFS	Federal	% below
6						
7		\$70,535			72108	
8		\$72,887			74512	
9		\$75,238			76916	
10		\$77,589			79319	
11						
12		\$79,941			81723	
13						
14	\$61,302	\$82,292	0.34		84127	
15						
16	\$56,984	\$84,644	0.49		86531	
17	\$52,127		0.62	\$58,267		0.49
18	\$56,487		0.50			
19		\$86,995			88935	
20						
21						
22		\$89,346			91338	
23	\$69,633		0.28			
24				\$72,804		0.25
25/top	\$60,922	\$91,698	0.51	\$76,121	93742	0.23
Average % below Federal			0.46	0.32		

Summary Average below Federal 0.35

Attachment 7

Governor's Directive of Testing of Old Serology Cases



COMMONWEALTH of VIRGINIA

Office of the Governor

Mark R. Warner
Governor

Robert M. Blue
Counselor to the Governor

September 30, 2004

Paul Ferrara
Division of Forensic Science
700 North Fifth Street
Richmond, VA 23219

Dear Paul:

As we have discussed, the Governor has directed the Division of Forensic Science ("DFS") to carry out an evaluation of old serology cases using new DNA technologies.

Obviously, post-conviction DNA testing should be limited to those cases in which testing can provide probative evidence of innocence or guilt. For purposes of this project, you have recommended that sexual assault cases provide the best opportunity for DNA testing that could yield useful results (understanding, of course, that your past experience in post-conviction DNA testing has often shown that no conclusion as to guilt or innocence can be reached).

The Division of Forensic Science has approximately 150,000 case files in which it conducted testing during the period of 1973-1988 where portions of evidence may have been retained in these files. Obviously, it would require a substantial amount of time and staff resources at DFS to conduct a detailed review of every one of these files. While the Governor is committed to DNA testing in appropriate post-conviction cases, he believes it is critical that this project not impede DFS's work in ongoing criminal investigations. Accordingly, as we have agreed, DFS will review ten percent of its serology cases chosen randomly and select those cases that meet the following criteria:

1. The serologist retained remnants of the evidence originally tested in his/her case files,
2. The serology test result indicated the presence of seminal fluid,

Paul Ferrara
September 30, 2004
Page 2

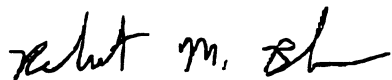
3. There was a suspect listed and a suspect known sample submitted (or DFS has a profile of the suspect in the DNA databank), and
4. The named suspect was eventually charged and convicted for the crime referenced in the Request for Laboratory Examination.

Based on the review conducted thus far, once you complete a review of ten percent of your files, you believe you are likely to find approximately 40 case files that meet the criteria listed above. In order to ensure that DFS's work on pending criminal cases is not slowed, you will send these post-conviction cases to an outside laboratory for testing. You expect that a private lab will charge between \$3,000 and \$4,000 per case. When staff time is included, the estimated cost of this project will be between \$150,000 and \$200,000. It should take approximately four months to complete.

Once this testing is completed, the Governor will review the results with you to determine whether any further review and testing of old serology cases would be productive.

The Governor appreciates the thought and effort that you and your staff at DFS have put into this project, and he looks forward to discussing the results with you after the testing is completed.

Sincerely,



Robert M. Blue

Attachment 8

Introduced Legislation

053632134

HOUSE BILL NO. 2216

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ [2.2-1104](#), [2.2-2101](#) as it is currently effective and as it shall become effective, [2.2-3802](#), [4.1-352](#), [9.1-102](#), [9.1-501](#), [18.2-267](#), [18.2-268.1](#), [18.2-268.6](#), [18.2-268.7](#), [18.2-268.8](#), [18.2-268.9](#), [19.2-187](#), [19.2-187.01](#), [19.2-187.2](#), [19.2-188.1](#), [19.2-270.4:1](#), [19.2-310.2](#), [19.2-310.2:1](#), [19.2-310.3](#), [19.2-310.3:1](#), [19.2-310.4](#), [19.2-310.5](#), [19.2-310.6](#), [19.2-310.7](#), [19.2-327.1](#), [19.2-327.3](#), [19.2-327.4](#), [19.2-386.23](#), [19.2-386.27](#), [19.2-387](#), [19.2-389.1](#), [46.2-341.25](#), [46.2-341.26:1](#), [46.2-341.26:6](#), [46.2-341.26:7](#), [46.2-341.26:9](#), [54.1-3404](#), and [54.1-3431](#) of the Code of Virginia, and to amend the Code of Virginia by adding in Title 9.1 a chapter numbered 11, consisting of articles numbered 1 through 3, containing sections numbered [9.1-1100](#) through [9.1-1113](#), and to repeal Article 2 (§§ [9.1-117](#) through [9.1-125](#)) of Chapter 1 of Title 9.1, relating to the creation of the Department of Forensic Science, the Forensic Science Board, and the Scientific Advisory Board.

Patrons-- Albo, Athey, Bell, Fralin, Hamilton, Kilgore, McDonnell and Moran; Senators: Howell and Stolle

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1104](#), [2.2-2101](#) as it is currently effective and as it shall become effective, [2.2-3802](#), [4.1-352](#), [9.1-102](#), [9.1-501](#), [18.2-267](#), [18.2-268.1](#), [18.2-268.6](#), [18.2-268.7](#), [18.2-268.8](#), [18.2-268.9](#), [19.2-187](#), [19.2-187.01](#), [19.2-187.2](#), [19.2-188.1](#), [19.2-270.4:1](#), [19.2-310.2](#), [19.2-310.2:1](#), [19.2-310.3](#), [19.2-310.3:1](#), [19.2-310.4](#), [19.2-310.5](#), [19.2-310.6](#), [19.2-310.7](#), [19.2-327.1](#), [19.2-327.3](#), [19.2-327.4](#), [19.2-386.23](#), [19.2-386.27](#), [19.2-387](#), [19.2-389.1](#), [46.2-341.25](#), [46.2-341.26:1](#), [46.2-341.26:6](#), [46.2-341.26:7](#), [46.2-341.26:9](#), [54.1-3404](#), and [54.1-3431](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 9.1 a chapter numbered 11, consisting of articles numbered 1 through 3, containing sections numbered [9.1-1100](#) through [9.1-1113](#), as follows:

§ [2.2-1104](#). Laboratory, testing, and analytical functions.

A. The Division shall provide, but is not limited to, the following specific laboratory, testing and analytical functions:

1. Maintain laboratories for the examination of clinical material and pathological specimens submitted by members of the medical profession of the Commonwealth and for which the Division may charge fees to recover full costs.

