



# COMMONWEALTH of VIRGINIA

## FORENSIC SCIENCE BOARD

Jo Ann Given, Chair

October 22, 2013

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

The Honorable Walter A. Stosch  
Chair, Senate Committee on Finance  
Innsbrook Centre  
4551 Cox Road, Suite 110  
Glen Allen, Virginia 23060-6740

The Honorable Thomas K. Norment, Jr.  
Chair, Virginia State Crime Commission  
P.O. Box 6205  
Williamsburg, VA 23188

### **Re: Annual Forensic Science Board Report**

Dear Delegate Putney and Senators Stosch and Norment:

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;

October 22, 2013  
Annual Forensic Science Board Report

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.

The 2013 Report of the Forensic Science Board concerning these matters is attached. Please do not hesitate to contact me through the Department of Forensic Science Director's Office if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Jo Ann Given". The signature is written in a cursive style with a large initial "J" and "G".

Jo Ann Given  
Chair, Forensic Science Board

Enclosure

cc: The Honorable Marla G. Decker, Secretary of Public Safety  
Bryan M. Rhode, Deputy Secretary of Public Safety  
Members, Forensic Science Board  
Linda C. Jackson, Director, Department of Forensic Science  
Division of Legislative Automated Systems

jag/gdj

**FORENSIC SCIENCE BOARD**  
**2013 ANNUAL REPORT**  
*Pursuant to § 9.1-1110.B of the Code of Virginia*

Section 9.1-1110.B of the Code of Virginia provides that the Forensic Science Board (“Board” or “FSB”) shall report by November 1 of each year concerning the following six topics:

**(1)**

***NEW MAJOR PROGRAMS AND PLANS FOR THE ACTIVITIES OF THE DEPARTMENT  
[OF FORENSIC SCIENCE] AND THE ELIMINATION OF PROGRAMS NO LONGER NEEDED***

Major programs and plans of the Department of Forensic Science (“Department” or “DFS”) reviewed by the Board in calendar year 2013; recommendations, if any:

**Post-Conviction DNA Testing Program and Notification Project**

***Post-Conviction DNA Testing Program***

The Post-Conviction DNA Testing Program is by no means “new,” but it and the related project assigned to the Board to notify persons who had been convicted of crimes in connection with the old cases included in the Program continue to be a major undertaking for the Department. The Program was initiated in 2005 by former Governor Mark Warner, who directed DFS to perform DNA testing of biological evidence identified in certain archived serology case files from the period 1973 through 1988. Past Annual Reports of the Forensic Science Board have detailed the history and evolution of this important and unprecedented project. To date, eleven men, each of whom had been convicted of violent felonies and served periods of incarceration, have been exonerated in Virginia as a result of DNA testing. Seven of the eleven have received gubernatorial pardons or have been granted Writs of Actual Innocence based on DNA testing conducted under this Program. Once again, this annual summary will not reiterate the Program’s history in detail but will highlight developments presented to the Board during the past year.

From mid-2008 until December 31, 2012, the DNA testing of old case evidence in the Program was supported through a federal grant of approximately \$ 4.5 million from the National Institute of Justice (NIJ). The grant paid costs associated with the DNA testing of identified biological evidence in old laboratory case files that included the name of at least one known suspect who subsequently was convicted in that case of a “violent felony offense under state law.” By the expiration of the grant, the testing of evidence from 816 old cases had been completed and certificates of analysis were issued in those cases to the investigating law enforcement agencies that originally submitted the evidence to DFS and to the Commonwealth’s Attorneys serving those respective jurisdictions. Still, on January 1, 2013, there remained 435 old cases with saved samples of biological evidence but for which no information confirmed that the case resulted in a conviction for a state violent felony crime. There were also 368 persons who were known to have been convicted in connection with cases

included in the Program, cases in which evidence was subjected to DNA examination, but who could not be notified about the Testing Program because their addresses, and whether in fact they were still living, were unknown. A small number of volunteer attorneys and other *pro bono* volunteers had agreed to assist with conviction research and with locating and notifying the remaining convicted persons whose case evidence had been tested. These volunteers provided some marginal assistance developing information from which conviction information could be confirmed. More importantly, however, the staff of the Virginia State Crime Commission (VSCC), led by Board Notification Subcommittee Chair Kristen Howard, invested significant time and effort during 2013 to obtain conviction records from courthouses across the Commonwealth. They also utilized “people-finder” software and online searching in support of that effort, as well as to locate last-known addresses for a number of the previously convicted individuals requiring notification.

At the quarterly meeting of the Forensic Science Board on October 16, 2013, DFS presented the following updated data relating to the progress of the Post-Conviction DNA Testing Program:

<b>Case files identified with evidence suitable for DNA testing</b>	<b>3,052</b>
<b>Cases with evidence and at least one named suspect</b>	<b>2,204</b>
<b>Cases with evidence and at least one named suspect confirmed convicted of a state violent felony offense</b>	<b>845</b>
<b>Cases out of program scope based on known conviction information</b>	<b>934</b>
<b>Cases remaining with unconfirmed conviction information</b>	<b>425<sup>1</sup></b>
<b>Program-Eligible Cases (state violent felony convictions)</b>	
<b>Total Number of Program-Eligible Cases</b>	<b>845</b>
<b>Cases in which certificates of Analysis had been issued</b>	<b>842</b>
<b>Total Number of Certificates of Analysis issued</b>	<b>1,008</b>
<b>Cases tested but not yet reported</b>	<b>2</b>
<b>Cases awaiting testing</b>	<b>1</b>

DNA testing completed in **842** cases reflects the following results:

<b>Suspect Convictions for state violent felony crimes</b>	<b>944</b>
<b>Convicted suspect “eliminations / not indicateds”</b>	<b>81</b>
<b>Convicted suspects “not eliminated”</b>	<b>247</b>
<b>Convicted Suspects From Whom Known Samples are Needed</b>	<b>142</b>
<b>Convicted Suspects Whose Cases had Insufficient Scientific Data Upon Which to Draw a Conclusion</b>	<b>474</b>

Also at the October 16, 2013 Board meeting, the Board’s Notification Subcommittee reported the contribution of the VSCC staff in substantially completing the collection of records needed to determine whether violent felony convictions had occurred in the more than 400 remaining

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<sup>1</sup> This number does not take into account the fact that data was provided to DFS shortly before the October 16, 2013 Board meeting reflecting the results of conviction research by the VSCC staff in virtually all of these cases. When review of this data is completed, it is expected that both additional Program-eligible cases and additional out-of-Program-scope cases will be confirmed.

cases with saved evidence. Turned over to DFS for review, those records are expected to result in the identification of the final group of cases to be deemed eligible for testing under the Program criteria.

### ***Convicted Suspect Notification Project***

Since 2008, the Department of Forensic Science has provided staff support to the Forensic Science Board to carry out the responsibility assigned to the Board by the General Assembly to notify convicted case suspects of the existence of physical evidence located in their old DFS case files and that such evidence was available for DNA testing. The history and progress of the convicted suspect notification project has been reported in detail in previous Annual Reports of the Forensic Science Board. Briefly, however, the Board became responsible for providing notice of the Post Conviction DNA Testing Program to all persons convicted in cases that met all of the following criteria: (i) evidence was submitted to DFS for forensic investigation from 1973 through 1988, (ii) samples of evidence were retained in the case files, and (iii) at least one suspect was confirmed to have been convicted of a state violent felony crime. Initially, information provided by the Department of Corrections, State Police, and other public records was used to locate recent address information for convicted persons requiring notification. Notifications letters have been sent in such instances via First Class and Certified US Mail. In some instances, volunteer attorneys accepted case assignments to locate and, if successful, notify convicted persons of the Testing Program.

