



COMMONWEALTH of VIRGINIA

FORENSIC SCIENCE BOARD RAYMOND F. MORROGH, CHAIRMAN

November 1, 2009

The Honorable Lacey E. Putney
Chair, House Committee on Appropriations
P.O. Box 127
Bedford, VA 24523

The Honorable Janet D. Howell
Co-Chair, State Crime Commission
P.O. Box 2608
Reston, VA 20195-0608

The Honorable Charles J. Colgan
Chair, Senate Committee on Finance
10677 Aviation Lane
Manassas, VA 20110-2701

The Honorable Kenneth W. Stolle
Co-Chair, State Crime Commission
1065 Laskin Road, Suite 203
Virginia Beach, VA 23451

Re: Annual Forensic Science Board Report

Dear Delegate Putney and Senators Colgan, Howell and Stolle:

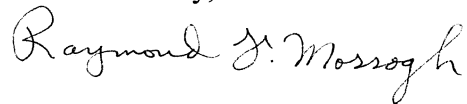
Pursuant to the provisions of Subsection B of § 9.1-1110 of the *Code of Virginia*, the Forensic Science Board shall, by November 1 of each year, review and make recommendations, concerning the following matters:

1. New major programs and plans for activities of the Department of Forensic Science and elimination of programs no longer needed;
2. Policy and priorities in response to agency need;
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 of Forensic Science and the user programs which are served;
5. Rules and Regulations necessary to carry out the purpose and intent of this chapter; and
6. Any recommendations submitted to the Board or the Director by the Scientific Advisory Committee.

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November 1, 2009
Forensic Science Board Report

The 2009 Report of the Forensic Science Board concerning these matters is attached. Please do not hesitate to contact me at (703) 246-2776 if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Raymond F. Morrogh". The signature is written in a cursive style with a large initial 'R'.

Raymond F. Morrogh
Commonwealth's Attorney
County of Fairfax
Chair, Forensic Science Board

Enclosure

cc: The Honorable John W. Marshall
Peter M. Marone
Members, Forensic Science Board
Division of Legislative Automated Systems

rfm/glc

2009 FORENSIC SCIENCE BOARD REPORT
Pursuant to § 9.1-1110.B of the Code of Virginia

1. New major programs and plans for the activities of the Department of Forensic Science (DFS) and the elimination of programs no longer needed

Review of programs and plans; recommendations, if any:

Breath Alcohol Instruments and Training of Operators

After review and recommendation of protocols by the Scientific Advisory Committee (SAC) and approval by the Forensic Science Board (Board or FSB) in August 2008, DFS began deployment of Intox EC/IR II instruments for breath alcohol testing in October 2008. The Intox EC/IR II instruments replaced the Intoxilyzer 5000, which had been used in the Commonwealth for over 12 years. The Intox EC/IR II offers enhanced communication capabilities, and utilizes dry gas as the control with every breath test. Full deployment of 168 new instruments to local, state, and federal enforcement agencies across Virginia was completed by the end of April 2009. To date, the Breath Alcohol Section has trained more than 4,400 operators on the new evidential breath test instrument.

Mitochondrial DNA Program Status

The SAC reviewed the Department's protocols for the mitochondrial DNA testing program and found them to be complete and appropriate. The unit went online in December 2008, and obtained its first mitochondrial DNA hit in the spring of 2009.

Y-STR DNA Testing Protocols

The SAC reviewed and recommended implementation of Y-STR DNA testing protocols, and the Board accepted the SAC's recommendation to adopt this technology at DFS. The unit went online in December 2008, and continues to process cases from around the state.

Transition to Capillary Electrophoresis for DNA Analysis

In April 2008, DFS began the transition from the use of gel technology for DNA analysis to the implementation of a platform for DNA analysis utilizing capillary electrophoresis. Capillary electrophoresis, or CE, is by far the most commonly utilized DNA technology in the country. To accomplish this transition, DFS purchased eight Applied Biosystems Genetic Analyzers (ABI 3130xl) and installed the instruments in its labs.

As required, protocols drafted by DFS scientists for using the new DNA technology were submitted to the SAC for review and discussion. Upon recommendation of the SAC, the Board, on August 12, 2009, approved use of the CE protocols. DFS supervisors and examiners have attended intensive one-week training courses in capillary electrophoresis at Marshall University in West Virginia. With the last of the training sessions being conducted in late October 2009, the

Databank and the four regional laboratories will be online with the new DNA platform by the end of this calendar year. .