2. Provide laboratory services for the testing and analysis of various products, foods, drinks, economic poisons and other materials regulated or controlled by the Commonwealth.
3. Provide laboratory services for the analysis and examination of samples and materials related to environmental control.
4. Establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act (P.L. [93-523](#)) and state requirements pursuant to that Act.

B. No fee shall be charged for the analyses of water samples that are required by regulations of the Department of Health or for feed and fertilizer samples that are required by regulations of the Department of Agriculture and Consumer Services.

C. The Division may provide, upon request of any law-enforcement agency, chemical and microbiological testing and analytical functions related to any criminal investigation. Nothing in this section shall be construed to limit or preclude the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science* from conducting all necessary testing and analytical functions associated with any criminal investigation.

D. Upon request of a bidder on any state contract that requires the Division to test or analyze the product being offered by the bidder, the Director of the Division of Purchases and Supply may allow such bidder or his representative to witness the test or analysis.

E. The Division shall provide for security and protection of evidence, official samples and all other samples submitted to the Division for analysis or examination.

§ [2.2-2101](#). (Effective until July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Council on Indians, who shall be appointed as provided for in § [2.2-2628](#); to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed

as provided for in § [23-231.3](#); to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § [2.2-5204](#); to members of the Board of Veterans Services, who shall be appointed as provided for in § [2.2-2452](#); to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § [23-231.15](#); to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § [2.2-2621](#); to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § [2.2-2423](#); to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § [22.1-346.1](#); to members of the Substance Abuse Services Council, who shall be appointed as provided for in § [37.1-207](#); to members of the Criminal Justice Services Board, who shall be appointed as provided in § [9.1-108](#); to members of the Council on Virginia's Future, who shall be appointed as provided in § [2.2-2685](#); ~~or~~ to members of the Virginia Workforce Council, who shall be appointed as provided for in § [2.2-2669](#); *or to members of the Forensic Science Board, who shall be appointed as provided for in § [9.1-1109](#).*

§ [2.2-2101](#). (Effective July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Council on Indians, who shall be appointed as provided for in § [2.2-2628](#); to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § [23-231.3](#); to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § [2.2-5204](#); to members of the Board of Veterans Services, who shall be appointed as provided for in § [2.2-2452](#); to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § [23-231.15](#); to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § [2.2-2621](#); to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § [2.2-2423](#); to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § [22.1-346.1](#); to members of the Substance Abuse Services Council, who shall be appointed as provided for in § [37.1-207](#); to members of the Criminal Justice Services Board, who shall be appointed as provided in § [9.1-108](#); ~~or~~ to members of the Virginia Workforce Council, who shall be appointed

as provided for in § [2.2-2669](#); or to members of the Forensic Science Board, who shall be appointed as provided for in § [9.1-1109](#).

§ [2.2-3802](#). Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ [9.1-126](#) through [9.1-137](#);
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ [16.1-222](#) through [16.1-225](#);
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;
7. Maintained by the Department of State Police; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ [23-232](#) et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
8. Maintained by the Virginia Port Authority as provided in § [62.1-134.1](#) or § [62.1-132.4](#);
9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the ~~Division of Forensic Science of the Department of Criminal Justice Services~~ *Department of Forensic Science*, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § ~~9.1-121~~ [9.1-1104](#) may apply;

11. Maintained by the Department of Corrections that deal with investigations and intelligence gathering by persons acting under the provisions of § [53.1-16](#); and

12. Maintained by the Department of the State Internal Auditor or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the State Employee Fraud, Waste and Abuse Hotline.

§ [4.1-352](#). Certificate of forensic scientist as evidence; requiring forensic scientist to appear.

The certificate of any forensic scientist employed by the Commonwealth on behalf of the Board or the ~~Division~~ *Department* of Forensic Science, when signed by him, shall be evidence in all prosecutions for violations of this title and all controversies in any judicial proceedings touching the mixture analyzed by him. On motion of the accused or any party in interest, the court may require the forensic scientist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable time prior to the day on which the case is set for trial.

§ [9.1-102](#). Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), for the administration of ~~(i)~~ this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth ~~or (ii) §§ [18.2-268.6](#), [18.2-268.9](#), [19.2-188.1](#), [19.2-310.5](#) and for any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science.~~ Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;
5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § [46.2-882](#) and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;
6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;
7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § [53.1-120](#), and to establish the time required for completion of such training;
8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § [8.01-293](#), and establish the time required for the completion of such training;
9. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as deputy sheriffs and jail officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;
10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;
11. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and with universities, colleges, community colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

12. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;
13. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;
14. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;
15. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;
16. Make recommendations concerning any matter within its purview pursuant to this chapter;
17. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;
18. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;
19. Conduct audits as required by § [9.1-131](#);
20. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;
21. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;
22. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;
23. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status

information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

24. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

25. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

26. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

27. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

28. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

29. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

30. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. [90-351](#), 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

31. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

32. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

33. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

34. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

35. Certify and decertify law-enforcement officers in accordance with §§ [15.2-1706](#) and [15.2-1707](#);

~~36. Provide forensic laboratory services as detailed in Article 2 (§ [9.1-117](#) et seq.) of this chapter;~~

37. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § [19.2-81.3](#);

~~38.~~37. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

~~39.~~38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

~~40.~~39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

~~41-40.~~ Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;

~~42-41.~~ (Effective until July 1, 2005) Assist, as necessary, in the administration of the Live In Our Community Police Housing Program and Fund established pursuant to Chapter 8.1 (§ [36-140.1](#) et seq.) of Title 36;

~~43-42.~~ Establish a Virginia Law-Enforcement Accreditation Center. The Center shall, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

~~44-43.~~ Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

~~45-44.~~ Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School Safety pursuant to § [9.1-184](#). Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;

~~46-45.~~ Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;

~~47-46.~~ (Effective July 1, 2005) License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ [9.1-185](#) et seq.) of this chapter;

48.47. (Effective October 1, 2005) License and regulate bail enforcement agents in accordance with Article 12 (§ [9.1-186](#) et seq.) of this chapter; and

49.48. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ [9.1-501](#). Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ [18.2-268.1](#) through [18.2-268.12](#). The officer shall notify the chief of his agency in writing of his request within ~~ten~~ 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be on the approved list of the ~~Division~~ Department of Forensic Science.

Chapter 11.
DEPARTMENT OF FORENSIC SCIENCE.
Article 1.
General Provisions.

§ [9.1-1100](#). *Department of Forensic Science created; Director.*

There is hereby created in the executive branch of state government, a Department of Forensic Science (the Department), which formerly existed as a division within the Department of Criminal Justice Services. The Department shall be headed by a Director appointed by the Governor, subject to confirmation by the General Assembly if in session when such appointment is made, and if not in session, then at its next succeeding session.