Given the passage of 25 to 40 years since these case investigations were opened and the minimal information provided to DFS about named suspects, however, it has proven very difficult to determine the status and location of many of the individuals that the General Assembly intended receive notice. Public records have repeatedly been reviewed to try to locate current addresses of persons for whom notification was not confirmed. In more recent years, online “people finder” subscription databases also were used.

The Board has been advised of the progress of the Notification Project at each of its quarterly meetings. On October 16, 2013, the following updated statistics were reported to the Board:

<b>Suspect Convictions in Program-eligible Cases</b>	<b>957</b>
<b>Notifications Required to Convicted Suspects Believed Still Living</b>	<b>732</b>
<b>Confirmed Notifications to Convicted Suspects Believed Still Living</b>	<b>376</b>
<b>Undelivered / Unconfirmed Notifications</b>	<b>356</b>
<b>Cases in which Certificates of Analysis have been issued</b>	<b>842</b>
<b>Letters to suspects with known addresses advising that Certificates are available</b>	<b>390</b>
<b>Certificates provided to suspects/attorneys upon request</b>	<b>230</b>

DFS continues to send each Certificate of Analysis that is issued reflecting DNA test results to the original investigating agency and the relevant Commonwealth’s Attorney. DFS and the VSCC staff will continue to support the Board in its effort to notify all convicted persons of the availability of DNA test results. State agencies that have access to useful “people-finder”

software and online databases will be asked to provide assistance in locating current or last known addresses for persons requiring notification.

The Mid-Atlantic Innocence Project (MAIP), which has assisted the Board since 2008 by providing legal advice and assistance to convicted persons notified about the Testing Program and by coordinating and training *pro bono* attorneys and other volunteers to help make notifications, recently offered to coordinate a *pro bono* project to locate and notify convicted person whose known DNA samples are needed to complete the examinations of their old case saved evidence (“Need Knowns”). Notification in such cases would include offers to assist the individual in determining whether or not to provide a DNA sample for analysis. A work plan for this project was recommended to the Board by its Notification Subcommittee at the October 16, 2013 meeting. Notification Subcommittee Chair Kristen Howard explained that the volunteer attorneys recruited through the MAIP offer will be required to sign the Confidentiality Agreements and Liability Waivers asked of volunteers previously. It is anticipated that MAIP volunteers will be asked to help locate approximately 65 case suspects who are believed still living and who have not previously been notified. DFS will provide case information needed by volunteers. As established in 2012 in connection with a procedure for disclosing, pursuant to Freedom of Information Act requests, Certificates of Analysis relating to convicted persons “eliminated/not indicated” by Post-Conviction program DNA testing, case information will not be disclosed if the relevant Commonwealth’s Attorney advises that disclosure could jeopardize an on-going criminal investigation. The Board voted unanimously to approve accepting the MAIP’s offer of assistance and to move forward with the plan to make it a priority to locate and inform the persons whose known samples are needed to complete DNA testing of their old case evidence.

### **DNA Population Statistical Calculations**

DFS first advised the Board in 2011 about revised national guidelines for forensic DNA interpretations that would affect certain types of DNA mixture interpretations because the guidelines recommended that data below a certain threshold should not be used in the population probability calculations. That first year, DFS identified approximately 375 recently completed cases in which the former DNA mixture statistical calculation was utilized and estimated that, on a continuous bases, it works approximately 15 cases per month that would be affected by the revised national guidelines.

To accommodate the revised guidelines, DFS entered into a contract with a private consulting firm, Cybergenetics (CG), to calculate a population statistic (“Likelihood Ratio” or “LR”) consistent with the revised DNA interpretation guidelines and to provide case reports for Virginia forensic DNA cases that could be submitted into evidence at trial. An expert from the company would testify regarding the statistical calculation, should that be needed. In addition, DFS acquired from Cybergenetics the necessary computer software (“TrueAllele”), hardware, and training so that DFS scientists could generate their own LR calculations in applicable DNA mixture cases. Four DFS staff members commenced training in January 2012, and soon thereafter, the staff began the necessary validation of the TrueAllele software for use by DFS in

casework. It was also reported to the Board that the Department initiated an evaluation and validation of a second widely-used software product, "Armed Xpert."

During 2013, the Department's Scientific Advisory Committee (SAC) DNA/Biology Subcommittee was informed of the validation processes for both TrueAllele and Armed Xpert. The Subcommittee reviewed the validation study and procedures relating to the application of TrueAllele to DFS casework. At the SAC's October 15, 2013 meeting, the full SAC concurred with the Subcommittee's recommendation that the validation of TrueAllele be accepted. At the Forensic Science Board meeting on October 16, 2013, the Board approved a motion accepting the recommendation of the SAC that TrueAllele be approved for use by the Department.

### **Facility Expansion and Renovation**

#### ***Eastern Laboratory***

The multi-phase renovation of space at the Eastern Laboratory building in Norfolk that began in 2011 is expected to be completed by the end of 2013. In all, the renovations included expanded facilities for Administrative Offices and the Latent Prints, Firearms, and Biology Sections; reconfiguration of the laboratory parking lot to increase the number of parking spaces; and renovations to accommodate expansion of the Toxicology and Controlled Substances Sections.

#### ***Central Laboratory***

A formal Needs Assessment and Feasibility Study relating to potential expansion of the Central Laboratory facility in Richmond was completed in 2013 and submitted to the Department of Planning and Budget. The report includes the needs for both DFS and its co-located tenant, the Office of the Chief Medical Examiner.

#### ***Western Laboratory***

The Western Laboratory in Roanoke was opened in 1994 and by 2008, had outgrown its space. The Laboratory site was expanded in November 2009 with the purchase of adjacent property from Roanoke County School Board. In 2012, the prospect of laboratory expansion was accelerated by the General Assembly with the inclusion of pre-planning funding in the FY 13-14 Biennial Budget. Expansion plans were developed and a "contractor at risk" designated. Groundbreaking for the expansion is anticipated before the end of CY 2013.

#### ***Public Safety Training Center***

The Department of Forensic Science has acquired the use of a portion of land at the former Hanover Juvenile Correctional Facility, now repurposed as a training area for a number of Public Safety agencies. DFS will have double-perimeter fencing installed to protect from wildlife intrusion an area that it intends to use for Forensic Science Academy crime scene investigation field exercises.