Northern Virginia Laboratory Project

A public-private partnership was formed by the Commonwealth of Virginia and Scheer Partners, Inc. of McLean, Virginia, to develop and construct a forensic science laboratory in Prince William County. The partnership delivered the new Northern Virginia Forensic Laboratory on-time and within budget on May 1, 2009. This new 114,000 square foot facility replaces the Fairfax laboratory that DFS and the Northern District Office of the Chief Medical Examiner (OCME) co-occupied for twenty years. DFS and the OCME will continue to serve twenty Northern Virginia jurisdictions from the new location. The DFS space includes separate sections that handle controlled substances, toxicology, trace evidence, forensic biology, latent prints and impressions, and firearms. The building, located in the Innovation Technology Park near George Mason University's Prince William campus, also offers training rooms and conference facilities that may be utilized by other state and local public agencies.

Western Laboratory Expansion

The 2008 Appropriation Act authorized DFS to explore the possible purchase of land for expansion or replacement of its Western Laboratory. On March 31, 2009, Governor Kaine approved funding for the purchase of property adjacent to the Western Laboratory from the Roanoke County School Board, and completion of the purchase is expected before the end of this calendar year. In light of the state revenue picture, there are no immediate plans to develop this property for expansion of the Western Laboratory.

Eastern Laboratory Expansion

Following a formal bid process, a contract has been awarded for renovation of the vacant space on the fifth floor Eastern Regional Laboratory building in Norfolk. Renovation will allow for expansion of the Laboratory into that space by early 2010.

Restructuring of DFS Technical Services

Director Marone informed the Board at its January 14, 2009 meeting that for budgetary and efficiency purposes, the management structure for DFS Technical Services had been reorganized. Under the former structure, eight Sections (Drugs, Toxicology, Trace Evidence, Latents/Imaging, Firearms, Nuclear DNA, Breath Alcohol, and Training Academy) were each headed by a Section Chief. As restructured, the sections were organized into four Programs (Chemistry, Physical Evidence, Biology, and Training & Calibration), each headed by a Program Manager. The Chemistry Program area includes Controlled Substances, Trace Evidence and Toxicology. The Physical Evidence Program area includes Firearms and Toolmarks, Latent Prints, Questioned Documents, Bloodstain Analysis, and Digital and Multimedia Evidence. The Biology Program includes five areas: Mitochondrial DNA, Y-STR DNA, STR DNA, Screening samples for DNA testing, and the DNA databank. The Training & Calibration Program includes the Forensic Science Academy and the Breath Alcohol Section. Each of the Program Managers

provided a brief program report to the Board at its May 13, 2009 meeting. The restructuring of Technical Services resulted in annual savings equal to the annual compensation (salary plus benefits) of the four eliminated positions, or approximately \$527,500.

Publication of Department Protocols

The Director advised Board members at the January meeting that budget reductions had limited the Department's use of contracted Webmaster services. Accordingly, revisions and additions to DFS protocols could not always be published on the DFS website promptly upon issuance, although current protocol information would always be provided upon request. At the request of Board members, agency resources were identified to ensure that new and revised protocols are published on the DFS website within a few days of issuance.

Post Conviction Case Review and Notification Process

In 2005, Governor Mark R. Warner directed the Virginia Department of Forensic Science to review archived serology case files from 1973 to 1988, and to perform DNA testing of biological evidence found in certain of those files. Originally, it was estimated that approximately 165,000 case files from the Central Laboratory should be reviewed. Ultimately, DFS determined that more than half a million case files, from all four DFS labs, needed to be reviewed to ascertain whether any individuals convicted of a certain set of crimes during that fifteen-year period may have been wrongly convicted..

This project, in terms of its scope, has no precedent. To date, approximately 534,000 DFS case files from the 1973-1988 period have been individually reviewed to determine whether there is crime scene evidence in the file. As of October 13, 2009, 2,208 cases have been identified that meet the following criteria:

- the file includes human biological evidence; and
- the file identifies a known suspect.

Of the 2,208 cases, 800 cases also satisfy a third criterion – that a known suspect was consequently convicted of a felony crime against a person.