In making his appointment, the Governor shall choose a candidate meeting the qualifications recommended by the Forensic Science Board created pursuant to § [9.1-1109](#). The Director shall serve for a term of six years, or until his successor shall be appointed and qualified. Any vacancy shall be filled for the unexpired term in the same manner as the original appointment.

The Director, under the direction and control of the Governor, shall exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties required by the Governor or requested by the Forensic Science Board created pursuant to § [9.1-1110](#).

§ [9.1-1101](#). Powers and duties of the Department.

A. It shall be the responsibility of the Department to provide forensic laboratory services upon request of the Superintendent of State Police; the Chief Medical Examiner, the Assistant Chief Medical Examiners, and local medical examiners; any attorney for the Commonwealth; any chief of police, sheriff, or sergeant responsible for law enforcement in the jurisdiction served by him; any local fire department; or any state agency in any criminal matter. The Department shall provide such services to any federal investigatory agency within available resources.

B. The Department shall:

1. Provide forensic laboratory services to all law-enforcement agencies throughout the Commonwealth and provide laboratory services, research, and scientific investigations for agencies of the Commonwealth as needed; and

2. Establish and maintain a DNA testing program in accordance with Article 1.1 (§ [19.2-310.2](#) et seq.) of Chapter 18 of Title 19.2 to determine identification characteristics specific to an individual.

C. The Director may appoint and employ a deputy director and such other personnel as are needed to carry out the duties and responsibilities conferred by this chapter.

§ [9.1-1102](#). Department to be isolated; security and protection of evidence.

A. The Department and its facilities shall be located so as to ensure the protection of evidence.

B. The Department shall provide for security and protection of evidence, official samples, and all other samples submitted to the Department for analysis or examination.

C. The Department shall ensure that its services are performed by skilled professionals who are qualified to testify in court regarding such services.

§ [9.1-1103](#). Forensic Science Academy.

The Forensic Science Academy, formerly within the Division of Forensic Science, shall be transferred to the Department, and shall provide advanced training to law-enforcement agencies in the location, collection, and preservation of evidence.

§ [9.1-1104](#). *Rights of accused person or his attorney to results of investigation or to investigation.*

Upon the request of any person accused of a crime or upon the request of an accused person's attorney, the Department or the Division of Consolidated Laboratory Services shall furnish to the accused or his attorney the results of any investigation that has been conducted by it and that is related in any way to a crime for which the person is accused. In any case in which an attorney of record for a person accused of violation of any criminal law of the Commonwealth, or the accused, may desire a scientific investigation, he shall, by motion filed before the court in which the charge is pending, certify that in good faith he believes that a scientific investigation may be relevant to the criminal charge. The motion shall be heard ex parte as soon as practicable, and the court shall, after a hearing upon the motion and being satisfied as to the correctness of the certification, order that the same be performed by the Department or the Division of Consolidated Laboratory Services and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for scientific investigation. Upon the request of the attorney for the Commonwealth of the jurisdiction in which the charge is pending, he shall be furnished the results of the scientific investigation.

§ [9.1-1105](#). *Reexamination by independent experts.*

Independent experts employed by (i) an attorney of record for a person accused of violation of any criminal law of the Commonwealth or (ii) the accused, for the purpose of reexamination of materials previously examined in any laboratory of the Department, shall conduct their analyses or examinations independently of the facilities, equipment, or supplies of the Department.

§ [9.1-1106](#). *Disposal of certain hazardous materials.*

Any material that is seized in any criminal investigation and that is deemed to be hazardous to health and safety, may be disposed of upon written application of the Department to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which the material is proposed to be evidence is pending. Upon receipt thereof, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Department shall accompany the application for disposal and shall clearly identify and designate the material to be disposed of. The application shall state the nature of the hazardous materials, the quantity thereof, the location where seized, the person from whom the materials were seized, and the manner whereby the materials shall be destroyed.

When the ownership of the hazardous material is known, notice shall be given to the owner at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of the seizure, the notice shall be given to the accused if other than the owner.

Upon receipt of the analysis report and the application, the court may order the destruction of all, or a part of, the material. However, a sufficient and representative quantity of the material shall be retained to permit an independent analysis when a criminal prosecution may result from the seizure. A return under oath, reporting the time, place, and manner of destruction, shall be made to the courts. Copies of the analysis report, application, order, and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

§ [9.1-1107](#). Disposal of certain other property after analysis.

Personal property, including drugs, not disposed of under § [9.1-1106](#), that has been submitted to the Department for analysis or examination and that has not been reclaimed by the agency submitting the property for analysis or examination, may be disposed of by the Department in accordance with this section if, after the expiration of 120 days after the receipt by the Department of the property, the Director notifies the circuit court of the county or city from which the property was taken, in writing, that the analysis or examination has been completed, and a report submitted to the agency that the property has not been reclaimed by the agency submitting it and that the Department proposes to dispose of the property. The notice shall state the nature of the property, the quantity thereof, the location where seized, the name of the accused, if known, and the proposed method of disposing of the property.

When the ownership of the property is known, a copy of the notice shall be sent simultaneously with the notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the copy shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within 30 days after receipt of the notice, may direct that the property be disposed of by the Department, by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Department. If the court does not so direct within the 30-day period, then the Department may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. The report, if sworn to, shall be admissible as evidence to the same extent as the disposed-of property would have been admissible.

§ [9.1-1108](#). Disposal of property held by Department for more than 15 years.

Notwithstanding the provisions of §§ [9.1-1106](#) and [9.1-1107](#), the Department may file an application in the Circuit Court of the City of Richmond seeking an order authorizing the disposal of all personal property, including drugs, received by the Department more than 15 years prior to the filing of the application. The application, under oath, shall list each

item of property, the date of submission to the Department, the agency or individual submitting the property, any previous court orders entered regarding the storage of the property, and the proposed method of disposal. The application shall also state that written notice by first-class mail was given to each agency or individual submitting property listed at least 30 days prior to the application, and that no agency or individual objected to the disposal. A return, under oath, reporting the time, place, and manner of disposal, shall be made to the court.

*Article 2.
Forensic Science Board.*

§ [9.1-1109](#). *Forensic Science Board; membership.*

A. The Forensic Science Board (the Board) is established as a policy board within the meaning of § [2.2-2100](#), in the executive branch of state government. The Board shall consist of 17 members as follows:

- 1. The Superintendent of the State Police or his designee;*
- 2. The Director of the Department of Criminal Justice Services or his designee;*
- 3. The Chief Medical Examiner or his designee;*
- 4. The Executive Director of the Virginia Board of Pharmacy or his designee;*
- 5. The Attorney General, or his designee;*
- 6. The Chairman of the Indigent Defense Commission or his designee;*
- 7. The Executive Secretary of the Supreme Court of Virginia or his designee;*
- 8. The Chairman of the Virginia State Crime Commission or his designee;*
- 9. The Chairman of the Scientific Advisory Board or his designee;*
- 10. The Director of the Virginia Institute of Forensic Science and Medicine or his designee;*
- 11. Five members, appointed by the Governor, from among the citizens of the Commonwealth as follows:*
 - a. A currently active member of the judiciary;*
 - b. A member of the Virginia Association of Chiefs of Police;*
 - c. A member of the Virginia State Sheriff's Association;*

d. A member of the Virginia Commonwealth's Attorneys Association; and

e. A member who is an attorney having specialized knowledge in the area of forensic sciences.

