



# COMMONWEALTH of VIRGINIA

## FORENSIC SCIENCE BOARD

**Colette W. McEachin, Chair**

October 31, 2018

The Honorable S. Chris Jones  
Chair, House Committee on Appropriations  
P.O. Box 5059  
Suffolk, Virginia 23435

The Honorable Thomas K. Norment, Jr.  
Co-Chair, Senate Committee on Finance  
P.O. Box 6205  
Williamsburg, Virginia 23188

The Honorable Emmett W. Hanger, Jr.  
Co-Chair, Senate Committee on Finance  
P.O. Box 2  
Mount Solon, Virginia 22843

The Honorable Mark D. Obenshain  
Chair, Virginia State Crime Commission  
P.O. Box 555  
Harrisonburg, Virginia 22803

### **Re: 2018 Annual Forensic Science Board Report**

Dear Delegate Jones, Senator Norment, Senator Hanger and Senator Obenshain:

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 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 of Forensic Science 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 Committee.

The 2018 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 blue ink that reads "Colette W. McEachin". The signature is fluid and cursive, with the first name being the most prominent.

Colette W. McEachin  
Chair, Forensic Science Board

Enclosure

cc: The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security  
Jae K. Davenport, Deputy Secretary of Public Safety and Homeland Security  
Members, Forensic Science Board  
Linda C. Jackson, Director, Department of Forensic Science  
Division of Legislative Automated Systems

## **FORENSIC SCIENCE BOARD 2018 ANNUAL REPORT**

Virginia Code § 9.1-1110(B) requires the Forensic Science Board (FSB) to review and make recommendations by November 1 of each year concerning the following:

1. New major programs and plans for the activities of the Department of Forensic Science (DFS) 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 DFS and the user programs which are served;
5. Rules and regulations necessary to carry out the purposes and intent of Chapter 11 of Title 9.1 of the Code of Virginia; and
6. Any recommendations submitted to the Board or the Director by the Scientific Advisory Committee.

The Forensic Science Board met at the Department of Forensic Science's Central Laboratory in Richmond on January 4, 2018, May 16, 2018, August 22, 2018, and October 17, 2018. A list of members of the Board is included as Attachment A. Pursuant to Code § 9.1-1110(B), the Board makes the following report.

### **1. NEW MAJOR PROGRAMS AND PLANS FOR THE ACTIVITIES OF DFS AND ELIMINATION OF PROGRAMS NO LONGER NEEDED**

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

In 2001, swabs and cuttings of evidence that had been affixed to a worksheet by a DFS serologist were discovered in an old case file. Post-conviction DNA testing of this evidence exonerated an individual who had been convicted of a rape in the case. After two additional individuals were exonerated of rapes based on post-conviction DNA testing conducted on evidence found in their case files, a random review of 10% of the Department's serology case files was undertaken in 2004 to identify cases where post-conviction DNA testing could provide probative evidence of the defendant's guilt or innocence. Post-conviction DNA testing conducted on the evidence from the thirty-one case files identified by the 10% random review resulted in three additional defendants being exonerated of rapes. In December 2005, based on the results of the random review, a full-scale review was initiated to identify retained evidence in DFS serology case files and to conduct DNA testing when appropriate. Information regarding this Post-Conviction DNA Testing Program and Notification Project has been included in the Forensic Science Board Annual Reports since the first report in 2006. This report provides updates on various aspects of the project, but it does not provide a detailed history; such a history can be found in the Forensic Science Board 2014 Annual Report, which is available online at:

<https://rga.lis.virginia.gov/Published/2014/RD356/PDF>

## **Update on “Need Known” Cases**

“Need known” cases are those where a DNA profile was obtained from the evidence retained in the case file; however, a reference or “known” sample (typically, from the victim or the suspect) is needed to compare to the DNA profile obtained from the evidence. The 2017 Forensic Science Board report referenced that, in June 2016, DFS completed additional DNA testing in a “need known” case where a profile had been obtained from the evidence, but a “known” sample had been needed from the individual convicted of the offense. The individual’s “known” sample was submitted for analysis, and DNA testing excluded him as a contributor of the DNA profiles obtained from the evidence in a rape case. In August 2016, the individual filed a petition for a writ of actual innocence. In March 2018, the Supreme Court of Virginia granted a writ of actual innocence in the case and vacated the individual’s conviction.

The 2017 Board report also referenced an additional case where a “known” sample from an individual was submitted for analysis in July 2017, and DNA testing excluded him as a contributor of the DNA profiles obtained from the evidence in a rape case. The Report also indicated that, in September 2017, the individual filed a petition for a writ of actual innocence. The petition is still pending before the Supreme Court of Virginia.

## **Virginia State Crime Commission Review of Case Files**

Staff from the Virginia State Crime Commission (VSCC) have continued the manual review of case files from the Post-Conviction DNA Testing Program and Notification Project to confirm the testing and notification status of each individual eligible for notification. In the spring 2018, VSCC staff completed the review of “inconclusive” cases.

The Indigent Defense Commission, the Richmond Public Defender’s Office and the Department of Corrections assisted VSCC staff in researching information for remaining un-notified “inconclusive,” “need known,” and “eliminated” cases to attempt to locate the individuals or determine if they are deceased. VSCC staff also received access to Accurint®, a people finder tool, in August 2018, to assist with these searches. VSCC staff has updated the records with any information obtained from this research and prepared additional notification letters to individuals with newly identified contact information, which the Department mailed.

In the summer of 2018, staff from the VSCC and DFS met and were able to review approximately 75% of project cases. Staff verified agreement as to the following: 1) laboratory outcome (i.e., “eliminated,” “need known,” “inconclusive” or “other”); 2) notification status (i.e., notified, deceased, not notified or other); and 3) whether due diligence has been met. Additional meetings to review the remaining 25% of cases are anticipated to be held in the fall of 2018. Once this is complete, there will be categories of individuals for VSCC staff and DFS staff to discuss further and determine whether due diligence has been met (i.e., no leads developed, all leads exhausted, team review required). VSCC staff will be presenting a full report of its work on the project to the Crime Commission at its meeting in December 2018.

## **DFS Accreditation Renewed Through ANSI-ASQ National Accreditation Board (ANAB)**

On August 30, 2018, DFS received official written notification that the ANSI-ASQ National Accreditation Board (ANAB) had renewed the Department's accreditation for all four testing laboratories and the Breath Alcohol Calibration Laboratory. In preparation for conformance to the new accreditation standards, DFS enhanced certain processes, including adding methodology to Certificates of Analysis. The onsite assessment of all five DFS laboratories was conducted in May 2018 by a team of 24 assessors. ANAB grants accreditation to laboratories that meet or exceed accreditation requirements set forth in the ISO/IEC 17025:2005 International Standard, accreditation requirements of ANAB and their own documented management system. DFS initially became accredited in 1989 through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), which merged with ANAB in 2016. The Department's latest cycle of accreditation extends until September 30, 2022. Additional information about the Department's accreditation, including Accreditation Certificates and scope documents, can be found on the DFS website at the following link:

<http://www.dfs.virginia.gov/about-dfs/accreditation/accreditation-documentation/>

## **2018 Physical Evidence Recovery Kit Submission Exception Legislation**

During the 2018 General Assembly Session, Delegate Vivian E. Watts introduced House Bill 303, on behalf of DFS, to create a fifth exception to the mandatory submission provision of the comprehensive physical evidence recovery kit (PERK) legislation enacted in 2016. The new exception allows a law enforcement agency that receives a PERK to transfer it to another law enforcement agency that has taken over responsibility for the investigation of the offense in lieu of submitting the PERK to DFS for analysis. This would apply when a PERK is received by a law enforcement agency, but the offense occurred in another jurisdiction or a Federal law enforcement agency was taking over the investigation. House Bill 303 passed the General Assembly unanimously.