As of October 13, 2009, DFS was able to report the following data relating to the DNA resting program:

- **829** cases have been sent to the contracting laboratory for DNA testing
- In **747** of the 829 cases, a suspect was convicted of a felony
- In **638** of the felony cases, a suspect was convicted of a crime meeting the National Institute of Justice (NIJ) criteria for grant payment of DNA testing (homicide, rape, or non-negligent manslaughter)
- In **105** of the felony cases, a suspect was convicted of another crime meeting State criteria (other violent crime against a person)
- In **4** cases sent for testing, confirmation of suspect convictions remain pending
- DNA test results have been completed for **288** cases
- Certificates of Analysis have been issued in **182** cases

- In cases for which Certificates have been issued, **24** suspects convicted of NIJ grant-eligible crimes and **15** suspects not convicted of NIJ grant-eligible crimes were not indicated (i.e., eliminated as contributor) on evidentiary samples in the case.
- Hits to DNA profiles in the Virginia/National DNA databanks of persons not named in the case file have been made in **10** of the cases.

State and federal funding have supported the testing program. DFS utilized the entire \$1,422,000 provided by the Governor's Economic Contingency Fund to pay employee wages and the testing of more than 300 cases from February, 2007 to June, 2008, when federal funds became available to pay for testing of an estimated 700 cases through an award from the National Institute of Justice (NIJ). A Cooperative Agreement governing the award of these funds was executed on September 24, 2008.

As of the preparation of this report, the vast majority of testing that has been completed has been of evidence in cases that meet the NIJ criteria for grant payment of DNA testing (a suspect convicted of homicide, rape, or non-negligent manslaughter) and that relate to a convicted person or persons who are currently incarcerated. Deliberate priority has been given to cases relating to persons who are incarcerated. Furthermore, since NIJ grant funding of approximately \$4.5 million was awarded to DFS in the fall of 2008 for testing cases meeting grant criteria, it is intended that these cases will be tested prior to testing the "state-eligible" cases.

Preliminary test results have been returned to DFS from the contract laboratory in 104 of the 105 "state-eligible" cases. In 4 of those cases, complete test results have been obtained and Certificates of Analysis have been issued.

The Board has been informed that no funding is available at present to test any additional state-eligible cases, but that it is the intention of the Department to complete the testing of these cases as well. The Department has indicated the possibility that NIJ grant criteria may be modified in the future to allow for the testing of evidence in additional cases.

A Special Condition of the NIJ award is that DFS ensure that Federal funds made available through the award not supplant State or local funds, but instead are used to increase the amount of funds that would, in the absence of Federal funds, be available from State or local sources for activities funded through this award.

DFS has reported to the Board that no Federal funds have been used in violation of this Special Condition, or for any reimbursement, testing, or retesting of any work on NIJ-eligible cases for which state funds were used, paid, or available. To the extent that the testing of any cases may be charged to the federal grant in error, DFS will adjust its receipt of grant reimbursement through reconciliation. Such reconciliation with the grantor is a common procedure, designed to ensure that grant funds are properly used.

Beginning in the fall of 2008 and throughout 2009, the Department of Forensic Science provided staff support for carrying out the responsibility imposed on the Forensic Science Board,

under language in the 2008 Appropriations Act, to notify convicted defendants of the existence of physical evidence found in the Department's case files and that such evidence is available for DNA testing. Using address information provided by the Department of Corrections and the Virginia State Police (VSP), and upon advice of the Office of the Attorney General (OAG) regarding the method of notification, notification letters were mailed in September and October of 2008 to a total of 556 of the 1,031 convicted persons then believed to be entitled to notification. This round of notification letters resulted in 181 confirmations of notification to the correct person. A significant percentage of these confirmed deliveries were to persons in the custody of the Department of Corrections.

At its October 8, 2008 meeting, the Board voted to recommend to the General Assembly that in its 2009 Session, it amend the 2008 Budget language, or use other expeditious means, to provide a procedure for notification of all relevant convicted persons in the most effective manner.