12. One member of the Virginia House of Delegates, appointed by the Speaker of the House; and

13. One member of the Senate of Virginia, appointed by the Senate Committee on Rules.

B. The legislative members shall serve for terms coincident with their terms of office. The members appointed by the Governor shall serve for terms of four years, provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Any vacancy on the Board shall be filled in the same manner as the original appointment, but for the unexpired term.

C. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Board shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

D. The Board shall elect its chairman and vice-chairman. A majority of the members shall constitute a quorum. Members shall be paid reasonable and necessary expenses incurred in the performance of their duties. Legislative members shall receive compensation as provided in § [30-19.12](#) and nonlegislative citizen members shall receive compensation for their services as provided in §§ [2.2-2813](#) and [2.2-2825](#).

E. The Board shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman of the Board shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Board.

§ [9.1-1110](#). *Functions of Forensic Science Board.*

A. The Board shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), for the administration of (i) this chapter or (ii) §§ [18.2-268.6](#), [18.2-268.9](#), [19.2-188.1](#), and [19.2-310.5](#) and for any provisions of the Code as they relate to the responsibilities of the Department. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information or DNA identification shall be submitted for review and comment to any board, commission, or committee or other body that may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

- 2. Develop and establish program and fiscal standards and goals governing the operations of the Department;*
 - 3. Ensure the development of long-range programs and plans for the incorporation of new technologies as they become available;*
 - 4. Review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;*
 - 5. Monitor the activities of the Department and its effectiveness in implementing the standards and goals of the Board;*
 - 6. Consider and review recommendations made by the Scientific Advisory Board;*
 - 7. Advise the Governor, Director, and General Assembly on matters relating to the Department and forensic science in general;*
 - 8. Review, amend, and approve recommendations of the Scientific Advisory Board;*
 - 9. Receive, administer, and expend all funds and other assistance available for carrying out the purposes of this chapter;*
 - 10. Approve Department applications for grants from the United States government or any other source in carrying out the purposes of this chapter and approve of acceptance of any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. The report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;*
 - 11. Monitor all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth; and*
 - 12. Recommend actions to foster and promote coordination and cooperation between the Department and the user programs that are served.*
- B. By November 1 of each year, the Board shall review and make recommendations to the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance, and the Crime Commission concerning:*

- 1. New major programs and plans for the activities of the Department and elimination of programs no longer needed;*
- 2. Policy and priorities in response to agency needs;*
- 3. General fiscal year operational budget and any major changes in appropriated funds;*
- 4. Actions to foster and promote coordination and cooperation between the Department and the user programs which are served;*
- 5. Rules and regulations necessary to carry out the purposes and intent of this chapter;
and*
- 6. Any recommendations submitted to the Board or the Director by the Scientific Advisory Board.*

*Article 3.
Scientific Advisory Board.*

§ [9.1-1111](#). Scientific Advisory Board; membership.

The Scientific Advisory Board is hereby established as an advisory board within the meaning of § [2.2-2100](#), in the executive branch of state government. The Scientific Advisory Board (the Advisory Board) shall consist of 13 members, consisting of the Director of the Department, and 12 members appointed by the Governor as follows: a director of a private or federal forensic laboratory located in the Commonwealth; a forensic scientist or any other person, with an advanced degree, who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring; a forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology; a forensic scientist with an advanced degree and having experience in the discipline of population genetics; a scientist with an advanced degree and having experience in the area of forensic chemistry; a scientist with an advanced degree and having experience in the area of forensic biology; a forensic scientist or any other person, with an advanced degree who has received substantial education, training, or experience in the discipline of criminalistics or trace evidence; a scientist with a doctoral degree and having experience in the area of forensic toxicology, who is certified by the American Board Forensic Toxicologists; a member of the Board of the International Association for Identification; a member of the Board of the Association of Firearms and Toolmark Examiners; a member of the International Association of Chemical Testing; and a member of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) Board.

Members of the Advisory Board initially appointed shall serve the following terms: four members shall serve a term of one year, four members shall serve a term of two years, and four members shall serve a term of four years. Thereafter, all appointments shall be

for a term of four years. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term.

Members of the Advisory Board shall be paid reasonable and necessary expenses incurred in the performance of their duties, and shall receive compensation for their services as provided in §§ [2.2-2813](#) and [2.2-2825](#).

§ [9.1-1112](#). *Meetings and chairman.*

The Advisory Board shall meet twice a year in the City of Richmond and at such other times and places as it determines or as directed by the Governor. A chairman shall be elected from among the members appointed by the Governor.

§ [9.1-1113](#). *Functions of the Scientific Advisory Board.*

A. The Advisory Board may review laboratory operations of the Department and make recommendations concerning the quality and timeliness of services furnished to user agencies.

B. The Advisory Board shall review and make recommendations to the Director of the Department and the Forensic Science Board concerning:

- 1. New scientific programs, protocols, and methods of testing;*
- 2. Plans for the implementation of new programs, sustaining existing programs and improving upon them where possible, and the elimination of programs no longer needed;*
- 3. Policy and priorities in response to agency needs;*
- 4. Protocols for testing and examination methods, and guidelines for the presentation of results in court; and*
- 5. Qualification standards for the various scientists of the Department, including the Director.*

C. The Advisory Board shall recommend to the Forensic Science Board a review process for the Department to use in instances where there has been a misidentification or other testing error made by the Department during its examination of evidence.

D. Upon request of the Director of the Department, the Forensic Science Board, or the Governor, the Advisory Board shall review analytical work, reports, and conclusions of scientists employed by the Department.

§ [18.2-267](#). *Preliminary analysis of breath to determine alcoholic content of blood.*

A. Any person who is suspected of a violation of §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#) shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of ~~Criminal Justice Services~~, ~~Division of Forensic Science~~, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of a violation of §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#), shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#).

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#), or a similar ordinance of the county, city or town where the arrest is made. The person so charged shall then be subject to the provisions of §§ [18.2-268.1](#) through [18.2-268.12](#), or of a similar ordinance of a county, city or town.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution under §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#), the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#).