**(2)**  
**POLICY AND PRIORITIES IN RESPONSE TO AGENCY NEEDS**

On February 25, 2013, Linda C. Jackson became the Director of the Department of Forensic Science, succeeding Peter M. Marone who retired. In May 2013, at the first meetings of the SAC and the Board following her appointment, Director Jackson provided each body an overview of the Strategic Goals and Priorities established for DFS in response to a direction from the Secretary of Public Safety to all Public Safety agencies. Throughout the remainder of the year and at subsequent meetings of the SAC and the Board, these priorities served to frame reports of the Director and discussions about how DFS was addressing its most pressing agency needs. The Department’s Strategic Priorities in 2013 were:

- To improve the timeliness of Toxicology and Controlled Substances analyses
- To improve the case documentation of Latent Print examinations
- To enhance the Department’s external communications
- To engage DFS personnel in ongoing training

Accordingly, the policies and priorities of the Department reviewed by the Board in 2013 included the following:

**Priority: Improving Timeliness**

**Status of Backlogs by Section: Comparing September 2013 to September 2012**

Section	Cases Received (2013)	Cases Received (2012)	Cases Completed (2013)	Cases Completed (2012)	Ending Backlog (cases) (2013)	Ending Backlog (cases) (2012)	Average Turnaround Time (days) (2013)	Average Turnaround Time (days) (2012)
Controlled Substances	2512	2453	3533	2420	3731	2759	52	32
Firearms	440	363	406	417	664	325	46	30
Forensic Biology	374	324	365	298	850	1000	81	84
Latent Prints	302	255	299	342	791	392	72	50
Questioned Documents	20	23	24	26	16	20	30	26
Toxicology	824	790	799	1100	1449	1783	55	74
Trace Evidence	63	53	82	94	119	67	55	52

Although simply comparisons of two monthly “snapshots,” the Section backlog data from September 2012 and September 2013 reflect some of the challenges and successes of the past year. For example, the backlog and turnaround times have improved in the Toxicology Section with the implementation of decentralized DUI/DUID testing and the completed training of several new Toxicology personnel. DFS continues, however, to focus on improving turnaround times for Toxicology analyses to better meet the needs of the Office of the Chief Medical Examiner (OCME) and other user agencies.

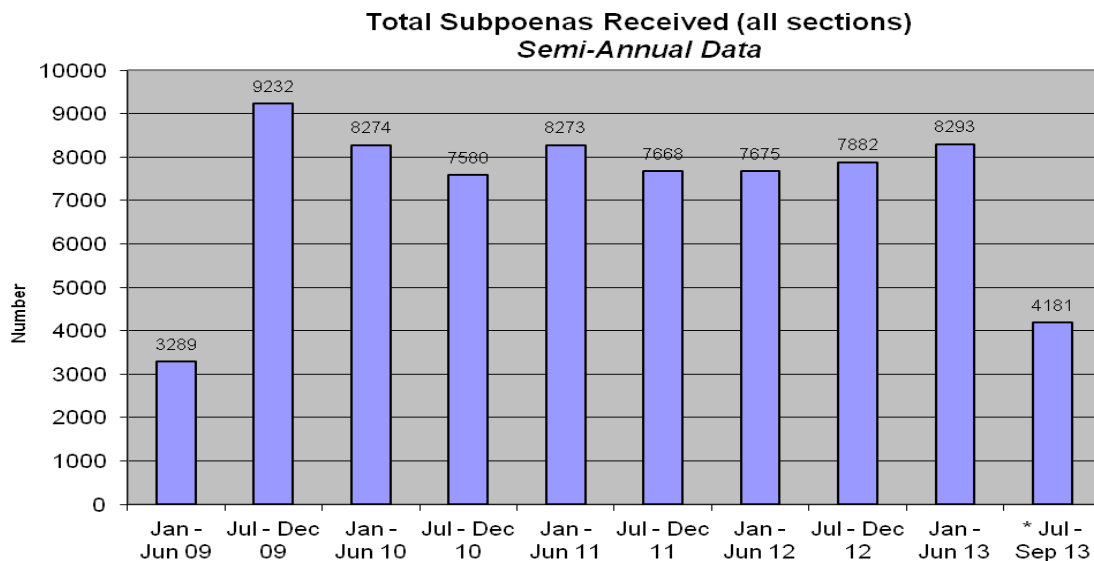


On the other hand, turnaround times increased in the Latent Print Section, which was entirely anticipated as the Section installed, validated and fully trained staff to use the on-screen comparison capability of new Mideo Technology software. Mideo was fully implemented for casework in September 2013, and Latent Print turnaround times are expected to return to pre-implementation levels as a result.

As regularly reviewed with the Board, backlogs and turnaround times in the Controlled Substances Section have increased over the past year due to examiners' significant time out of the laboratory for court testimony and the dual-impact of *increases* in the number cases requiring *more complex* analyses, such as those involving clandestine methamphetamine laboratories and the growing number of emerging drugs, *i.e.*, the synthetic cannabinoids and research chemicals.

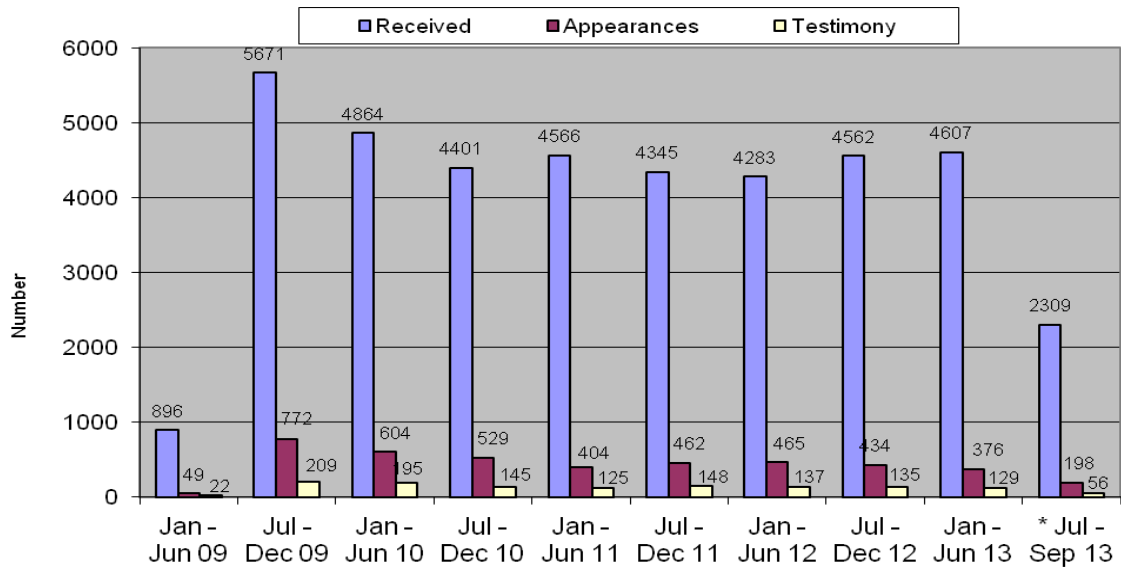
### Factors Affecting DFS Workloads and Backlogs

**Melendez-Diaz v. Massachusetts** The decision of the Supreme Court of the United States in 2009 in the case of *Melendez-Diaz v. Massachusetts* has had a lasting impact on the Department's ability to manage its caseload. The Court's opinion held that in order to preserve the defendant's Sixth Amendment right to confront witnesses against him, the forensic analyst whose laboratory report is offered as testimony must appear in person to testify. The Court's decision had an immediate and measurable impact on prosecutions in Virginia. As reported in prior Annual Reports of the Board and supported by current data, the number of subpoenas for analyst testimony and the amount of time analysts are required to spend out of the laboratory, on court travel and appearances, have risen dramatically as compared to the pre-*Melendez* period. Obviously, if analysts are required to be out of laboratory for extended periods of time for court travel and appearances, they have fewer hours available in the laboratory to perform forensic analyses. The Sections most acutely affected have been Toxicology and Controlled Substances. The graphs that follow illustrate the impact of the *Melendez-Diaz* decision:



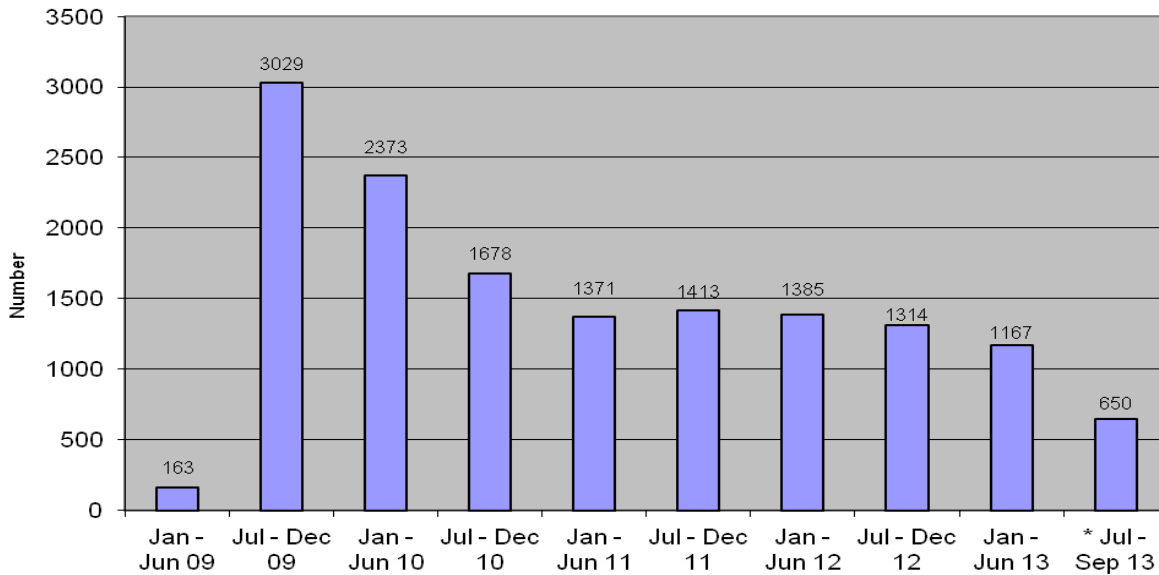
\* Q3 2013 data only

**Controlled Substances Subpoenas**  
*Semi-Annual Data*

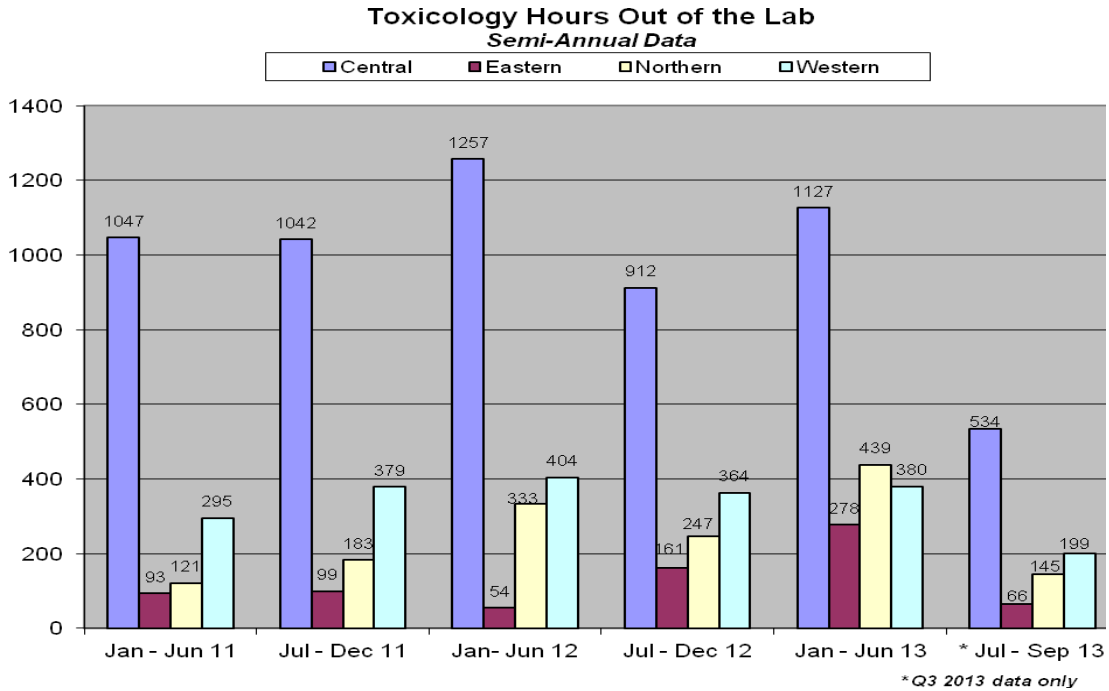


\*Q3 2013 data only

**Controlled Substances Hours Out of Laboratory**  
*Semi-Annual Data*

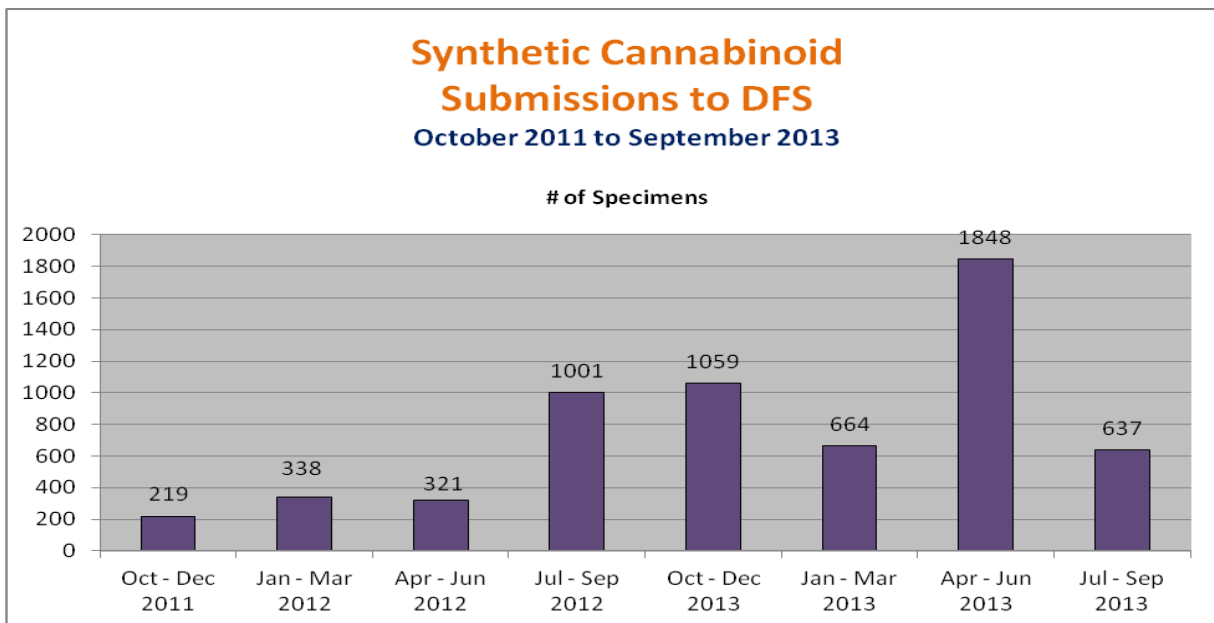


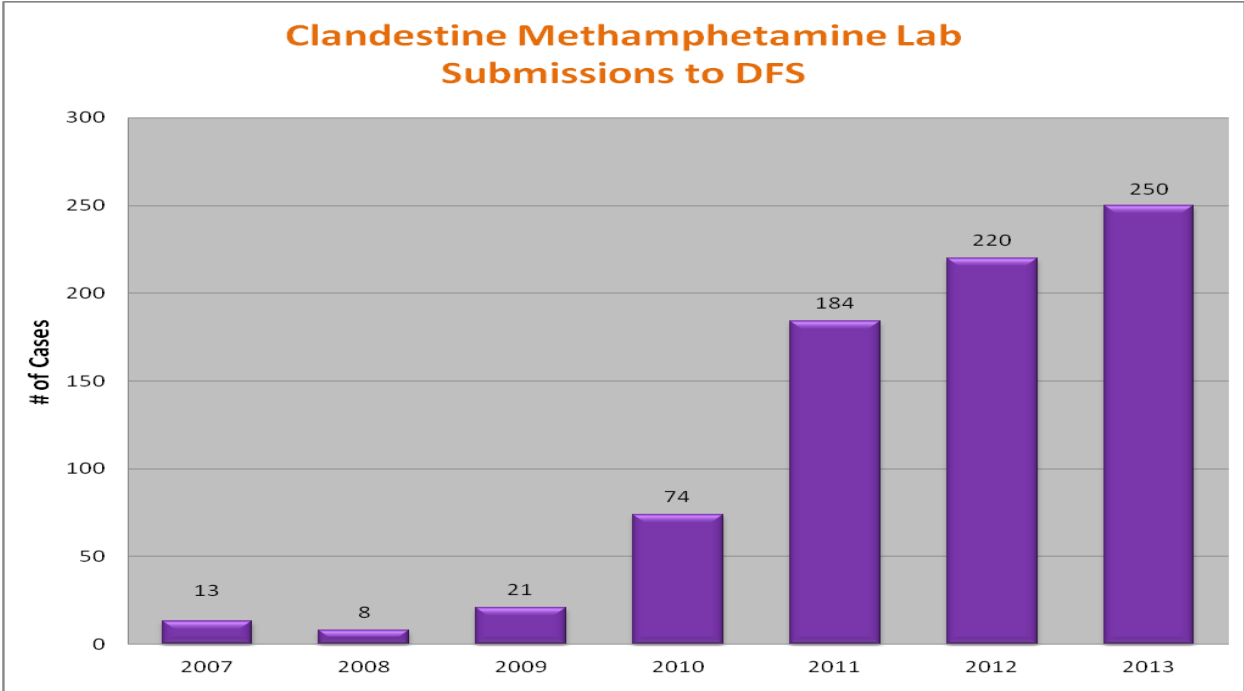
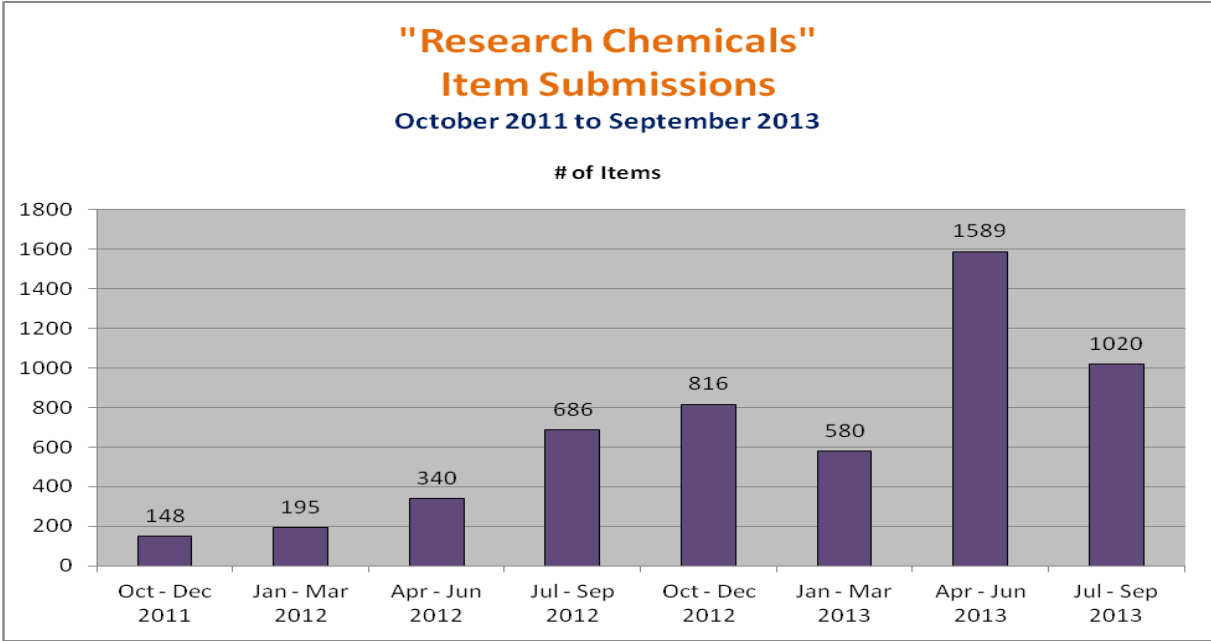
\*Q3 2013 data only



**Synthetic Cannabinoids, “Research Chemicals,” and Clandestine Methamphetamine Labs**

In 2012, DFS reported to the Board that it had experienced an upward trend in case submissions requiring forensic analyses of suspected synthetic cannabinoids and/or other amphetamine- or Ecstasy-like research chemicals, popularly known as “bath salts,” along with an increased number of case submissions relating to investigations of clandestine methamphetamine laboratories. These trends continued in 2013. In addition to the increase in the case submissions of these types, these cases tend to require more complex analyses to identify the substances that are present. Finally, the increase in cases and case complexity also account for the increase in subpoenas to Controlled Substances examiners to appear in court.





## **DFS Strategies for Addressing Timeliness in Controlled Substances and Toxicology**

The Department has kept the Board advised of its implementation of the following strategies to improve case timeliness:

- Decentralization of DUI/DUID cases to distribute them among laboratories to balance handling of the workload; active monitoring of case distribution
- Seek approval for and fill additional positions in Toxicology and Controlled Substances Sections
- Provide efficient centralized training of Controlled Substances staff
- Implementation of a “Clandestine Methamphetamine Team” to perform complete analyses of meth lab cases in the Western Laboratory

### **Priority: Improving Case Documentation in Latent Prints**

The Department informed the Board of its acquisition, installation, staff instruction, and validation of laboratory equipment to utilize Mideo technology software for on-screen comparisons in Latent Print examinations. Mideo was placed in operation on September 23, 2013 and is expected to be integrated into the Department’s new Laboratory Information Management System (LIMS) in Spring 2014.