The Virginia State Police continued to research the best available addresses for persons whose current addresses were previously unknown or who failed to confirm receipt of proper notification in the first round of mailings. Based principally on a review of government records, it also was confirmed that 206 of the convicted persons were deceased. During the first week of December 2008, a second round of mailings was sent to newly-found or updated addresses to 528 of the 845 living persons entitled to notification. By early January 2009, the Board had a total of 317 confirmed notifications (including hand-delivery to 169 inmates, enclosed white postcard confirmations returned, or confirmation from the Mid-Atlantic Innocence Project). A total of 528 notification letters from the two rounds of mailings were returned as "undeliverable," and addresses for 58 persons remained undetermined at that time. Notification letters continued to be mailed throughout 2009, as updated addresses were obtained.

Prior to the 2009 Session of the General Assembly, the Virginia State Crime Commission (VSCC) reviewed the progress of the Board's notification efforts. The VSCC recommended legislation to allow the Board to utilize the services of pro bono attorneys and other volunteers to assist with the notification project. The legislation that was introduced by Senator Ken Stolle, Senate Bill No. 1391, was based largely on a consensus draft prepared at the Crime Commission's request by representatives of the VSCC, DFS, VSP, and OAG. SB 1391 was enacted as emergency legislation and signed into law by Governor Kaine on March 23, 2009.

At its first meeting following the legislative session on May 13, 2009, the Board adopted a work plan for implementing the legislation and utilizing pro bono attorneys and other volunteers to assist in the notification project. The Executive Director of the Crime Commission, who is a member of the Board, became chair of a Notification Subcommittee. The Subcommittee, with assistance from Crime Commission staff, has responsibility for coordinating the participation of pro bono volunteers. The Mid-Atlantic Innocence Project accepted the task of developing and implementing a training program for the volunteers that commenced in August 2009. A total of seven training sessions have been conducted at various locations around the Commonwealth. The Virginia State Bar approved the training program for two hours of continuing legal education credit, and the OAG prepared the waiver of liability and confidentiality agreement forms required of participants under the new law. DFS has provided

to the Notification Subcommittee Chair its database records identifying cases in the testing program and all information in its possession pertaining to the identification of persons entitled to notification.

As of the preparation of this report, 881 living persons have been identified as entitled to notification. Confirmed notification to 336 such persons has been accomplished.

The pro bono volunteers will have various assignments, including confirming conviction status of case suspects, determining present addresses for persons not previously notified and making personal delivery of notification letters. On October 1, 2009, pursuant to Senate Bill No. 1391, the progress of notification efforts by volunteers was reported to the Board through the Notification Subcommittee. On December 1, 2009, the Board shall present a report to the General Assembly on the status of the notification effort.

2. Policy and priorities in response to agency needs

Grants

DFS has received or is receiving grant funding under the following awards:

2007 Forensic DNA Backlog Reduction Program –\$731,400 (of the total award of \$1,019,118) was expended in FY09. The full \$1,019,118 was drawn down during FY09.

FY 08 Forensic DNA Backlog Reduction Program - 2008-DN-BX-K036, \$ 942,280 from the National Institute of Justice (NIJ). Funding provided to reduce the forensic casework backlog in the Forensic Biology Section.

FY 09 Forensic DNA Backlog Reduction Program – 2009-DN-BX-K080, \$950,167 from NIJ to reduce the forensic casework backlog in the Forensic Biology Section.

2007 Convicted Offender/Arrestee DNA Backlog Reduction Program – \$89,333 (of the total award of \$360,000) was expended in FY09. The full \$360,000 was drawn down in FY09.

FY 09 Convicted Offender/Arrestee DNA Backlog Reduction Program – 2009-DN-BX-K020, \$171,579 from NIJ to eliminate the backlog in the DNA data bank.

2008 Byrne Memorial Justice Assistance/Criminal Justice System Improvement Grants – \$83,836.35 in FY09 for a GC/MS unit, \$60,000 of which were federal funds. DFS was also reimbursed the \$60,000 by DCJS in FY09.

2008 Paul Coverdell National Forensic Science Improvement Program - 2008-CD-BX-0044, \$59,000 sub-granted from the OCME to purchase equipment and supplies for the Controlled Substances and Toxicology Sections statewide.

Post-Conviction DNA Testing Assistance Program - 2008-DN-BX-K128, \$4,520,295 from the NIJ. Funding provided to pay the contract fees associated with the DNA analysis of a minimum of 700 post-conviction cases.