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of §§ [18.2-266](#), [18.2-266.1](#) or ~~§~~[18.2-272](#), advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ [18.2-268.1](#) through [18.2-268.12](#).

§ [18.2-268.1](#). Chemical testing to determine alcohol or drug content of blood; definitions.

As used in §§ [18.2-268.2](#) through [18.2-268.12](#), unless the context clearly indicates otherwise:

The phrase "alcohol or drug" means alcohol, a drug or drugs, or any combination of alcohol and a drug or drugs.

The phrase "blood or breath" means either or both.

"Chief police officer" means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives.

"Department" means the Department of Forensic Science.

"Director" means the Director of the ~~Division~~ *Department* of Forensic Science.

~~"Division" means the Division of Forensic Science.~~

"License" means any driver's license, temporary driver's license, or instruction permit authorizing the operation of a motor vehicle upon the highways.

"Ordinance" means a county, city or town ordinance.

§ [18.2-268.6](#). Transmission of blood samples.

The blood sample withdrawn pursuant to § [18.2-268.5](#) shall be placed in vials provided or approved by the ~~Division~~ *Department* of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the accused, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the ~~Division~~ *Department*, and the container shall be sealed to prevent tampering with the vials. The arresting or accompanying officer shall take possession of the container as soon as the vials are placed in the container and sealed, and shall promptly transport or mail the container to the ~~Division~~ *Department*.

§ [18.2-268.7](#). Transmission of blood test samples; use as evidence.

A. Upon receipt of a blood sample forwarded to the ~~Division~~ *Department* for analysis pursuant to § [18.2-268.6](#), the ~~Division~~ *Department* shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the ~~Division~~ *Department* and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the

withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. After completion of the analysis, the ~~Division of Forensic Science~~ *Department* shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the ~~Division~~ *Department*, request an order directing the ~~Division of Forensic Science~~ *Department* to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The ~~Division~~ *Department* shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

B. When a blood sample taken in accordance with the provisions of §§ [18.2-268.2](#) through [18.2-268.6](#) is forwarded for analysis to the ~~Division~~ *Department*, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the ~~Division of Forensic Science~~ *Department*.

§ [18.2-268.8](#). Fees.

Payment for withdrawing blood shall not exceed \$25, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of §§ [18.2-266](#), [18.2-266.1](#) or § [18.2-272](#) or of a similar ordinance, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § [18.2-271.1](#), the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

If the person whose blood sample was withdrawn is subsequently convicted for violation of §§ [18.2-266](#), [18.2-266.1](#) or § [18.2-272](#) or a similar ordinance, a fee of \$25 for testing the first blood sample by the ~~Division~~ *Department* shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

§ [18.2-268.9](#). Assurance of breath-test validity; use of test results as evidence.

To be capable of being considered valid as evidence in a prosecution under §§ [18.2-266](#), [18.2-266.1](#) or § [18.2-272](#), or a similar ordinance, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department of ~~Criminal Justice Services, Division of Forensic Science~~. The ~~Division~~ *Department* shall test the accuracy of the breath-testing equipment at least once every six months.

The ~~Division~~ *Department* shall establish a training program for all individuals who are to administer the breath tests. Upon a person's successful completion of the training program, the ~~Division~~ *Department* may license him to conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon which the individual has successfully completed training.

Any individual conducting a breath test under the provisions of § [18.2-268.2](#) shall issue a certificate which will indicate that the test was conducted in accordance with the ~~Division's~~ *Department's* specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the ~~Division~~ *Department* shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results.

§ [19.2-187](#). Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ [19.2-386.1](#) et seq.) of this title, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or the ~~Division~~ *Department* of Forensic Science or authorized by such ~~Division~~ *Department* to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, or the United States Secret Service Laboratory when such certificate is duly attested by such person, shall be admissible in evidence as

evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial and (ii) a copy of such certificate is mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at least seven days prior to the hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least ~~ten~~ 10 days prior to trial. In the event that a request for a copy of a certificate is filed with the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that he must resubmit the request at such time as the case is properly before the court in order for such request to be effective.

The certificate of analysis of any examination conducted by the ~~Division~~ *Department* of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the ~~Division~~ *Department* of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it.

§ [19.2-187.01](#). Certificate of analysis as evidence of chain of custody of material described therein.

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by (i) the Division of Consolidated Laboratory Services, the ~~Division~~ *Department* of Forensic Science or any of its regional laboratories, or by any laboratory authorized by ~~either~~ *such Division or Department* to conduct such analysis or examination; (ii) the Federal Bureau of Investigation; (iii) the federal Bureau of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug Enforcement Administration; (vi) the Postal Inspection Service; or (vii) the United States Secret Service shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.

§ [19.2-187.2](#). Procedure for subpoena duces tecum of analysis evidence.

No subpoena duces tecum shall issue for the production of writings or documents used to reach the conclusion contained in a certificate of analysis prepared pursuant to § [19.2-187](#) except upon affidavit that the requested writings or documents are material. Upon a showing by the Commonwealth that the production of such writings and documents would place an undue burden on the ~~Division~~ *Department* of Forensic Science, the court may order that the subpoena duces tecum be satisfied by making the writings and documents available for inspection by the requesting party at the laboratory site where the analysis was performed or at the laboratory operated by the ~~Division~~ *Department* of Forensic Science which is closest to the court in which the case is pending.

§ [19.2-188.1](#). Testimony regarding identification of controlled substances.

In any preliminary hearing on a violation of Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2, any law-enforcement officer shall be permitted to testify as to the results of field tests which have been approved by the ~~Division~~ *Department* of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.), regarding whether or not any substance the identity of which is at issue in such hearing is a controlled substance, imitation controlled substance, or marijuana, as defined in § [18.2-247](#).

§ [19.2-270.4:1](#). Storage, preservation and retention of human biological evidence in felony cases.

A. Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony but not sentenced to death or his attorney of record to the circuit court that entered the judgment for the offense, the court shall order the storage, preservation, and retention of specifically identified human biological evidence or representative samples collected or obtained in the case for a period of up to fifteen years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time. Upon the filing of such a motion, the defendant may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be stored in accordance with the provisions of this section. Upon the granting of the motion, the court shall order the clerk of the circuit court to transfer all such evidence to the ~~Division~~ *Department* of Forensic Science. The ~~Division~~ *Department* of Forensic Science shall store, preserve, and retain such evidence. If the evidence is not within the custody of the clerk at the time the order is entered, the court shall order the governmental entity having custody of the evidence to transfer such evidence to the ~~Division~~ *Department* of Forensic Science. Upon the entry of an order under this subsection, the court may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the attorney for the Commonwealth, modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order.