### **Priority: Enhancing External Communications**

The Department informed the Board of several strategies it implemented in 2013 to enhance its communications with user agencies and the public. In May 2013, the Director emailed invitations to its customers, requesting that they utilize an online survey form developed on the “Survey Monkey” website to provide the Department responses to questions about customer needs and DFS services. The invitations were sent to Chiefs of Police, Sheriffs, Commonwealth’s Attorneys, the OCME, State Police, ABC, Department of Corrections and Department of Game and Inland Fisheries. Within a few weeks, the Department received 471 responses with pertinent information about customers’ use of forensic services, use of the DFS website, required case turnaround times, overall customer satisfaction and suggestions for improvement. DFS Laboratory Directors used the survey responses to help guide follow-up contacts with their area customer agencies. The Department plans to conduct similar online surveys on an annual basis.

A second major strategy for enhancing DFS external communications was a total redesign of the DFS website. DFS engaged a website design firm under state contract, Cap Tech, to develop the new website, which went online on September 13, 2013. The Department has received a favorable response to the new website, which can be easily updated by DFS staff and allows for online application to the Forensic Science Academy and other Training Section courses offered to law enforcement officers. The website is found at [www.dfs.virginia.gov](http://www.dfs.virginia.gov).

In addition to regular contacts that DFS Directors make throughout the year with customer agency heads, the Department continues to offer two intensive, 9-week Forensic Science

Academy sessions per year; the annual Forensic Academy Retraining Seminar (197 officers attended August 28-30, 2013); and nearly weekly Breath Alcohol instrumentation classes.

**Priority: Engaging DFS Personnel in Ongoing Training**

Beginning in July 2013, DFS established two training objectives for its staff. It intends to offer all scientific staff the opportunity to obtain at least 8 hours of specialized scientific/technical training each year. Training will be presented on-site to the greatest extent possible. Virtually all scientific staff are on track to accomplish at least 8 hours of training by December 31, 2013. In addition, the following training modules are being developed for Department-wide training: *A Forensic Science Overview*; *Ethics*; *The DFS Quality System*; and *Courtroom Testimony*. To date, all staff have completed *Ethics* training and relevant staff will complete *Courtroom Testimony* training by December 31, 2013.

**(3)**

**GENERAL FISCAL YEAR OPERATIONAL BUDGET AND ANY  
MAJOR CHANGES IN APPROPRIATED FUNDS**

Budget and changes in appropriated funds of the Department reviewed in 2013; recommendations, if any:

**Budget Overview**

The Department's current annual budget for FY 2014 is:

General Fund:	\$36,234,516
<i>Central Account Adjustments</i>	\$ 1,419,591
Non-General Fund:	<u>\$ 2,506,966</u>
 TOTAL	 \$40,161,073

**Grants**

Since the last Annual Report dated November 1, 2012, funding has been available or awarded to DFS under the following grant programs:

**2008 Post-Conviction DNA Testing Assistance Program** - \$4,520,295 from the National Institute of Justice (NIJ). Funding provided to pay the costs associated with the DNA analysis of a minimum of 700 post-conviction cases. Change of scope granted to provide funding to the Virginia State Crime Commission and Mid-Atlantic Innocence Project for their costs associated with case review and notification of convicted persons. ***Expired December 31, 2012.***

***FY 10 Using DNA Technology to Identify the Missing*** – \$468,640 from NIJ to continue the joint effort between DFS and the OCME to conduct DNA analysis and profiling of human remains currently in OCME storage and other cases as submitted by law enforcement. ***Final extension granted to March 31, 2014.***

***FY 11 DNA Backlog Reduction Grant Program*** -- DFS was awarded \$1,447,358 from NIJ to enhance capacity and reduce the forensic case backlog. ***Extended to December 31, 2013.***

***FY 11 Paul Coverdell Forensic Science Improvement Grant Program*** – \$230,825 to DFS through DCJS for training, equipment and software for the Physical Evidence, Chemistry, and Calibration and Training program areas. ***Extended to March 31, 2014 to accommodate OCME.***

***2012 Byrne Justice Assistance Grant (New Projects)*** – \$75,000 to enhance capabilities of the forensic Laboratory Information Management System (LIMS) to enable submitting agencies (law enforcement, OCME, etc.) to request forensic laboratory examinations remotely, as well as to provide for secure electronic transmission of Certificates of Analysis. Federal funds = \$67,500. DFS match = \$7,500. ***Extended to December 31, 2013.***

***2012 Continuation of Byrne Justice Assistance Grants*** – \$5,562 awarded to continue the IAI personal certification training and testing project for crime scene investigators. Funding was requested for reimbursement of testing fees for participants of the fall 2012 and spring 2013 FSA classes. If interest in certification among FSA participants is low, resulting in a surplus of funds, the award will be used to assist other crime scene personnel who express an interest in attaining certification. Federal funds total \$5,284, with a DFS match of \$278. ***Expired June 30, 2013.***

***2012 Continuation of Byrne Justice Assistance Grants*** – \$66,655 awarded to continue the Digital and Multi-Media Evidence Section capacity enhancement project. Funds were requested for training and equipment to improve the section's efficiency, decrease turnaround time, and increase the number of monthly computer case completions. Federal funds total \$63,322, with a DFS match of \$3,333. ***Expired June 30, 2013.***

***FY 12 DNA Backlog Reduction Grant Program*** – \$1,165,649 from NIJ to enhance capacity in the Forensic Biology Section and provide training for DNA examiners. ***Expires March 31, 2014.***

***FY 12 Paul Coverdell Forensic Science Improvement Program*** -- \$103,891 from NIJ to provide training and equipment for Chemistry, Physical Evidence, and Calibration and Training program areas. ***Extended to June 30, 2014.***

***FY 12 Solving Cold Cases with DNA*** -- \$467,000 co-awarded to DFS and Virginia State Police to investigate cold cases and to conduct DNA analysis in violent crime cold cases. \$102,859 provided to DFS. ***Expires March 31, 2014.***

***2013 Highway Safety Grant Program*** – \$172,585 was awarded through DMV to (i) reimburse law enforcement officers for travel to Breath Alcohol Training; (ii) hire a part-time

administrative assistant for Breath Alcohol section; and (iii) purchase the supplies for breath alcohol instrument classroom instruction. ***Expired September 30, 2013.***

***2013 Continuation of Byrne Justice Assistance Grant*** -- \$66,654 to continue Training and to support equipment for the Digital and Multi-Media Evidence Section. Federal funds total \$63,321, with a DFS match of \$3,333. ***Expires June 30, 2014.***

***FY 13 DNA Backlog Reduction Grant Program*** -- \$990,871 from NIJ to enhance capacity in the Forensic Biology Section. Supports personnel, training and equipment. ***Expires March 31, 2015.***

***FY 13 Paul Coverdell Forensic Science Improvement Program*** -- \$83,582 to DFS from NIJ for training of non-DNA personnel. ***Expires September 30, 2014.***

***2014 Highway Safety Grant Program*** -- \$174,499 awarded through DMV for Breath Alcohol training and travel costs for law enforcement officers and training for DFS Breath Alcohol personnel. ***Expires September 30, 2014.***

#### ***(4)***

#### ***ACTIONS TO FOSTER AND PROMOTE COORDINATION AND COOPERATION BETWEEN THE DEPARTMENT AND THE USER PROGRAMS WHICH ARE SERVED***

Review in 2013 of actions to promote coordination and cooperation between Department and user programs; recommendations, if any:

#### **Conferences, Presentations, and Training**

Along with the measures DFS implemented to address its 2013 strategic objective to enhance its external communication, DFS representatives have continued to attend regional meetings and statewide conferences of its user agencies to give presentations on relevant forensic science issues and to be available for feedback and comment on the services that the Department is providing. This included meetings and conferences with investigators, sheriffs, chiefs of police, Commonwealth's Attorneys, defense attorneys and judges.