Research and Development in the Area of Controlled Substances Detection and Analysis - 2008-DN-BX-K140, \$49,774 from NIJ. Funding provided to develop a Thin Layer Chromatography Method for the separation of enantiomers using chiral mobile phase additives.

FY 08 Using DNA Technology to Identify the Missing - 2008-DN-BX-K154, \$443,682 from NIJ. DFS is partnering with the OCME in a joint effort to conduct DNA analysis and profiling of human remains currently in OCME storage.

2009 Highway Safety Grant Program – 154-AL-2009-59170-3473, \$40,674.47 from DMV to conduct breath alcohol training to law enforcement officers statewide on the new breath test equipment.

2009 Paul Coverdell Forensic Science Improvement Grant Program - \$164,951 to DFS as a sub-grantee of the OCME for renovation of existing space at the Central Laboratory to create lab work space and for the modification of office space.

2010 Highway Safety Grant Program – K8-2010-50105-3725, \$136,469 from DMV to conduct breath alcohol training for law enforcement officers statewide.

FY 09 Solving Cold Cases with DNA - \$490,960 from the NIJ to pay the contract fees associated with the DNA analysis of approximately 120 cold cases and for the travel costs for DFS DNA scientists to travel to the contract laboratory to conduct site visits.

Grant Application and Acceptance Process

In response to a concern of at least one Board member relating to the process by which the Board approves applications for and acceptance of grant awards under § 9.1-1110.A.9 of the *Code of Virginia*, the Department developed a grant tracking tool to ensure compliance with grant application and acceptance requirements. A tracking form is now used to record dates on which grant applications are approved by the Board or, when required, by the Chair and Co-chair and, similarly, when grant awards are formally accepted. The form also records when a grant solicitation or other grant information is sent to a Board member upon request.

3. General Fiscal Year Operational Budget and any Major Changes in Appropriated Funds

Budget Review

The final DFS FY 09 general fund appropriation for operating expenses was \$34,454,701, which included Governor's spending reductions totaling approximately \$1.27

million that were a combination of FY 08 reductions and an additional 0.5% reduction. The final DFS FY 09 federal fund appropriation (federal grants) was \$4,666,659.

The current DFS FY 10 general fund appropriation for operating expenses is \$33,074,256, which includes approximately \$1.9 million base budget reductions initiated in prior fiscal years, a continuation of the 0.5% reduction that was not made to the base budget, and approximately \$1.09 million in Governor’s current year spending reductions. To achieve the Governor’s spending reductions, DFS has continued the previously implemented strategies of holding positions open, reducing expenses for wage employees, and delaying the purchase of scientific (GC/MS instruments) and IT equipment. The delay in the purchase of GC/MS instruments was accomplished with no detriment to laboratory capabilities since DFS extended the normal service life of existing instruments through one-time upgrades to their computer and software systems, DFS will also delay certain payments until FY 11 to achieve the Governor’s most recent spending reduction. The current DFS FY 10 federal fund appropriation is \$3,026,279.

4. Actions to foster and promote coordination and cooperation between the Department and the user programs which are served

Review of programs; recommendations, if any:

Conferences, Presentations, etc.

DFS representatives have attended regional meetings and statewide conferences of its user agencies to give presentations on relevant forensic science issues and be available for feedback and comment on the services that the Department is providing. This included meetings and conferences for investigators, sheriffs, chiefs of police, and commonwealth’s attorneys. DFS also continues to organize the Virginia Forensic Science Academy Annual Retraining Seminar, which provides Academy graduates updates on DFS services and practices. This seminar also serves as a mechanism for DFS to receive feedback on the services it provides to user agencies.

Backlogs

Status of Backlogs as of October 1, 2009

Section	Ending Backlog (cases)	Average Turn Around Time (in days)	Cases Over 30 days
Controlled Substances	1300	18	11
Firearms	763	54	408
Forensic Biology	1385	365	1062
Latent Prints	1003	80	698
Questioned Documents	17	26	1
Toxicology	1171	45	638
Trace Evidence	377	69	281

Response to Decision in *Melendez-Diaz v. Massachusetts*

On June 25, 2009, the Supreme Court of the United States issued a decision in *Melendez-Diaz v. Massachusetts*. The *Melendez-Diaz* opinion held a Certificate of Analysis issued by the state forensic laboratory in Massachusetts could not stand alone as evidence of the nature and weight of a controlled substance in a criminal case for drug distribution. Rather, the Supreme Court opined that the analyst must testify in person in order to preserve the defendant's Sixth Amendment right to confront witnesses against him. The majority opinion also favorably discussed "notice-and-demand" statutes, which require the prosecutors to give pretrial notice of their intent to proceed on a Certificate of Analysis alone and gives the accused a specific period of time prior to trial to object and demand the presence of the analyst.