B. In the case of a person sentenced to death, the court that entered the judgment shall, in all cases, order any human biological evidence or representative samples to be transferred

by the governmental entity having custody to the ~~Division~~ *Department* of Forensic Science. The ~~Division~~ *Department* of Forensic Science shall store, preserve, and retain such evidence until the judgment is executed. If the person sentenced to death has his sentence reduced, then such evidence shall be transferred from the ~~Division~~ *Department* to the original investigating law-enforcement agency for storage as provided in this section.

C. Pursuant to standards and guidelines established by the ~~Division~~ *Department* of Forensic Science, the order shall state the method of custody, transfer and return of any evidence to insure and protect the Commonwealth's interest in the integrity of the evidence. Pursuant to standards and guidelines established by the ~~Division~~ *Department* of Forensic Science, the ~~Division~~ *Department* of Forensic Science, local law-enforcement agency or other custodian of the evidence shall take all necessary steps to preserve, store, and retain the evidence and its chain of custody for the period of time specified.

D. In any proceeding under this section, the court, upon a finding that the physical evidence is of such a nature, size or quantity that storage, preservation or retention of all of the evidence is impractical, may order the storage of only representative samples of the evidence. The ~~Division~~ *Department* of Forensic Science shall take representative samples, cuttings or swabbings and retain them. The remaining evidence shall be handled according to § [19.2-270.4](#) or as otherwise provided for in the Code.

E. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this section shall create any cause of action for damages against the Commonwealth, or any of its political subdivisions or officers, employees or agents of the Commonwealth or its political subdivisions.

§ [19.2-310.2](#). Blood, saliva or tissue sample required for DNA analysis upon conviction of a felony; fee.

Every person convicted of a felony on or after July 1, 1990, and every person convicted of a felony offense under Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1, 1989, shall have a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. A fee of ~~twenty-five dollars~~ \$25 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the felony conviction and one-half of the fee shall be paid into the general fund of the locality where the sample was taken and one-half of the fee shall be paid into the general fund of the state treasury. The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the ~~Division of Forensic Science, Department of Criminal Justice Services~~ *Department of Forensic Science* or other entity designated by the ~~Division~~ *Department*. The identification characteristics of the profile resulting from

the DNA analysis shall be stored and maintained by the ~~Division~~ *Department* in a DNA data bank and shall be made available only as provided in § [19.2-310.5](#).

After July 1, 1990, the blood, saliva or tissue sample shall be taken prior to release from custody.

Notwithstanding the provisions of § [53.1-159](#), any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood, saliva or tissue sample prior to his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall provide a blood, saliva or tissue sample as a condition of such sentence.

§ [19.2-310.2:1](#). Saliva or tissue sample required for DNA analysis after arrest for a violent felony.

Every person arrested for the commission or attempted commission of a violent felony as defined in § [19.2-297.1](#) or a violation or attempt to commit a violation of §§ [18.2-89](#), [18.2-90](#), [18.2-91](#), or ~~§~~ [18.2-92](#), shall have a sample of his saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a determination by a magistrate or a grand jury that probable cause exists for the arrest, a sample shall be taken prior to the person's release from custody. The analysis shall be performed by the ~~Division~~ *Department* of Forensic Science or other entity designated by the ~~Division~~ *Department*. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the ~~Division~~ *Department* in a DNA data bank and shall be made available as provided in § [19.2-310.5](#).

The clerk of the court shall notify the ~~Division~~ *Department* of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the ~~Division~~ *Department* shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

§ [19.2-310.3](#). Procedures for withdrawal of blood, saliva or tissue sample for DNA analysis.

Each sample required pursuant to § [19.2-310.2](#) from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood, saliva or tissue as provided herein as a result of the act of withdrawing blood, saliva or tissue from any person submitting thereto, provided the

blood, saliva or tissue was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood, saliva or tissue sample.

Chemically clean sterile disposable needles and vacuum draw tubes or swabs shall be used for all samples. The tube or envelope containing the sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; and the date and place of collection. The tubes or envelopes containing the samples shall be secured to prevent tampering with the contents. The steps herein set forth relating to the taking, handling, identification, and disposition of blood, saliva or tissue samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the ~~Division~~ *Department* of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ [19.2-310.4](#) and [19.2-310.5](#).

§ [19.2-310.3:1](#). Procedures for taking saliva or tissue sample for DNA analysis.

A. Each sample required pursuant to § [19.2-310.2:1](#) from persons arrested shall be taken before release from custody at such place as is designated by the law-enforcement agency responsible for arrest booking in the jurisdiction. Samples shall be taken in accordance with procedures adopted by the ~~Division~~ *Department* of Forensic Science. The sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; the date and place of collection; information identifying the arresting or accompanying officer; and the offense for which the person was arrested. The sample shall be secured to prevent tampering with the contents and be accompanied by a copy of the arrest warrant or *capias*. The steps herein set forth relating to the taking, handling, identification, and disposition of saliva or tissue samples are procedural and not substantive. The sample shall be transported to the ~~Division~~ *Department* of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ [19.2-310.4](#) and [19.2-310.5](#).

B. Substantial compliance therewith shall be deemed to be sufficient. If a sample has been previously taken from the individual as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. No civil liability shall attach to any person authorized to take saliva or tissue as provided herein as a result of the act of taking saliva or tissue from any person submitting thereto, provided the saliva or tissue was taken according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the taking of any saliva or tissue sample.

§ [19.2-310.4](#). Procedures for conducting DNA analysis of blood, saliva or tissue sample.

Whether or not the results of an analysis are to be included in the data bank, the ~~Division~~ *Department* shall conduct the DNA analysis in accordance with procedures adopted by the ~~Division~~ *Department* to determine identification characteristics specific to the

individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and examined, and a statement that the seal on the tube or envelope containing the sample had not been broken or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and inclusion in the data bank pursuant to § [19.2-310.2](#) or § ~~19.2-310.2:1~~ may be divided, labeled as provided for the original sample, and securely stored by the ~~Division~~ *Department* in accordance with specific procedures adopted by regulation of the ~~Division~~ *Department* to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the ~~Division~~ *Department* to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the ~~Division~~ *Department* as authorized, including the profile and identifying information, shall be made and maintained at the ~~Division~~ *Department*. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § [19.2-310.5](#), the results of the analysis shall be securely stored and shall remain confidential.

§ [19.2-310.5](#). DNA data bank exchange.

It shall be the duty of the ~~Division~~ *Department* to receive blood, saliva or tissue samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, saliva or tissue samples submitted pursuant to § [19.2-310.2](#) or § ~~19.2-310.2:1~~ and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, saliva or tissue samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. The ~~Division~~ *Department* shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the ~~Division~~ *Department*.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank.