## **Laboratory Information Management System**

The Department has received and begun testing of the latest software version for its Laboratory Information Management System (LIMS). This version will allow the integration of the module that will permit law enforcement to remotely submit Requests for Laboratory Examination (RFLE) forms to DFS. The Department has already begun customizing that module and anticipates launching its use in 2019.

## **Qualtrax**

The Department continues to replace paper approval and documentation processes with the Qualtrax System. Qualtrax is a quality and compliance management software that

maintains accreditation, certification and training documentation, in addition to having the ability to streamline business processes. In 2018, the Department's Human Resources New Employee Onboarding process was incorporated into Qualtrax.

### **Central Laboratory Facility Project**

In 2014, the Department was authorized to begin space programming and schematic design work for the renovation and expansion of the Central Laboratory facility for DFS and the Office of the Chief Medical Examiner (OCME), which is co-located in the Central Laboratory with the Department. This project would allow for DFS and OCME operations currently housed across the street in the Biotech 8 Building to be moved back into an expanded Central Laboratory facility. Currently, the agencies together lease approximately 25,000 square feet of space in the Biotech 8 Building.

SFCS was selected as the architecture and engineering firm for the planning and design phase of the Central Laboratory expansion and renovation project, and Skanska was selected as the Construction Management company, following the Construction Management at Risk Process. Space programming for the project was completed, and preliminary schematic designs for the renovation and expansion were developed. However, it was determined through the schematic design process that the project could not be completed within the approved budget and that the current location would not allow for future expansion. Accordingly, in 2018, the General Assembly amended the budget language to change the scope of work for the project to allow DFS to explore building a new facility at another location. A request for information (RFI) seeking parcels of land suitable for the project has been issued.

### **Service Area Activities**

#### **New Forensic Biology Methods**

The Forensic Biology Section implemented new DNA screening methods in February 2018. These new methods, which are used for sexual assault cases, can eliminate or lessen the need for the more time consuming microscopic search for spermatozoa. Samples in sexual assault cases can be extracted prior to the microscopic examination and the amount of male DNA assessed to determine if DNA typing is needed for the particular sample. An additional male DNA screening tool has been in development, and its final implementation is pending. It is anticipated that these screening methods will result in identifying more sexual assault cases where DNA testing can be performed, increasing the need for Y-STR analysis on these types of cases. Thus, in anticipation of a greater workload in this area, additional examiners are being trained in Y-STR analysis so that it will be available in all four of the Department's laboratories.

Also in Forensic Biology, new DNA quantitation chemistries and instrumentation and new automated differential DNA extractions for sexual assault evidence are in the evaluation stage. An additional software system, called STRmix, has been purchased. This

software can be used to provide rarity estimates of how common or rare DNA types from individuals are in DNA mixtures of two or more contributors. The Forensic Biology staff statewide received training on the use of the software in April 2018, and validation of this new method is underway.

### **New Toxicology Methods and Instrumentation**

In early 2018, the Toxicology Section implemented a new method for the qualitative identification of 34 fentanyl derivatives. Further research is being conducted to expand this panel out to 50+ fentanyl derivatives and to be able to quantify how much of each analyte is present in the sample.

In April 2018, the Toxicology Section purchased four Agilent 6550 iFunnel QTOF LC/MS systems. These new instruments will be utilized for screening toxicology samples with the goal of reducing the analysis time from over three days down to one. The method development for this screening is being conducted with the goal of being able to identify 250+ compounds with a small sample volume, minimal extraction processes, and short instrumental analysis times. This method will combine the current immunosorbent screening assay and gas chromatography screening assay into one streamlined analysis.

The Toxicology Section has expanded their scope of testing to include pregabalin and lacosamide to the anti-epileptic drugs quantitation and confirmation analysis.

New methodology is also being developed and validated to identify novel psychoactive substances, which include a wide variety of potentially impairing substances, such as synthetic cannabinoids, benzodiazepine analogs, and research chemicals (e.g. "bath salts"). This method will expand the scope of testing for the Toxicology Section to be able to identify new compounds in all toxicology samples.

### **Grant Funded Physical Evidence Recovery Kit (PERK) Related Activities**

#### **Testing of Inventoried PERKs**

In 2015, the Department and the Office of the Attorney General were awarded \$1.4 million in funds from the New York County District Attorney's Sexual Assault Kit Backlog Elimination Program (DANY) to support testing of the PERKs identified by the inventory completed by DFS. The DANY funds were intended to pay for the outsourced testing of 2,034 untested kits that were collected, but not submitted to DFS for analysis, prior to July 1, 2014. Under the DANY grant, 1,810 kits from 99 Virginia law enforcement agencies were submitted to the outsource private testing laboratory, Bode Cellmark Forensics. As of October 1, 2018, the private laboratory had provided testing results to DFS in 1,710 of those cases. Testing is in process for the remaining kits. In 394 cases, DNA profiles obtained by the private laboratory were uploaded for searching in the DNA Data Bank by DFS. There have been 153 resulting Data Bank hits. DFS has conducted reviews of the Bode results using overtime funds under the grant; however, the grant period ended on



September 30, 2018. DFS staff will continue reviewing the results for the remaining cases, and the Office of the Attorney General has agreed to fund the remaining approximately 900 hours of overtime that will be necessary for DFS to complete the project.

Virginia also received funds from the Sexual Assault Kit Initiative (SAKI) grant awarded to the Office of the Attorney General to support the outsourced testing of approximately 1,240 untested PERKs collected, but not submitted for analysis, between July 1, 2014 and June 30, 2016. Bode Cellmark Forensics also was awarded the contract to conduct the outsourced testing of kits under the SAKI grant. Several jurisdictions have sent PERKs to the contract laboratory, but testing will not begin until testing of the DANY grant kits is completed.

### **PERK Tracking System**

DFS received funds, as a sub-recipient under SAKI grant awarded to the Attorney General's Office, to contract with its Laboratory Information Management System (LIMS) vendor to develop PERK tracking software that will be integrated with the DFS LIMS. Once developed and implemented, this system will be able to track each PERK through every step in the process, including its distribution as an uncollected kit to the collection site (e.g., hospitals) through collection, transfer to law enforcement, submission to the laboratory for analysis, and return to the law enforcement agency for storage. All agencies handling kits will be granted access in order to update the status of each kit, and victims may use the system to check the status of the analysis of their kits. Agencies do not need to purchase the system; it is web based, and any agency with internet access may use the system at no charge. By tracking the status of kits entered into the system, DFS will be able to notify stakeholders when collected kits have not been appropriately submitted for analysis. Kits will be tracked by their unique ID number or barcode; no personally identifying information will be captured in the system.