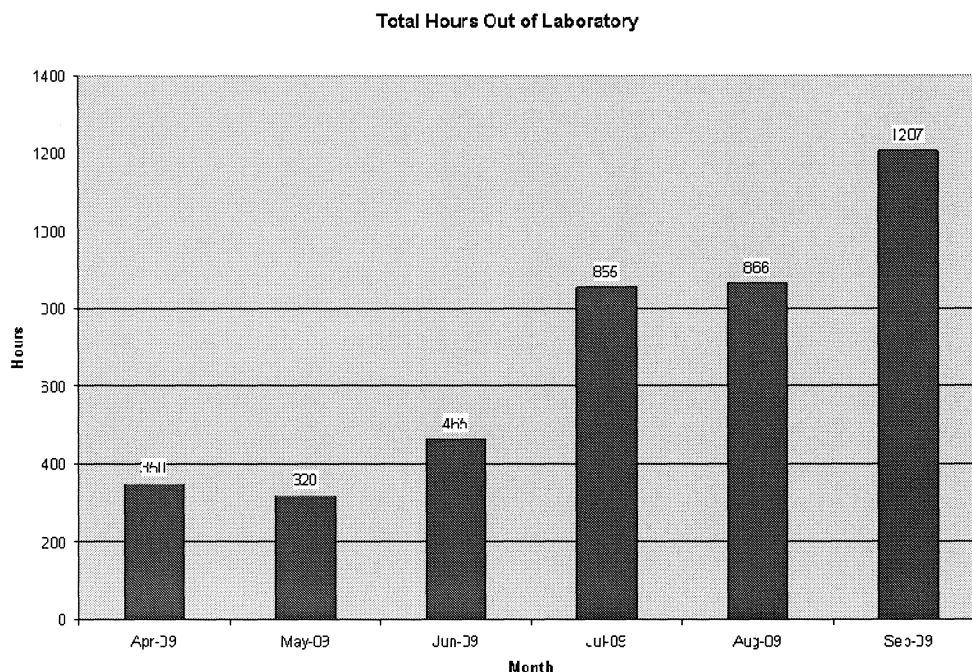
In the wake of this decision, the DFS experienced a swift and measurable impact. The number of subpoenas for analysts to testify in criminal trials tripled. The amount of time analysts are required to spend out of the laboratory, on court travel and appearances, rose dramatically. For example, the Controlled Substances Section analysts spent more time in court September 2009 than in the entire preceding eleven months combined.

Governor Kaine called a Special Session of the General Assembly on August 19, to consider legislation aimed principally at addressing Virginia's "notice-and-demand" statutes. A unanimous Senate and House of Delegates passed legislation intended to reduce the impact of *Melendez-Diaz* on various state agencies. On August 21, Governor Kaine signed this emergency legislation into law.

As it applies to DFS, the legislation established rules requiring the prosecution to notify a defendant of the Commonwealth's intention to introduce a Certificate of Analysis of laboratory or DUI breath-test results. The defendant may object to the admission of the Certificate and require that the person who performed the analysis or examination testify. If the defendant does not object he waives his objection to the introduction of the Certificate, and it may be offered into evidence without the appearance and testimony of the analyst. If the defendant objects and the person who performed the analysis or examination is unavailable to testify in the Commonwealth's case-in-chief, the court shall order a continuance, not to exceed specified time periods. The speedy trial statute is tolled during such continuances. There is also a provision for a continuance if the defendant did not receive timely notice. The notice procedure as constructed in this measure is intended to apply to criminal trials and hearings but does not apply in preliminary hearings. When a Certificate is offered into evidence, the defendant's right to call the person who performed the analysis as an adverse witness at the Commonwealth's expense is preserved. Finally, information on breath-test instrumentation accuracy is removed as a component of the operator's attestation clause in the DUI breath Certificate of Analysis. This is intended to remove the possibility that documents related to instrument calibration will be considered "testimonial" in nature.