The ~~Division~~ *Department* shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The ~~Division~~ *Department* shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The ~~Division~~ *Department* shall create a separate statistical data base comprised of DNA profiles of blood, saliva or tissue samples of persons whose identity is unknown. Nothing in this section or § [19.2-310.6](#) shall prohibit the ~~Division~~ *Department* from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The ~~Division~~ *Department* may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

§ [19.2-310.6](#). Unauthorized uses of DNA data bank; forensic samples; penalties.

Any person who, without authority, disseminates information contained in the data bank shall be guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a Class 1 misdemeanor.

Except as authorized by law, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the ~~Division~~ *Department* of Forensic Science for analysis shall be guilty of a Class 5 felony.

§ [19.2-310.7](#). Expungement when DNA taken for a felony conviction.

A person whose DNA profile has been included in the data bank pursuant to § [19.2-310.2](#) may request expungement on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The ~~Division~~ *Department of Forensic Science* shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

§ [19.2-327.1](#). Motion by a convicted felon for scientific analysis of newly discovered or previously untested scientific evidence; procedure.

A. Notwithstanding any other provision of law or rule of court, any person convicted of a felony may, by motion to the circuit court that entered the original conviction, apply for a new scientific investigation of any human biological evidence related to the case that resulted in the felony conviction if: (i) the evidence was not known or available at the time the conviction became final in the circuit court or the evidence was not previously subjected to testing because the testing procedure was not available at the ~~Division~~ *Department* of Forensic Science at the time the conviction became final in the circuit court; (ii) the evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way; (iii) the testing is materially relevant, noncumulative, and necessary and may prove the convicted person's

actual innocence; (iv) the testing requested involves a scientific method employed by the ~~Division~~ *Department* of Forensic Science; and (v) the convicted person has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available at the ~~Division~~ *Department* of Forensic Science.

B. The petitioner shall assert categorically and with specificity, under oath, the facts to support the items enumerated in subsection A and (i) the crime for which the person was convicted, (ii) the reason or reasons the evidence was not known or tested by the time the conviction became final in the circuit court, and (iii) the reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted. Such motion shall contain all relevant allegations and facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions.

C. The petitioner shall serve a copy of such motion upon the attorney for the Commonwealth. The Commonwealth shall file its response to the motion within ~~thirty~~ 30 days of the receipt of service. The court shall, no sooner than ~~thirty~~ 30 and no later than ~~ninety~~ 90 days after such motion is filed, hear the motion. Motions made by a petitioner under a sentence of death shall be given priority on the docket.

D. The court shall, after a hearing on the motion, set forth its findings specifically as to each of the items enumerated in subsections A and B and either (i) dismiss the motion for failure to comply with the requirements of this section or (ii) dismiss the motion for failure to state a claim upon which relief can be granted or (iii) order that the testing be done by the ~~Division~~ *Department* of Forensic Science based on a finding of clear and convincing evidence that the requirements of subsection A have been met.

E. The court shall order the tests to be performed by the ~~Division~~ *Department* of Forensic Science and prescribe in its order, pursuant to standards and guidelines established by the ~~Division~~ *Department*, the method of custody, transfer, and return of evidence submitted for scientific investigation sufficient to insure and protect the Commonwealth's interest in the integrity of the evidence. The results of any such testing shall be furnished simultaneously to the court, the petitioner and his attorney of record and the attorney for the Commonwealth. The ~~Division~~ *Department* of Forensic Science shall give testing priority to cases in which a sentence of death has been imposed. The results of any tests performed and any hearings held pursuant to this section shall become a part of the record.

F. Nothing in this section shall constitute grounds to delay setting an execution date pursuant to § [53.1-232.1](#) or to grant a stay of execution that has been set pursuant to § [53.1-232.1](#) (iii) or (iv).

G. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action

for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or its political subdivisions.

H. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ [19.2-157](#) et seq.) of Chapter 10 of this title.

§ [19.2-327.3](#). Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence.

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a Class 1 felony, (2) a Class 2 felony or (3) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § [19.2-327.1](#) became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § [19.2-327.1](#); (vii) that the petitioner is currently incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any conviction that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § ~~9.1-121~~ [9.1-1104](#). The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § [53.1-232.1](#) or to grant a stay of execution that has been set pursuant to § [53.1-232.1](#) (iii) or (iv).

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § [18.2-434](#).

C. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have 30

days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt of the defendant that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ [19.2-157](#) et seq.) of Chapter 10 of this title.

§ [19.2-327.4](#). Determination by the Supreme Court for findings of fact by the circuit court.

If the Supreme Court determines from the petition, from any hearing on the petition, from a review of the records of the case, including the record of any hearing on a motion to test evidence pursuant to § ~~9.1-121~~ [9.1-1104](#), or from any response from the Attorney General that a resolution of the case requires further development of the facts under this chapter, the court may order the circuit court to conduct a hearing within ~~ninety~~ 90 days after the order has been issued to certify findings of fact with respect to such issues as the Supreme Court shall direct. The record and certified findings of fact of the circuit court shall be filed in the Supreme Court within ~~thirty~~ 30 days after the hearing is concluded. The petitioner or his attorney of record, the attorney for the Commonwealth and the Attorney General shall be served a copy of the order stating the specific purpose and evidence for which the hearing has been ordered.

§ [19.2-386.23](#). Disposal of seized controlled substances, marijuana and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ [18.2-247](#) et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by the ~~Division~~ *Department* of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the ~~Division~~ *Department* for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the

location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § [18.2-265.1](#) not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ [18.2-247](#) et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § [19.2-386.24](#).

§ [19.2-386.27](#). Forfeiture of firearms carried in violation of § [18.2-308](#).

Any weapon used in the commission of a violation of § [18.2-308](#) shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the ~~Division~~ *Department* of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § [19.2-386.29](#).

§ [19.2-387](#). Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police.

A. The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record-keeping agency of the Commonwealth, except for (i) the Department of Juvenile Justice pursuant to Chapter 10 (§ [16.1-222](#) et seq.) of Title 16.1, (ii) the Department of Motor Vehicles, (iii) for purposes of the DNA data bank, the ~~Division~~ *Department* of Forensic Science and (iv) for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3 and 5 of § [53.1-136](#), the Virginia Parole Board.

B. The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices, and acquire such equipment as shall be necessary to carry out the

purposes of this chapter and is also authorized to enter into agreements with other state agencies for services to be performed for it by employees of such other agencies.

§ [19.2-389.1](#). Dissemination of juvenile record information.

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § [16.1-299](#) shall be disseminated only (i) to make the determination as provided in §§ [18.2-308.2](#) and [18.2-308.2:2](#) of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ [19.2-152.2](#) et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report pursuant to § [19.2-264.5](#) or § [19.2-299](#) or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § [19.2-298.01](#); (iii) to aid local community-based probation programs established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ [9.1-173](#) et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § [19.2-298.01](#); (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § [9.1-101](#); and (vii) to the ~~Division~~ Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § [16.1-299.1](#).