The vendor has developed an alpha version of the PERK Tracking System. DFS has been testing this version of the system and providing feedback to the vendor. DFS anticipates that the vendor will have a beta version of the system installed on premises at the Department in the first quarter of 2019. DFS plans to pilot the beta version of the system with at least one agency from each of the three non-DFS user types (i.e., hospitals, law enforcement and the Division of Consolidated Laboratory Services). Once this beta testing has been completed, DFS plans to roll out the PERK Tracking System statewide.

A PERK Tracking System Coordinator position at DFS is funded under the SAKI grant. An individual has been hired for the position and is expected to begin working at DFS in November 2018.

### **Historical (Archived) Case File Review Project**

DFS obtained funding in FY16 to begin its Historical or Archived Case File Review Project. Through the project, an electronic database of archived case file information is



being created that will include scanned copies of all Certificates of Analysis and additional case information, including the jurisdiction of the offense, the investigating agency, victim and suspect names, date evidence received, type of examination, and examiner names. The database of archived case files will include cases from 1973 through 1994. DFS implemented a Laboratory Information Management System (LIMS) in 1995 so DFS is already able to electronically search cases from 1995 forward using its LIMS.

Five wage employees are each working up to 29 hours per week on the project. As of October 1, 2018, over 150,000 of the estimated 1,000,000 archived case files covering the relevant period have been entered into the database. This searchable database of case information and scanned documentation ultimately will be integrated with the Department's LIMS.

### **Microscopic Hair Comparison Case Review**

In January 2016, the Board created a Microscopic Hair Comparison Case Review Subcommittee, which developed a process for the initial screening of DFS's microscopic hair comparison cases and for the review of transcripts in cases with convictions. A Review Team, consisting of two attorneys and one DFS scientist with experience as a hair examiner, conducts reviews of the transcripts and makes recommendations to the Subcommittee regarding whether notification to the parties is appropriate in each case.

The Department has continued its work identifying microscopic hair examination cases as part of its Historical Case File Review. One of the wage employees who is assisting with the Historical Case File project reviews all identified hair cases to determine whether there were any positive, probative associations reported in each case. A DFS staff member is now available to confirm conviction information for the cases with positive, probative associations and to continue to seek out transcripts or transcript substitutes, where appropriate, for review.

An additional six transcripts were obtained during the spring of 2018, and a Review Team Meeting was held on June 27, 2018, to review those transcripts and make recommendations regarding notifications. The Microscopic Hair Comparison Case Review Subcommittee met on August 27, 2018, to consider the Review Team's recommendations. Notifications were approved by the Subcommittee in two cases as a result of this meeting. These notifications are pending.

The Department has been unable to locate two defendants, or their next of kin, for notifications approved by the Subcommittee in November 2016. Assistance was provided by Virginia State Crime Commission staff who conducted searches using Accurint® in August 2018, but no additional contact information was discovered. DFS will seek the assistance of other state agencies in its continued attempts to obtain contact information for these defendants or their next of kin so that these notifications can be made.

Based on a recommendation of the Subcommittee, DFS is also seeking to inform

inmates directly of the Microscopic Hair Comparison Case Review project so that any inmate may submit his/her case for consideration if microscopic hair comparison testimony was provided at his/her trial. This will allow inmates to have their cases considered for review in advance of the Department's identification of their cases through the Historical Case File Review.

### **Serology Case Review**

With the Board's approval, the Department commenced a Serology Case Review in 2016. The review was initiated by DFS in response to allegations made in a petition for a writ of actual innocence filed with the Supreme Court of Virginia. A random sample of serology cases (including at least 100 reports each from the Eastern and Northern Laboratories between the years 1982 and 1992) is being reviewed to determine whether a more in depth review is needed.

Each case is being reviewed separately by two scientists. DFS had four scientists who previously served as serologists conducting reviews; however, two have retired so there are now only two DFS scientists conducting the serology reviews. Jami St. Clair, a member of the Department's Scientific Advisory Committee who has experience as a serologist, is serving as an independent, external reviewer and is conducting the second review for twenty percent of the cases.

The double review of the Eastern serology cases is approximately 98% complete, and the double review of the Northern serology cases is approximately 60% complete. In the reviews conducted as of October 15, 2018, no files had been identified where the typing results in the case notes would have eliminated the defendant and were not reported, which was the issue identified in the case prompting the Serology Case Review.

## **2. POLICY AND PRIORITIES IN RESPONSE TO AGENCY NEEDS**

### **Improving Timeliness**

#### **Caseload Data**

The caseload data reported in the table below reflects, for FY17 and FY18, the total number of cases received statewide by each DFS testing section, the total number of cases completed by each section, and the average case turnaround time (number of days from receipt of evidence in a case by DFS to the release of the Certificate of Analysis) for each section. The table also specifies the ending backlog (total number of cases on hand) in each section as of the end of the respective fiscal years.

Section	Cases Received (FY17)	Cases Received (FY18)	Cases Completed (FY17)	Cases Completed (FY18)	Average Case Turnaround Time (FY17)	Average Case Turnaround Time (FY18)	Ending Backlog 6/30/17	Ending Backlog 6/30/18
<b>Controlled Substances</b>	31,002	34,734	27,339	30,494	82	120	9,114	13,416
<b>Digital &amp; Multimedia Evidence</b>	103	97	101	107	318	334	114	104
<b>Firearms &amp; Toolmarks</b>	7,563	7,453	6,334	8,093	131	146	3,233	2,618
<b>Forensic Biology</b>	4,925	5,845	4,260	5,698	137	161	1,858	2,206
<b>Latent Prints &amp; Impressions</b>	2,840	2,661	3,043	2,589	62	73	411	422
<b>Toxicology</b>	8,804	9,586	9,272	9,869	59	48	1,154	874
<b>Trace Evidence</b>	773	689	862	721	83	64	123	101
<b>Total</b>	<b>56,010</b>	<b>61,065</b>	<b>51,211</b>	<b>57,571</b>	<b>88</b>	<b>113</b>	<b>16,007</b>	<b>19,741</b>

The table below presents, for each DFS section, the ending backlog as of October 1, 2018, and the average turnaround time for cases completed in September 2018.

Discipline/Section	Ending Backlog As of 10/1/18	Average TAT (in days) September 2018
<b>Controlled Substances</b>	13,759	134
<b>Digital &amp; Multimedia Evidence (DME)</b>	136	94
<b>Firearms &amp; Toolmarks</b>	2,171	131
<b>Forensic Biology (DNA)</b>	2,082	137
<b>Latent Prints &amp; Impressions</b>	533	57
<b>Toxicology</b>	895	35
<b>Trace Evidence</b>	111	52

The Controlled Substances Section continues to face rising submissions. The complex nature of the compounds being submitted, the safety precautions required in the handling of the increasingly lethal substances received, and the additional reporting requirements have compounded the problem and further lengthened the time required for examiners to complete Controlled Substances cases. DFS implemented two periods of mandatory overtime for all Controlled Substances examiners (24 hours required in the fall of 2017, and another 40 hours from January – May 2018) to prevent the backlog from

increasing further. DFS also received six additional Controlled Substances forensic scientist positions in the FY19 budget, but sustained rising submissions projected for CY2018 led the Department to seek additional Controlled Substances resources, as detailed in the Section of this report which follows, and is entitled “Controlled Substances Workload Increases and Actions to Address.”