As mentioned, DFS offers two nine-week Forensic Science Academy training sessions to selected classes of law enforcement officers, presents other short courses on crime scene investigation, and provides year-round training and certification of breath alcohol instrument operators. Also, DFS continues to organize the annual Virginia Forensic Science Academy Retraining Seminar, which provides Academy graduates updates on DFS services and practices. All of these conferences, presentations, and training sessions provide an opportunity for DFS to receive feedback on the services it provides to user agencies.



In 2012 and 2013, DFS and the Department of Alcoholic Beverage Control served as lead organizing agencies for the Governor's youth substance abuse awareness and prevention initiative known as "SAVVY," standing for "Substance Abuse Awareness is Vital for Virginia Youth." Four regional SAVVY "Expos," designed to foster community networking and education, were held from November 2012 to September 2013 in Chesterfield, Manassas, Newport News and Abingdon. Each event brought together law enforcement, local leaders, youth organizations, school officials, PTA officers, health care providers, parents and teens, along with dozens of national, state and local agencies and organizations there to showcase strategies for preventing substance abuse by teens and young adults. SAVVY utilizes social media ([www.facebook.com/savvyva](http://www.facebook.com/savvyva)) to promote its educational efforts.

(5)

***RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PURPOSES  
AND INTENT OF CHAPTER 11 OF TITLE 9.1 OF THE CODE OF VIRGINIA (DFS)***

**Review in 2013 of rules and regulations; recommendations, if any:**

**Regulations**

In 2012, DFS initiated a periodic review of four agency regulations, as required by Executive Order 36 (2006): ***Regulations for Breath Alcohol Testing*** (6 VAC 40-20), ***Regulations for the Approval of Field Tests for Detection of Drugs*** (6 VAC 40-30), ***Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries*** (6 VAC 40-40), and ***Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material*** (6 VAC 40-50).

The Forensic Science Board subsequently took several actions to improve the clarity of the regulations, update regulatory text, eliminate obsolete provisions and reduce costs to the Commonwealth. The most significant of the proposed actions is to require manufacturers of drug field tests to pay the actual costs of the "street drug preparations" used in the evaluation process, which is a cost currently borne by the Commonwealth. The proposed amendments to regulations are in various stages of the regulatory process.

- **Proposed amendment to require manufacturers submitting drug field test kits for evaluation to pay the actual costs of the "street drug preparations" used in the evaluation process (6 VAC 40-30-80)**

Under the current regulation, field test kit manufacturers are charged a \$50 fee for each drug for which individual field test kit evaluation is requested. This fee is intended to address the manpower costs of the evaluation process and does not include the cost of the "street drug preparations" used in the evaluation process to assess the efficacy of a particular field test kit. The "street drug preparations" for controlled drugs, particularly for newly emerging drugs such as research chemicals (commonly referred to as "bath

salts”), are expensive and difficult to obtain. Recently, the materials costs for such evaluations have far exceeded the fees collected and, effectively, were paid by the taxpayers. The proposed fast-track regulatory amendments to 6 VAC 40-30 are currently in the process of Executive Branch Review.

- **Proposed amendment to allow DFS to deliver notification of the revocation of a breath test operator or instructor license via any deliver provider’s signature- required delivery service (6 VAC 40-20-140)**

The current regulation requires the Department to use United States Postal Service “certified mail” to deliver such notices. The ability to select between mail delivery services will enable DFS to choose the most cost-efficient delivery method. The proposed fast-track regulatory amendments to 6 VAC 40-20 are currently in the process of Executive Branch review.

- **Changed verbiage relating to the Department’s assessment of marijuana and drug field test kits pursuant to Virginia Code § 19.2-188.1 from an “approval” process to an “evaluation” process to express more accurately the neutrality of the evaluation process (6 VAC 40-30; 6 VAC 40-50)**

The proposed regulatory amendments to 6 VAC 40-30 and 6 VAC 40-50 are currently in the process of Executive Branch review.

- **Clarified that process for resubmitting marijuana and drug field test kits after disapproval (6 VAC 40-30-40; 6 VAC 40-50-40)**

The proposed regulatory amendments to 6 VAC 40-30 and 6 VAC 40-50 are currently in the process of Executive Branch review.

- **Proposed amendment to repeal unnecessary language regarding “preventative maintenance checklists,” a document relevant to breath alcohol instrumentation no longer in use in the Commonwealth (6 VAC 40-20-160)**

The proposed fast-track regulatory amendments to 6 VAC 40-20 are currently in the process of Executive Branch review.

- **Corrected an outdated website address for the State Compensation Board (6 VAC 40-40-40)**

This exempt regulatory action became effective on June 20, 2013.

**(6)**  
**ANY RECOMMENDATIONS SUBMITTED TO THE FORENSIC SCIENCE BOARD  
OR THE DIRECTOR BY THE SCIENTIFIC ADVISORY COMMITTEE**

Recommendations in 2013 of the Scientific Advisory Committee and Forensic Science Board:

**Scientific Advisory Committee (SAC) Recommendations and Actions in CY 2013**

- The SAC met on May 14, 2013 and on October 15, 2013 at the DFS Central Laboratory in Richmond.
- At its May 2013 meeting, the SAC acknowledged that its goal is eventually to review procedures relating to all the Department's scientific disciplines.
- In May 2013, the SAC's Biology/DNA Subcommittee began a review of the Department's validation studies for two software systems acquired for performing DNA population statistical calculations. The first was for "TrueAllele," software that was already being used for analyzing some DNA mixture cases under a performance contract with the software's developer. The second validation study was for "Armed Xpert" software, on which DFS Forensic Biology analysts were being trained for use in-house.
- Also in May 2013, the SAC formed a Latent Prints Subcommittee to review the Department's Latent Print Manual and any changes thereto made by Physical Evidence Program Manager Sabrina Cillessen. Mr. Zercie was appointed the Chair and Ms. Given and Ms. St. Clair joined as members.
- At the May 2013 meeting, the SAC re-elected Ms. St. Clair as its Chair and elected Ms. Given as its Vice-Chair for one-year terms beginning July 1, 2013.
- At the SAC's October 2013 meeting, DFS Forensic Biology Program Manager Brad Jenkins reported on the progress made in implementing the use of the TrueAllele software by DFS Forensic Biology staff. The SAC adopted the recommendation of its Biology/DNA Subcommittee that the Department's validation of TrueAllele be approved.
- In addition, at the October meeting, DFS Physical Evidence Program Manager Sabrina Cillessen updated the SAC on the extended process for revising the Latent Prints manual and the implementation of Mideo software for on-screen comparisons. The Latent Prints Subcommittee will review the Latent Prints manual.
- Also at the October 2013 meeting, the SAC decided that its Trace Evidence Subcommittee should continue its review of the Section's manual and validation of the new LIBS instrumentation as they become available.
- Finally, at the October 2013 meeting, the SAC established a new Toxicology Subcommittee to begin a review of that Section's manuals and procedures.