As of October 1, the Department had not seen significant evidence of relief in subpoena rates, time spent out of the laboratory and court travel costs. Indeed, the numbers of subpoenas received by DFS analysts in September 2009 remained approximately three times higher than the average monthly number of subpoenas received prior to the issuance of the decision. The

number of hours spent by DFS analysts out of the laboratory, traveling to court appearances, has similarly increased (see Ex.1 below). The greatest impact has been on the Controlled Substances, Toxicology and Breath Alcohol Sections. To meet the increased demands, DFS has been working with the Administration to identify additional resources needed to support increased court travel expenses and necessary overtime compensation.



Ex. 1

Toxicology Department Staffing

With the reorganization of Technical Services in the fall of 2008, the Toxicology Section Chief position was abolished. The incumbent elected not to seek continued employment with DFS. In December 2008, an additional toxicology position was vacated through the retirement of an employee. Both of these positions were located in the Central Laboratory but provided statewide scientific and testimonial support.

During 2009, three Central Laboratory Toxicology staff members resigned from DFS to accept other opportunities: a toxicologist accepted a non-forensic toxicology position in another state agency; a toxicology supervisor accepted a management position in a private laboratory; and a forensic scientist accepted a technical position in a private clinical laboratory.

DFS has addressed these staffing changes as follows:

- i. Recruited and hired a toxicologist for the Central Laboratory who began employment in May 2009;

- ii. Initiated a recruitment process to fill the Central Laboratory toxicology supervisor position;
- iii. Promoted two Forensic Laboratory Specialists to Forensic Scientists, allowing these staff, once they have completed training, to fulfill expanded roles;
- iv. Transferred two Controlled Substances Forensic Scientists to the Toxicology Section; and .
- v. Re-opened the recruitment process for two additional toxicologists for the Eastern and Northern Laboratories.

These measures are intended to afford more resources to provide interpretive pharmacological testimony and support of the Office of the Chief Medical Examiner in their death investigations.

5. Rules and Regulations necessary to carry out the purposes and intent of this chapter

Review of new rules and regulations; recommendations, if any:

Regulations for Obtaining Information From the DNA Data Bank and Procedures for Verification and Authorization of Persons Requesting Information From the Data Bank (6 VAC 40-60)

These regulations were proposed by the Board in 2007 to comply with § 19.2-310.5 of the *Code of Virginia*, which requires that regulations be adopted by the Department of Forensic Science outlining: 1) methods of obtaining information from the data bank and 2) procedures for verifying the requestor’s identity and authority. The public comment period on the proposed regulation ended on January 23, 2009. Only one comment was received; it reflected an opinion that the regulation does “does not do enough to protect the privacy of Virginians.” The final regulation was presented to the Board at its October 14, 2009 meeting, and the Board voted to defer consideration to its January 6, 2010 meeting.

6. Recommendations submitted to the Forensic Science Board or the Director by the Scientific Advisory Committee

Scientific Advisory Committee recommendations and actions:

- That DFS acquire a Liquid Chromatography/Mass Spectrometry/Mass Spectrometry (LC/MS/MS) instrument from the Division of Consolidated Laboratory Services, Neonatal Screening unit, for use in forensic analysis.
- That DFS draft a proposal regarding notifying the SAC of new DFS protocols and manuals.

- That, in connection with the impending DNA platform change, a new subcommittee of the SAC be formed to review the validations and protocol manuals of the PowerPlex 16 on the 3130xl instruments.
- That the Bylaws of the SAC be amended to allow for the election of a Vice-Chair of the SAC.
- After consideration of validation data and recommendation by the SAC subcommittee, that the Capillary Electrophoresis (CE) protocols for the Powerplex 16 be adopted by the Board for use in both DFS casework and for the DNA databank.
- That in light of the National Research Council's National Academy of Sciences Report on *Strengthening Forensic Science in the United States*, that the Chairman of the SAC and Director Marone prepare a proposed work plan for the systematic review of all DFS protocols by the SAC.