With the addition of the new position created in FY19, the Digital & Multimedia Evidence (DME) Section now has six forensic scientist positions. As of October 15, 2018, the DME Section has four qualified scientists, one trainee, and one position in recruit.

The Firearms Section continues to complete more cases than it has been receiving due to the National Integrated Ballistic Information Network (NIBIN) forensic scientist positions created in 2016. However, DFS is still not meeting the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ recommendation that NIBIN results be provided within 48 hours.

The Forensic Biology Section has been able to complete more cases each quarter than have been received since the beginning of CY2018. The Section, which in October 2017 had eleven scientist positions in either the hiring or training process, has only four scientists in training as of October 15, 2018. The addition of the research scientist position in the FY19 budget will assist the Section statewide with validating and implementing new methodologies.

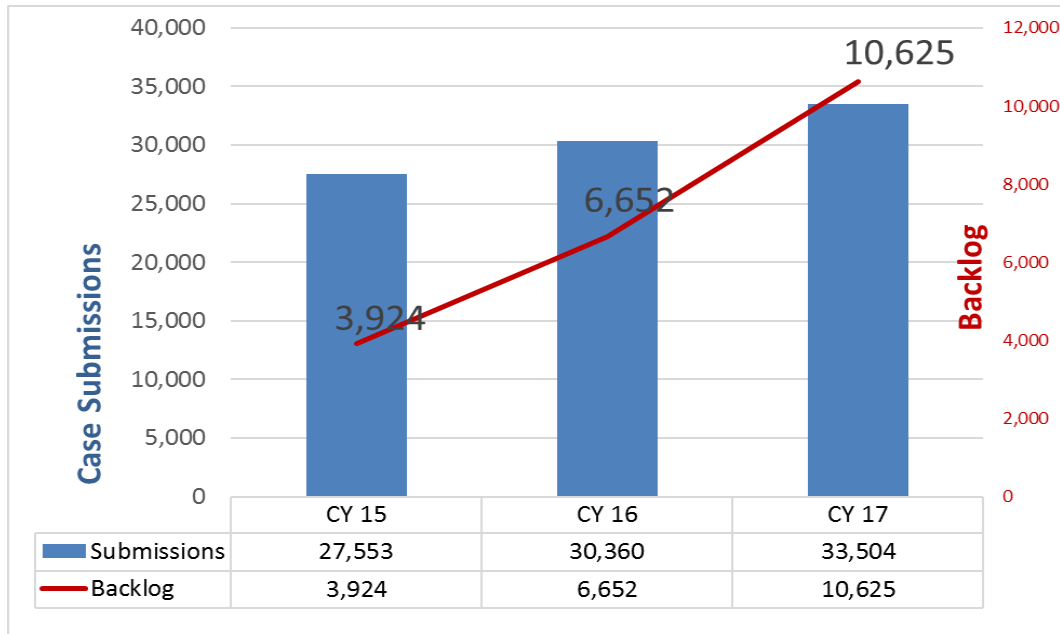
The Latent Prints Section saw a 20% increase in submissions in the first quarter of FY18, but this increase did not continue into the last three quarters of FY18. Accordingly, the fully staffed Latent Prints Section was able to complete more cases than were received for the last three quarters of FY18. However, a moderate submission increase occurred in the first quarter of FY19, and the Section was unable to complete more cases than it received that quarter.

The Toxicology Section has been consistently meeting the OCME’s accreditation requirements and has been able to improve the average case turnaround times for all Toxicology cases types.

The Trace Evidence Section is fully-staffed. The Section continues to build capacity by cross-training examiners in additional trace evidence sub-disciplines.

### **Controlled Substances Workload Increases and Actions to Address**

The Controlled Substances Section has seen a continued increase in submissions. As illustrated in the chart below, there was a 21% increase in submissions between CY2015 and CY2017. During the same time period, the backlog grew by nearly 170%.



The increased submission trend continued into CY2018, and, with updated projections showing an approximate 9% increase over CY2017, DFS determined that the six additional positions included in the FY19 budget would not be sufficient to manage the growing Controlled Substances caseload.

Accordingly, the Department developed a plan, which was based on a 10% increase in submissions through July 2019, to address the Controlled Substances caseload. Working closely with the Office of the Secretary of Public Safety & Homeland Security and the Department of Planning & Budget, DFS submitted a Decision Package in July 2018 seeking emergency funding for additional resources in order to take immediate action to address the Controlled Substances backlog. The Governor approved the plan on August 1, which included transferring \$1,660,000 from the Department's FY20 budget to its FY19 budget. The plan includes the following:

- Fill six additional vacant and unfunded positions with Controlled Substances forensic scientists;
- Create and fill four wage (P-14) positions (two evidence specialists to handle the increased Controlled Substances case receipts and two forensic administrative specialists to perform administrative tasks associated with increased case output);
- Purchase two additional scientific instruments needed to handle the increased Controlled Substances cases; and,
- Outsource a portion of the Controlled Substances backlog to a commercial laboratory.

The above requested emergency funding will allow DFS to increase its capacity to analyze controlled substances, including opioids.

The Department issued a Request for Proposals, which closes on October 31, 2018, seeking submissions from private laboratories to perform seized drug testing on evidentiary materials submitted by investigating law enforcement agencies. DFS anticipates awarding the outsource contract by December 1, 2018.

As of October 15, 2018, DFS has hired the six Controlled Substances positions provided in the FY19 budget. One of the six additional scientist positions funded in FY19 through a transfer of funds from FY20 starts on October 25, 2018, and the remaining five positions are in the hiring process.

DFS will be taking additional actions to assist in addressing the Controlled Substances workload. The Department has been awarded grant funding, beginning in January 2019, to implement a Lean Six Sigma (LSS) project to increase the efficiency, without sacrificing the quality, of the analytical process in the Controlled Substances Section. The project will identify systemic inefficiencies, improve production and process workflows, and provide green belt certification for multiple individuals, which will enable implementation of LSS principles in all four DFS Controlled Substances laboratories. The main focus will be on increasing productivity in the Controlled Substances Section statewide to gain efficiencies in managing caseloads overall, and, in particular, to more efficiently address the opioid crisis. Additionally, DFS will be evaluating potential submission policy changes to limit submissions and testing, with input from stakeholders. It is anticipated that this stakeholder meeting will be held in late fall 2018.

### **Mandatory Overtime for Controlled Substances and Forensic Biology Sections**

The Caboose Bill for the FY18 Budget included \$125,000 in funding for overtime for the Controlled Substances and Forensic Biology Sections to help address case backlogs. Every forensic scientist in the Controlled Substances and Forensic Biology Section was required to work a minimum of 40 hours of overtime between January 1 and May 30, 2018. This mandatory overtime period was in addition to a minimum of 24 hours of overtime that all Controlled Substances forensic scientists were required to complete in the fall of 2017.