### Forensic Science Board (FSB or Board) Recommendations and Actions in CY 2013

- The Board met on January 3, 2013; May 15, 2013; August 7, 2013; and October 16, 2013 at the DFS Central Laboratory in Richmond.
- The Board gave approval to DFS in 2013 to apply for and, if awarded, to accept the following grants: *Byrne Funding for New Project and One-Time Equipment Purchases (\$35,000); Using DNA to Identify the Missing (\$176,415); FY 13 DNA Backlog Reduction Grant (\$990,871); FY 13 Paul Coverdell Grant (\$78,200); 2013 Highway Safety Grant (\$181,244); 2013 Byrne Justice Assistance Grant (JAG) Continuation Grant for training and Digital and Multimedia Evidence (DMME) Section equipment; 2013 Byrne JAG Continuation Grant for Forensic Science Academy International Association for Identification (IAI) certification; 2013 Byrne JAG Continuation Grant for enhancement of the DFS Laboratory Information Management System (LIMS); and an application to the Office of the Attorney General for a one-time transfer of Abbott Forfeiture Funds to support purchases of instrumentation (\$2,943,000).*
- At its January 2013 meeting, the Board discussed the periodic review of four Department regulations that DFS commenced during the summer of 2012. The Board approved changes to the following regulations that were recommended by DFS staff:
  - Breath Alcohol Testing (6 VAC 40-20) – to allow delivery of revocation of a breath test operator license by any signature-required delivery service and repeal language referring to a checklist document no longer in use;
  - Approval of Field Tests for Detection of Drugs (6 VAC 40-30) – to require manufacturers seeking DFS evaluation of kits to pay for cost of drugs needed for the evaluation process;
  - Implementation of the Law Permitting DNA Analysis Upon Arrest for all Violent Felonies and Certain Burglaries (6 VAC 40-40); and
  - Approval of Marijuana Field Tests for Detection of Marijuana Plant Material.
- Also, at its January 2013 meeting, the Board unanimously passed a motion thanking outgoing DFS Director Peter Marone for his years of dedicated work and service to the Scientific Advisory Committee and the Forensic Science Board.
- At its meeting in May 2013, the Board approved the adoption of an additional proposed amendment to DFS regulation 6 VAC 40-60 (Approval of Field Tests for the Detection of Drugs). The amendment would require field test kit manufacturers to pay the actual cost of drug preparations needed for DFS to evaluate their submitted kits, in addition to the \$50 administrative fee required by the regulation.
- At its May 2013 meeting, the Board elected Ms. Given to serve as its Chair and Ms. Juran to serve as its Vice Chair for one-year terms beginning July 1, 2013.

- At its August 2013 meeting, the Board, as always, reviewed the progress of its continuing responsibilities in connection with the Post-Conviction DNA Testing Program Notification Project. In order to effectively consider an offer by the Mid-Atlantic Innocence Project to assist in the effective notification of convicted persons whose known DNA samples are needed to complete the testing of their identified old case evidence, the Board reconstituted its Notification Subcommittee, to be composed of Ms. Howard (Chair), Mr. Long, and Lt. Col. Northern (designee of Col. Flaherty).
- At its October 2013, the Board approved a motion accepting the recommendation of the Scientific Advisory Committee that TrueAllele be approved for use by the Department.
- Also at the October 2013 meeting, the Board voted to accept an offer from the Mid-Atlantic Innocence Project to assist with the continuing project to notify convicted persons whose old case evidence has been tested as part of the Post-Conviction DNA Testing Program. The MAIP and other Innocence Project staff, law students and *pro bono* attorneys will specifically work on locating, notifying and, if requested, advising convicted persons whose known DNA samples are needed to complete the analyses of their old case evidence.
- In addition, at the October 2013 meeting, the Board passed a motion recommending to the Department of Planning and Budget and the Secretary of Public Safety that any consideration given to revising the language of the Appropriations Act that directs the Board to notify convicted persons potentially affected by the Post-Conviction DNA Testing Program (Item 405.B.1) be deferred until the 2015 Session of the General Assembly to allow for appropriate review by the Board.
- Finally, at the October 2013 meeting, the Board also approved the submission of this Annual Report, as required by § 9.1-1110.B of the *Code of Virginia*, following review of the completed final report by the Board Chair.

## Attachment A

### FORENSIC SCIENCE BOARD MEMBERS

- **Colonel W. Steven Flaherty** – Term: period in office or employment  
Superintendent of the Virginia State Police
- **Garth L. Wheeler** – Term: period in office or employment  
Director of the Department of Criminal Justice Services
- **William Gormley, M.D.** – Term: period in office or employment  
(Acting) Chief Medical Examiner
- **Caroline D. Juran (Vice-Chair)** – Term: period in office or employment  
Executive Director of the Virginia Board of Pharmacy
- **Alan Katz** – Term: period in office or employment  
Designee of Attorney General Kenneth T. Cuccinelli, II
- **Karl R. Hade** – Term: period in office or employment  
Executive Secretary of the Supreme Court of Virginia
- **Kristen J. Howard** – Term: period in office or employment  
Designee of the Chair of the Virginia State Crime Commission
- **The Honorable Ryan T. McDougle** -- Term: period in office or employment  
Designee of the Chair of the Senate Committee for Courts of Justice
- **The Honorable Rick Morris** – Term: period in office or employment  
Designee of the Chair of the House Committee for Courts of Justice
- **Jo Ann Given (Chair)** – Term: designated by Chair of the Scientific Advisory Committee  
Member of the Scientific Advisory Committee
- **Jami St. Clair** – Term: designated by Chair of the Scientific Advisory Committee  
Member of the Scientific Advisory Committee
- **Sheriff A. A. Lippa, Jr.** – Term: ending 6/30/2017  
Member of Law Enforcement
- **The Honorable Claiborne Stokes** – Term: ending 6/30/2017  
Member of the Virginia Commonwealth’s Attorneys Association
- **David A.C. Long, Esq.** – Term: ending 6/30/2017  
Criminal defense attorney having special knowledge in the area of forensic science
- Position unfilled due to dissolution of Virginia Institute of Forensic Science and Medicine

## Attachment B

### SCIENTIFIC ADVISORY COMMITTEE MEMBERS

- **Jose Almirall, Ph.D.** – Term: ending 6/30/2014  
Trace Evidence Scientist
- **John V. Planz, Ph.D.** – Term: ending 6/30/2015  
Population Geneticist
- **Randall E. Beaty** – Term: ending 6/30/2014  
Member of the International Association of Chemical Testing
- **Les Edinboro, Ph.D.** -- Term: ending 6/30/2014  
Director of a private or federal forensic laboratory located in the Commonwealth
- **Jo Ann Given** -- Term: ending 6/30/2017 (Vice-Chair)  
Member of the American Society Crime Laboratory Directors
- **Richard P. Meyers** – Term: ending 6/30/2014  
Forensic Chemist
- **Linda C. Jackson** – Term: period in office or employment  
Director of the Department of Forensic Science
- **Alphonse Poklis, Ph.D.** – Term: ending 6/30/2014  
Toxicologist certified by the American Board of Forensic Toxicologists
- **Travis Spinder** – Term: ending 6/30/2017  
Member of the Board of the Association of Firearms and Toolmark Examiners
- **Carl Sobieralski** – Term: ending 6/30/2015  
Forensic Biologist
- **Kenneth Zercie** – Term: ending 6/30/2015  
Member of the Board of the International Association for Identification
- **Jami St. Clair (Chair)** – Term: ending 6/30/2015  
Scientist or other person with education, training or experience in laboratory standards or quality assurance regulation and monitoring
- **Robin W. Cotton, Ph.D.** – Term: ending 6/30/2017  
Molecular Biologist