§ [46.2-341.25](#). Preliminary analysis of breath of commercial drivers to determine alcohol content of blood.

A. Any person who is reasonably suspected of a violation of § [46.2-341.24](#) or of having any alcohol in his blood while driving or operating a commercial motor vehicle may be required by any law-enforcement officer to provide a sample of such person's breath for a preliminary screening to determine the probable alcohol content of his blood. Such person shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of ~~Criminal Justice Services, Division~~ Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. If the breath sample analysis indicates that there is alcohol present in the person's blood, or if the person refuses to provide a sample of his breath for a preliminary screening, such person shall then be subject to the provisions of §§ [46.2-341.26:1](#) through [46.2-341.26:11](#).

D. The results of a breath analysis conducted pursuant to this section shall not be admitted into evidence in any prosecution under § [46.2-341.24](#) or § [46.2-341.31](#), but may be used as a basis for charging a person for a violation of the provisions of § [46.2-341.24](#) or § [46.2-341.31](#).

E. The law-enforcement officer requiring the preliminary screening test shall advise the person of his obligations under this section and of the provisions of subsection C of this section.

§ [46.2-341.26:1](#). Use of chemical tests to determine alcohol or drug content of blood of commercial driver; definitions.

As used in §§ [46.2-341.26:2](#) through [46.2-341.26:11](#), unless the context clearly indicates otherwise:

The phrase "alcohol or drug" means alcohol, drug or drugs, or any combination of alcohol and a drug or drugs.

The phrase "blood or breath" means either or both.

"Chief police officer" means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives.

"Department" means the Department of Forensic Science.

"Director" means the Director of the ~~Division~~ *Department* of Forensic Science.

~~"Division" means the Division of Forensic Science.~~

§ [46.2-341.26:6](#). Transmission of blood samples.

The blood sample withdrawn pursuant to § [46.2-341.26:5](#) shall be placed in vials provided or approved by the ~~Division~~ *Department* of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the suspect, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the ~~Division~~ *Department*, and

the container shall be sealed to prevent tampering with the vials. A law-enforcement officer shall take possession of the container as soon as the vials are placed in such container and sealed, and shall promptly transport or mail the container to the ~~Division~~ *Department*.

§ [46.2-341.26:7](#). Transmission of samples.

A. Upon receipt of a blood sample forwarded to the ~~Division~~ *Department* for analysis pursuant to § [46.2-341.26:6](#), the ~~Division~~ *Department* shall have it examined for its alcohol or drug content, and the Director shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the ~~Division~~ *Department* and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug content. The Director or his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. After completion of the analysis, the ~~Division of Forensic Science~~ *Department* shall preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the ~~Division~~ *Department*, request an order directing the ~~Division of Forensic Science~~ *Department* to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The ~~Division~~ *Department* shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

B. When a blood sample taken in accordance with the provisions of §§ [46.2-341.26:2](#) through [46.2-341.26:6](#) is forwarded for analysis to the ~~Division~~ *Department*, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood or breath was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the ~~Division of Forensic Science~~ *Department*.

§ [46.2-341.26:9](#). Assurance of breath test validity; use as evidence.

To be capable of being considered valid in a prosecution under § [46.2-341.24](#) or § [46.2-341.31](#), chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with the type of equipment and in accordance with methods approved by the ~~Division~~ *Department* under the provisions of § [18.2-268.9](#).

Any individual conducting a breath test under the provisions of § [46.2-341.26:2](#) shall issue a certificate which includes the name of the suspect, the date and time the sample was taken from the suspect, the alcohol content of the sample, and the identity of the person who examined the sample. The certificate will also indicate that the test was conducted in accordance with the ~~Division's~~ *Department's* specifications and that the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate. The certificate, when attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the ~~Division~~ *Department* shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it.

A copy of such certificate shall be promptly delivered to the suspect. The law-enforcement officer requiring the test or anyone with such officer at the time if otherwise qualified to conduct such test as provided by this section, may administer the breath test or analyze the results thereof.

§ [54.1-3404](#). Inventories of controlled substances required of certain persons; contents and form of record.

A. Except as set forth in subsection G, every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.

C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.

E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.

Within 30 days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.

G. Each person authorized to conduct chemical analyses using controlled substances in the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science* shall comply with the inventory requirements set forth in subsections A through F; however, the following substances shall not be required to be included in such inventory: (i) controlled substances on hand at the time of the inventory in a quantity of less than one kilogram, other than a hallucinogenic controlled substance listed in Schedule I of this chapter; or (ii) hallucinogenic controlled substances, other than lysergic acid diethylamide, on hand at the time of the inventory in a quantity of less than 20 grams; or (iii) lysergic acid diethylamide on hand at the time of the inventory in a quantity of less than 0.5 grams. Further, no inventory shall be required of known or suspected controlled substances that have been received as evidentiary materials for analyses by the ~~Division of Forensic Science within the Department of Criminal Justice Services~~ *Department of Forensic Science*.

§ [54.1-3431](#). Admission into evidence of certain certificates of analysis.

In any administrative hearing, a certificate of analysis of a chemist, performed in any laboratory operated by the ~~Division~~ *Department* of Forensic Science or authorized by such ~~Division~~ *Department* to conduct such analysis, when such certificate is attested by such chemist, shall be admissible as evidence. A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.

Any certificate of analysis purporting to be signed by any chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.

2. That Article 2 (§§ [9.1-117](#) through [9.1-125](#)) of Chapter 1 of Title 9.1 is repealed.
3. That as of July 1, 2005, the Department of Forensic Science shall be deemed successor in interest to the Division of Forensic Science of the Department of Criminal Justice Services to the extent that this act transfers powers and duties. All right, title and interest in and to any real or tangible personal property vested in the Division of Forensic Science of the Department of Criminal Justice Services shall be transferred to and taken as standing in the name of the Department of Forensic Science.
4. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.
5. That any general fund and nongeneral fund positions at the Division of Forensic Science of the Department of Criminal Justice Services on July 1, 2005 shall be transferred to the Department of Forensic Science to support the changes in organization or responsibility resulting from or required by the provisions of this act.
6. That all rules and regulations adopted by the Department of Criminal Justice Services which are in effect as of July 1, 2005, and which pertain to the subject of this act, shall remain in full force and effect until altered, amended, or rescinded by the Board of Forensic Science.
7. That on and after July 1, 2005, any reference in the Code of Virginia or in the Acts of Assembly to the Division of Forensic Science shall be construed to mean the Department of Forensic Science.