### **Factors Affecting DFS Workloads and Backlogs**

#### **Court Appearances for Controlled Substances and Toxicology Sections**

A long-term impact of the United States Supreme Court's 2009 decision in Melendez-Diaz v. Massachusetts has been the increased the number of witness subpoenas DFS staff receive and the increased time examiners spend out of the laboratory for court travel and appearances. In Melendez-Diaz, the Court held that the defendant's Sixth Amendment right to confront witnesses against him is violated if the laboratory report is offered into evidence without the testimony of the forensic scientist who performed the analysis. The Controlled Substances and Toxicology Sections continue to be most directly affected by this decision.

In 2017, DFS staff statewide received 15,548 subpoenas, which resulted in 4,023 appearances, and approximately 397 days spent away from the laboratory. The Controlled Substances Section alone received 7,360 of the subpoenas and made 512 appearances, which resulted in approximately 66 days away from the laboratory. When examiners are out of the laboratory, they have fewer hours available to perform forensic analyses. In presentations provided to Commonwealth’s Attorneys, circuit court judges, and substitute judges, DFS staff requested assistance in minimizing the time examiners spend away from the laboratory by, among other things, allowing examiners to be placed on call for testimony and using video testimony.

**Ability to Hire and Train Qualified Examiners**

The demand for trained, experienced forensic scientists has exceeded the supply for many years. In order to fill positions with limited qualified applicants, DFS has developed a process of hiring and training individuals with the necessary educational credentials, but without the practical experience. The table below reflects the average length of the training for new scientists hired as trainees in each discipline. The length of training for scientists who come to DFS as previously “qualified” in another laboratory system may be reduced.

<b>Section</b>	<b>Average Examiner Training Period</b>
Breath Alcohol	12 months
Controlled Substances	10 months
Digital & Multimedia Evidence	12 months
Firearms & Toolmarks	6 months (NIBIN forensic scientists) 24 months (forensic scientists)
Forensic Biology (DNA)	12 months
Latent Prints & Impressions	12 months (latent prints forensic scientists) 12 months (impressions forensic scientists)
Toxicology	12 months (forensic scientists) 18 months (toxicologists)
Trace Evidence	12 months

Current examiners conduct the training for new hires and must dedicate significant time to working with the trainees, which results in decreased case output for the examiners conducting the training.

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

**Budget Overview**

The Department’s annual budget for FY2019 is:

General Fund Base Budget	\$45,818,010
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Technical Adjustments to Base Budget	\$529,885
Transfer of funds from FY20	\$1,660,000
Non-General Funds	\$2,043,270
<b>TOTAL OPERATING BUDGET</b>	<b>\$50,051,165</b>

The Governor’s Introduced Budget for the biennium (FY19-FY20), which was presented in December 2017, provided DFS with funding for six new forensic scientist positions in Controlled Substances, one new forensic scientist position in Digital & Multimedia Evidence, and one new forensic scientist research position in Forensic Biology for method development, validation and implementation. The Governor’s budget also added funding to allow DFS to purchase new scientific equipment through the Master Equipment Lease Program (MELP). The Budget approved by the General Assembly retained the additional funding that the Governor provided to the Department in his Introduced Budget.

As described in the section of this report above entitled, “Controlled Substances Workload Increases and Actions to Address,” in August 2018, the Governor approved the transfer of \$1,660,000 from the Department’s FY20 budget to its FY19 budget to increase the Department’s Controlled Substances capacity.

**Grants**

During the period of November 1, 2017 through October 31, 2018, funding has been available or awarded to DFS under the following grant programs:

**FY16 Paul Coverdell Forensic Science Improvement Program** – \$218,912 awarded by NIJ to Virginia (the Department of Criminal Justice Services or DCJS) for DFS and the Office of the Chief Medical Examiner. The DFS portion (\$109,456) was used for training and continuing education of scientific staff in the Chemistry, Physical Evidence, and Toxicology program areas. The grant period was January 1, 2017 – September 30, 2018.

**FY15 DNA Capacity Enhancement and Backlog Reduction Grant** – \$913,390 awarded by NIJ to enhance capacity in the Forensic Biology Section. The funds were used to support personnel, training, and equipment. The grant period was January 1, 2016 – June 30, 2018.

**FY16 DNA Capacity Enhancement and Backlog Reduction Grant** – \$1,382,996 awarded by NIJ to enhance capacity in the Forensic Biology Section. The funds are to be used to support personnel, training, and equipment. The grant period is January 1, 2017 – December 31, 2018.

**FY17 DNA Capacity Enhancement and Backlog Reduction Grant** – \$1,376,805 awarded by NIJ to enhance capacity in the Forensic Biology Section. The funds are

to be used to support personnel, training, and equipment. The grant period is January 1, 2018 – December 31, 2019.

**FY15 NIJ Research and Development for Publicly Funded Forensic Science Laboratories** – \$149,504 awarded by NIJ to develop and validate two innovative quantitative liquid chromatography mass spectrometry methods for forensic toxicology analyses. The grant period is January 1, 2016 – December 31, 2018.

**FY16 Research and Evaluation for the Testing and Interpretation of Physical Evidence in Publicly Funded Forensic Laboratories (Latent Prints)** – \$216,225 awarded by NIJ to: 1) determine the accuracy and reliability of the LatentSleuth technology for latent print examinations; and 2) determine if integrating LatentSleuth into the current comparison workflow for complex comparisons improves efficiency and reproducibility as compared to existing methods. The grant period is January 1, 2017 – September 30, 2019.

**Opioid Joint Project (OCME and DFS)** – DFS received funds from the OCME in the amount of \$133,293 to support additional personnel in DFS to improve both the timeliness and comprehensiveness of toxicological studies in deaths suspected as opioid overdoses. The grant period was September 1, 2017 – August 31, 2018.

**Opioid Joint Project (OCME and DFS) – Continuation** - This project was fully funded for another year, at the same level of \$133,293 for the same activities. The new period runs from September 1, 2018 – August 31, 2019.

**FY18 Byrne Justice Assistance Grant (JAG) – Continuation Funding** – \$50,000 awarded by DCJS to maintain the increased capacity in the Forensic Training Section that was realized with the FY17 grant project. Funds were used to retain the part-time forensic trainer position and to add several items of equipment to be used as back-up when the current equipment is in need of repair. The total amount of the grant included a required match of \$7,500. The grant period was October 1, 2017 – September 30, 2018.

**FY19 Byrne Justice Assistance Grant (JAG) – Continuation Funding** – \$46,536 awarded by DCJS to maintain the increased capacity in the Forensic Training Section that was realized with the FY18 grant project. Funds will be used to retain the part-time forensic trainer position and to add several items of equipment that can be used as a back-up when the current equipment is in need of repair. The total amount of the grant includes a required match of \$11,634. The grant period is October 1, 2018 – September 30, 2019.