Forensic Science Board recommendations and actions:

- That a subcommittee of the Board, chaired by the Executive Director of the Virginia State Crime Commission, be established to carry out the responsibilities imposed by Senate Bill No. 1391 (2009) to utilize the services of pro bono attorneys and other volunteers for the purpose of completing the notification of convicted persons whose DFS laboratory case files contained physical evidence suitable for DNA testing.
- That that the Capillary Electrophoresis (CE) protocols for the Powerplex 16 be adopted for use in both DFS casework and for the DNA databank.
- That in light of the National Research Council's National Academy of Sciences Report on *Strengthening Forensic Science in the United States*, DFS and the Chair of the SAC prepare a proposed work plan for the systematic review of all DFS protocols by the SAC.
- At its August 12, 2009 meeting, the Board welcomed four new members to the Board: the Honorable Henry L. Marsh II of the Senate of Virginia and the Honorable William R. Janis of the Virginia House of Delegates, added to the Board pursuant to Senate Bill No. 1435 (2009) and two members appointed by Governor Kaine, Fairfax Commonwealth's Attorney Raymond F. Morrogh and Caroline County Sheriff A.A. Lippa, Jr. Mr. Morrogh was elected Chair of the Board and member Robert Jensen, Vice-Chair.

Attachment A

FORENSIC SCIENCE BOARD MEMBERS

- Mr. Steven. D. Benjamin – Term: ending 6/30/2013
Criminal defense attorney having specialized knowledge in the area of forensic sciences
- Dr. Leah Bush – Term: period in office or employment
Chief Medical Examiner
- Dr. Dale Carpenter – Term: ending 6/30/2010
Member of the Scientific Advisory Committee
- Mr. Leonard G. Cooke – Term: period in office or employment
Director of the Department of Criminal Justice Services
- Ms. Marla G. Decker – Term: period in office or employment
Designee for Attorney General Robert F. McDonnell
- Colonel W. Steven Flaherty – Term: period in office or employment
Superintendent of the State Police
- Ms. Jo Ann Given – Term: ending 6/30/2013
Member of the Scientific Advisory Committee
- Mr. Karl R. Hade – Term: period in office or employment
Executive Secretary of the Supreme Court of Virginia
- Ms. Kristen J. Howard – Term: period in office or employment
Designee of the Co-Chairs of the Virginia State Crime Commission
- The Honorable William R. Janis, (Delegate Albo designee) – Term: period in office or employment,
Chairman of the House Committee for Court of Justice or his designee
- Mr. Robert Jensen – Term: period in office or employment
Chairman of the Board of the Virginia Institute of Forensic Science and Medicine
- Sheriff A.A. Lippa, Jr. – Term: ending 6/30/2013
Member of Law Enforcement
- The Honorable Henry L. Marsh III – Term: period in office or employment
Chairman of the Senate Committee for Court of Justice or his designee
- Mr. Raymond F. Morrogh – Term: ending 6/30/2013
Member of the Virginia Commonwealth's Attorney's Association
- Ms. Elizabeth S. Russell – Term: period in office or employment
Executive Director of the Virginia Board of Pharmacy

Attachment B

SCIENTIFIC ADVISORY COMMITTEE MEMBERS

- Dr. Jose Almirall – Term: ending 6/30/2010
Trace Evidence Scientist
- Dr. Frederick Bieber – Term: ending 6/30/2011
Population Geneticist
- Dr. John M. Butler – Term: ending 6/30/2013
Molecular Biologist
- Dr. Dale Carpenter (Chairman) – Term: ending 6/30/2010
Member of the International Association of Chemical Testing
- Ms. Jo Ann Given – Term: ending 6/30/2013
Member of the American Society of Crime Laboratory Directors
- Dr. D. Christian Hassell – Term: ending 6/30/2011
Director of a Private or Federal Forensic Laboratory
- Dr. Dan Krane – Term: ending 6/30/2010
Forensic Chemist
- Mr. Pete M. Marone – Term: period in office or employment
Director of the Department of Forensic Science
- Dr. Alphonse Poklis – Term: ending 6/30/2010
Toxicologist certified by the American Board of Forensic Toxicologists
- Mr. Thomas L.G. Price – Term: ending 6/30/2013
Member of the Board of the Association of Firearms and Toolmark Examiners
- Dr. Norah Rudin – Term: ending 6/30/2011
Forensic Biologist
- Mr. Kenneth Smith – Term: ending 6/30/2011
Member of the Board of the International Association for Identification
- Ms. Jami J. St. Clair – Term: ending 6/30/2011
Quality Assurance Regulation and Monitoring