**New York County District Attorney’s Office (DANY) Sexual Assault Kit Backlog Elimination Project** – \$1,399,989 awarded to the Office of the Attorney General and DFS (co-applicants in the project) to outsource the testing of previously untested sexual assault kits. The DFS portion of the award (\$123,226) was used for overtime hours for DFS scientists to conduct reviews on DNA profiles received from

the contract laboratory, upload all eligible profiles into CODIS, perform DNA testing needed for Data Bank hit confirmations, and prepare all necessary reports. The original grant period was October 1, 2015 to September 30, 2017, but it was extended through September 30, 2018.

**Sexual Assault Kit Initiative (SAKI) Grant** – \$421,155 awarded by the Office of the Attorney General (OAG) to DFS as a sub-recipient. Funding provided to DFS to hire a part-time forensic laboratory specialist to assist in implementing a streamlined approach to processing sexual assault kits that will include testing of samples collected in the kits for male DNA followed by extraction and testing of DNA with robotics. The OAG also provided funds to DFS to contract with a vendor to develop sexual assault kit tracking software that will be integrated with the DFS Laboratory Information Management system. In addition, funds were allocated to DFS to hire a kit tracking system coordinator to provide help-desk support for law enforcement. The grant period is October 1, 2016 – September 30, 2019.

**2018 Highway Safety Grant Program** – \$275,714 awarded by DMV for the DFS Breath Alcohol training program. Funding was provided for reimbursement of travel costs for law enforcement officers, supplies needed for breath alcohol classes, continuing education for DFS Breath Alcohol personnel, and the retention of the grant-funded Breath Alcohol forensic scientist position. This year, funding was also provided to purchase software licenses for web-based, on-demand training programs. DFS also contracted with the breath alcohol database developer to provide enhanced search functionality. The total amount of the award included an in-kind match of \$55,143. The grant period was October 1, 2017 – September 30, 2018.

**2019 Highway Safety Grant Program** – \$280,455 awarded by DMV for the DFS Breath Alcohol training program. Funding is provided for reimbursement of travel costs for law enforcement officers, supplies needed for breath alcohol classes, continuing education for DFS Breath Alcohol personnel, and the retention of the grant-funded Breath Alcohol forensic scientist position. The total amount of the award includes an in-kind match of \$70,114. The grant period is October 1, 2018 – September 30, 2019.

**2018 Highway Safety Grant Program (TREDS Project)** – \$84,290 awarded to DFS as a sub-recipient of DMV under its TREDS (Traffic Records Electronic Data System) Program. The project goal was to decrease the turnaround time of data from the OCME to DMV in cases involving motor vehicle accident fatalities. This project involved the OCME, DFS and DMV. DFS received funds to retain four part-time forensic laboratory specialists to assist in the Toxicology Sections statewide to increase capacity. The grant period was October 1, 2017– September 30, 2018.

**2019 Highway Safety Grant Program (TREDS Project)** – \$84,290 awarded to DFS as a sub-recipient of DMV under its TREDS (Traffic Records Electronic Data System) Program. The project goal is to decrease the turnaround time of data from the

OCME to DMV in cases involving motor vehicle accident fatalities. This project will involve the OCME, DFS and DMV. DFS received funds to retain four part-time forensic laboratory specialists to assist in the Toxicology Sections statewide to increase capacity. The grant period is October 1, 2018– September 30, 2019.

**FY18 Byrne Justice Assistance Grant (JAG) – One-Time Equipment Funding** – \$220,000 awarded by DCJS to increase the capacity in the Controlled Substances Section by adding GC/MS/FID instruments to the Central and Northern Laboratories. The grant period was July 1, 2018 – September 30, 2018.

**Virginia Prescription Drug Overdose Prevention Program** – \$50,000 awarded to DFS via a Memorandum of Understanding with VDH for improvements to the DFS LIMS using a Business Intelligence model to enhance data reporting on opioid cases to DFS stakeholders. The grant period is August 1, 2018 – August 31, 2019.

**Centers for Disease Control - Public Health Crisis Response One-Time Funding** – \$948,000 awarded to DFS through the VDH to add equipment and supplies to increase capacity in the Toxicology Section statewide. The grant period is September 1, 2018 – August 31, 2019.

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

##### **Policy Notices Sent to DFS User Agencies**

##### **Revised Controlled Substances Submission and Weighing Policies**

On December 1, 2017, the Department sent a Notice of DFS Policy Change to its user agencies, advising of revised controlled substances submission and weighing policies. These changes were the result of a meeting DFS held on September 18, 2017, with Commonwealth’s Attorneys and narcotics investigators from law enforcement agencies across the state, to discuss the Department’s weighing practices for controlled substances and other measures that may increase the efficiency of the analytical process. As a result of this meeting, DFS discontinued its practice of providing net weights for substances unless the substance is at or near a statutory weight threshold. Substances that do not meet or exceed an established weight threshold will be reported using the gross weight, which includes innermost packaging. Submissions of marijuana food products were also limited to one specimen for simple possession cases and up to five specimens for distribution cases. For search warrant cases, only evidence supporting the indicated charge should be submitted for analysis.

##### **Notice Regarding Forensic Biology (DNA) Workload**

On January 24, 2018, DFS sent a Notice addressing Forensic Biology (DNA) submissions and turnaround time to all law enforcement agencies, all Commonwealth’s

Attorneys, the criminal defense bar, and circuit and district judges. The Notice pointed out the 5,195 cases received for analysis by the Forensic Biology Section in CY2017 and how that figure represented an approximately 25% increase over past years and resulted in a backlog of 2,295 cases waiting to be worked and an average turnaround time of 179 days.

The Notice advised that numerous factors contributed to this increase, including growth in the volume of physical evidence recovery kits (PERKs) submitted for analysis as a result of enactment of the comprehensive PERK legislation in 2016, the expansion of the areas of DNA tested during analysis from 16 to 24 in accordance with national testing policies, and statistical calculations being required in many cases, which are time consuming. The Notice acknowledged the impact that lengthy turnaround times have on the criminal justice process and explained that DFS has been working to expand its DNA testing capacity.

### **Expanded NIBIN Search Areas and Changes to Toolmark and Distance Determination Submission Policies**

On April 2, 2018, the Department sent a Notice of DFS Policy Change to its user agencies, advising that, effective March 27, 2018, every National Integrated Ballistic Information Network (NIBIN) case submitted to DFS is being searched against cases entered at the following sites: any DFS laboratory, the Newport News Police Department (Virginia), the District of Columbia Department of Forensic Sciences, the Montgomery County Police Department (Maryland), and the Prince George's County Police Department (Maryland), as well as cases entered by the ATF for Zone 1.

The Notice further advised agencies of two revised submission policies: 1) that evidence for toolmark examination/comparison will not be accepted unless the tool is associated with a suspect; and 2) that a presubmission consultation between the investigator and/or the Commonwealth's Attorney and a Firearms & Toolmarks Supervisor will be required before any evidence will be accepted for a distance determination examination.

### **Eastern Laboratory Building Closed Due to Hurricane Florence**

DFS closed its Eastern Laboratory beginning Wednesday, September 12, 2018, at 5:00 p.m. in anticipation of Hurricane Florence. The power to the building was powered off at noon on Thursday, September 13, 2018, and the building was closed on September 13 and 14. DFS user agencies were provided notice of the closing. Although DFS reconnected power on Friday, September 14, due to a faulty network switch, the facility HVAC and electronic security systems were not functional. VITA/SAIC was deployed to repair the switch Saturday morning, but was not successful. On Sunday, September 16, 2018, VITA/SAIC replaced the switch and by the afternoon the HVAC and security systems were reconnected. The Eastern Laboratory reopened on Monday, September 17, 2018.

### **NIBIN Administrative Sampling Plan**

On October 15, 2018, the Department sent a Notice of DFS Policy Change to its user agencies, advising that the Firearms & Toolmarks Section had implemented an administrative sampling plan for National Integrated Ballistic Information Network (NIBIN) searches to allow the Department to more expeditiously enter cases into NIBIN and report any investigative leads. Under the Plan, which was effective immediately, when two or more cartridge cases and/or shotshell cases are submitted, the evidence will be screened and grouped based on similar characteristics. At least one cartridge case and/or shotshell case representing each determined group will be imaged, and appropriate NIBIN system searches conducted. Comparative examinations that may determine how many firearms are represented will not be routinely performed on cartridge cases and/or shotshell cases, and projectile evidence will not be routinely examined when submitted with cartridge cases and/or shotshell cases in the absence of a firearm.

### **Average Case Turnaround Times Posted on DFS Website**

In March 2018, the Department began posting, on the DFS website, the average case turnaround times (in days) for cases completed in the prior month. This information, which is available by section, is updated at the beginning of each month.

### **Board of Pharmacy Expedited Regulations**

Pursuant to Virginia Code § 54.1-3443(D), the Board of Pharmacy is permitted to temporarily place substances into Schedule I or II via an expedited regulatory process. This process may be used when the Board of Pharmacy has determined, in consultation with DFS, that the substances should be so scheduled. The Board of Pharmacy must conduct a public hearing, with at least 30 days' notice, providing a list of substances it intends to schedule. The Board of Pharmacy must notify the House and Senate Courts of Justice Committees of any new substances added to Schedule I or II by this expedited regulatory process. Any substances added by this process will remain in Schedule I or II for 18 months and then be de-scheduled unless a general law is enacted adding such substance to Schedule I or II in the Code of Virginia. DFS monitors evidence submissions to its Controlled Substances Section and tracks new compounds that are submitted statewide. DFS recommends compounds to the Board of Pharmacy for this process on a quarterly basis.

As indicated in the 2017 Forensic Science Board report, DFS recommended eleven compounds to the Board of Pharmacy in October 2017. Those compounds were subsequently scheduled by Board of Pharmacy regulation effective February 21, 2018. DFS recommended an additional seven compounds in January 2018, which were scheduled via Board of Pharmacy regulation effective June 13, 2018. Eight more compounds were recommended by DFS in April 2018, and they were scheduled via Board of Pharmacy regulation effective September 5, 2018. There were two additional compounds recommended by DFS in July 2018, which were approved by the Board of Pharmacy on September 25, 2018 and will become scheduled following publication in the Register of Regulations. In October 2018, DFS recommended an additional nine compounds to the Board of Pharmacy. Of the 26 compounds recommended to the Board of Pharmacy by DFS

between November 1, 2017 and October 31, 2018, 12 were research chemicals, two were cannabimimetic agents, one was a benzodiazepine, and 11 were synthetic opioids.

### **Conferences and Presentations**

The Department encourages its staff to attend meetings and 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. From November 1, 2017 to October 31, 2018, DFS representatives attended statewide conferences/training for the Virginia Association of Commonwealth's Attorneys, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, substitute judges, and the Judicial Conference of Virginia. Staff also attended and gave presentations at multiple regional and local meetings of DFS user agencies.

### **Training**

#### **Forensic Training Section**

In 2017, the Department's Forensic Training Section was able to hire a part-time instructor to expand the number of short courses offered, as well as provide staff capacity to offer a third Forensic Science Academy (FSA), using funds from the FY17 Byrne Justice Assistance Grant. DFS was awarded continuation funding for the FY18 and FY19 grant cycles so DFS was able to offer a third FSA Session in 2018 and anticipates doing so again in 2019. Each nine-week Academy session provides in-depth training to twelve selected law enforcement students in the recognition, documentation, collection, preservation, and handling of physical evidence through classroom instruction by forensic experts, evidence collection demonstrations, and numerous practical exercises in simulated crime scenes.

The Forensic Training Section also presented numerous short courses throughout the year on various crime scene investigation subjects, including Basic Crime Scene Investigation, Basic Digital Crime Scene Photography, and Impression Evidence Documentation and Collection. Law enforcement training updates were also conducted at each of the four DFS Regional Laboratories. These programs, entitled "Laboratory Capabilities and Update," allow DFS personnel to communicate evidence receiving guidelines and changes to laboratory services to, as well as receive feedback directly from, the larger law enforcement community. The Virginia Forensic Science Academy Alumni Association 2018 Annual Retraining Seminar was held August 29 – August 31, 2018. Numerous DFS staff gave presentations at this seminar, which was coordinated by the Forensic Training Section and attended by over 170 Forensic Science Academy alumni.

#### **Breath Alcohol Instrument Operator Training**

The Department's Breath Alcohol Section provides maintenance of evidential breath alcohol instruments, responses to legal requests for information, testimony, and training for law enforcement personnel. From November 1, 2017 through October 15, 2018, the Breath Alcohol Section conducted 36 initial breath alcohol instrument operator (three-day)



classes and licensed 697 new operators. During this period, the Section developed and implemented a new online recertification course, and, as of October 15, 2018, had offered four of these courses, relicensing 156 operators online. In addition, the Section conducted 78 in-person relicensing (four-hour) sessions and subsequently relicensed 2,302 operators. Instructor Recertification was held September 10-12, 2018, and 22 law enforcement instructors were recertified. The law enforcement instructors assist Breath Alcohol staff in conducting the operator training classes.

### **Forensic Science Training Program for Attorneys (and Judges)**

DFS has implemented a forensic science training program for criminal attorneys in Virginia. The program, which is modeled after the Arizona Forensic Science Academy, provides training to prosecutors and criminal defense attorneys together on the science underlying the various laboratory disciplines. Judges are also invited to attend the classes. Each subject offered will be provided to attorneys and judges in each of the four DFS laboratories.

The Department disseminated a Needs Assessment Survey to criminal attorneys across Virginia in October 2017, and 524 individuals responded. A stakeholder group, which included the Chief Medical Examiner, prosecutors, criminal defense attorneys and two circuit judges, provided input on how such a training program could best be implemented in Virginia, and the consensus of the group, after reviewing the Needs Assessment survey results, was that the first offering should be a DNA Training. The stakeholder group assisted the Department with the screening and application process, determining how best to promote the program, and the subjects to be covered under the DNA curriculum.

The first DNA Training was held at the Department's Western Laboratory on October 12, 2018. Twenty-four individuals attended this training. A DNA Training had been scheduled at the Eastern Laboratory on September 14, 2018, but was postponed as a result of the area being under mandatory evacuation due to Hurricane Florence. The remaining DNA Trainings for 2018 are scheduled as follows:

- November 2 – Central Laboratory
- November 9 – Northern Laboratory
- November 30 – Eastern Laboratory

No continuing legal education (CLE) credits are being provided for the training because the program teaches science and does not include a legal component, which is a requirement for CLE credit. However, the Department is not charging any fees to the attendees.

### **Publications**

The updated report "Drug Cases Submitted to the Virginia Department of Forensic Science CY 2017" was released on August 9, 2018. DFS receives tens of thousands of drug

samples every year, submitted by law enforcement agencies across the state. This report, a joint effort by DFS and the Virginia Department of Criminal Justice Services (DCJS), highlights the frequency with which various selected drugs are submitted, broken out by the seven Virginia State Police Divisions. The report can be accessed on the DFS website here:

<http://www.dfs.virginia.gov/wp-content/uploads/2018/08/DFS-2017-Drug-Submission-Data-Report.compressed.pdf>

### **Customer Input Survey**

On July 27, 2018, the Department disseminated a link to a Customer Input Survey to law enforcement, the Office of the Chief Medical Examiner, Commonwealth's Attorneys and defense attorneys across Virginia. The survey was open from July 26 through August 31. The survey included 14 questions, which covered topics such as the clarity and understandability of Certificates of Analysis, the accessibility and responsiveness of staff, and interest in the use of video testimony. DFS received 420 survey responses, 307 of which were complete responses.

### **September 16-22, 2018 Designated Forensic Science and Medicine Week in Virginia**

Governor Northam issued a proclamation declaring September 16–22, 2018, as Forensic Science and Medicine Week in Virginia. On September 20, Secretary of Public Safety & Homeland Security Brian Moran visited the Central Laboratory and presented the proclamation. In conjunction with Forensic Science and Medicine Week, DFS and the OCME hosted an On the Square event and provided tours of the DFS Central Laboratory and the Central OCME to state employees.

## **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)**

### **Regulations**

At its January 4, 2018 meeting, the Board approved a Notice of Intended Regulatory Action (NOIRA) to consider amendments to 6 VAC 40-30, the Regulations for the Approval of Field Tests for the Detection of Drugs. In the fall of 2017, the Department had received a request from a law enforcement agency to approve a handheld Raman spectrometer for the detection of drugs as a field test under these regulations. However, as currently written, the field test regulations only contemplate the approval of presumptive chemical tests as field tests. The proposed amendments to the regulations would amend the definition of field test to include presumptive mobile instruments and set up a process for the approval of presumptive mobile instruments.

Most, if not all, law enforcement agencies in Virginia have discontinued the use of presumptive chemical tests for powders due to safety concerns with the handling of such potentially lethal compounds. Some of the presumptive mobile instruments, such as the

handheld Raman spectrometer, permit field testing of suspected controlled substances without destroying any portion of the sample. Some of these instruments are also able to test the sample through clear plastic or glass packaging.

The NOIRA was submitted, along with the required agency statement, on Virginia's Regulatory Town Hall, on February 16, 2018. The Department of Planning and Budget completed its review on March 2, 2018. The Governor's Office approved the NOIRA on June 25, 2018, and the Notice was published in the Virginia Register of Regulations on July 23, 2018. A public comment period was opened on July 23, 2018, on Virginia's Regulatory Town Hall and closed on August 25, 2018.

A public hearing was held on August 22, 2018 prior to the Board's regular meeting. All comments received to that date, whether through Virginia's Regulatory Town Hall or submitted directly to DFS, were considered by the Board.

At its October 17, 2018 meeting, the Board considered and approved proposed amendments for 6 VAC 40-30.

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

The Scientific Advisory Committee (SAC) met at the DFS Central Laboratory in Richmond on May 15, 2018 and October 16, 2018. A list of members of the Scientific Advisory Committee is included as Attachment B.

### **Scientific Advisory Committee (SAC) Recommendations/Actions in 2018**

- The SAC's Forensic Biology Subcommittee met on May 15, 2018, immediately prior to the SAC meeting, to consider a packet of information sent to the Department's Director from staff at the Virginia Parole Board related to a specific DFS case file. The Department Director, with the concurrence of the Chair of the Scientific Advisory Committee, had requested that the Subcommittee review the information packet from the Parole Board and the Department's case file, and present their findings to the Scientific Advisory Committee. The Subcommittee discussed the matter in a closed session pursuant to Virginia Code § 2.2-3711(A)(35).
- The Scientific Advisory Committee met on May 15, 2018, after the Forensic Biology Subcommittee. The Committee also went into closed session pursuant to Virginia Code § 2.2-3711(A)(35) to discuss the Subcommittee's findings related to the materials from the Parole Board and the case file. After reconvening in an open session, the Committee accepted the Subcommittee's report and directed Department Counsel to prepare a draft response to the Parole Board for the Subcommittee's approval. Once approved by the Subcommittee, Department Counsel was directed to send the response to the Parole Board.

## Attachment A

### FORENSIC SCIENCE BOARD MEMBERS

(as of October 31, 2018)

- **Colonel Gary T. Settle** – Term: period in office or employment  
Superintendent of the Virginia State Police
- **Shannon Dion** – Term: period in office or employment  
Director of the Department of Criminal Justice Services
- **William T. Gormley, M.D.** – Term: period in office or employment  
Chief Medical Examiner
- **Caroline D. Juran**– Term: period in office or employment  
Executive Director of the Virginia Board of Pharmacy
- **James F. Entas** – Term: period in office or employment  
Designee of Attorney General Mark R. Herring
- **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
- **Denise M. Toney, Ph.D.** – Term: period in office or employment  
Director of the Division of Consolidated Laboratory Services
- **The Honorable Vince Donoghue** – Term: period in office or employment  
Designee of the Chair of the Senate Committee for Courts of Justice
- **The Honorable Emily M. Brewer, Delegate** – Term: period in office or employment  
Designee of the Chair of the House Committee for Courts of Justice
- **Leslie Edinboro, Ph.D.** – Term: designated by Scientific Advisory Committee Chair  
Member of the Scientific Advisory Committee
- **Richard P. Meyers** – Term: designated by Scientific Advisory Committee Chair  
Member of the Scientific Advisory Committee
- **Colonel Maggie A. DeBoard** – Term: ending 6/30/2021  
Governor Appointee – Member of Law Enforcement
- **Colette W. McEachin (Chair)** – Term: ending 6/30/2021  
Governor Appointee – Member of the Virginia Commonwealth’s Attorneys Association
- **David R. Lett (Vice Chair)**– Term: ending 6/30/2021  
Governor Appointee – Criminal defense attorney with special knowledge in the area of forensic sciences

## Attachment B

### SCIENTIFIC ADVISORY COMMITTEE MEMBERS

(as of October 31, 2018)

- **Linda C. Jackson** – Term: period in office or employment  
Director of the Department of Forensic Science
- **Les Edinboro, Ph.D.** – Term: ending 6/30/2019  
Governor Appointee – Director of a private or federal forensic laboratory located in the Commonwealth
- **Jami St. Clair** – Term: ending 6/30/2019  
Governor Appointee – 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 6/30/2021  
Governor Appointee – Molecular Biologist
- **George C. Maha, Ph.D.** – Term: ending 6/30/2019  
Governor Appointee – Population Geneticist
- **Richard P. Meyers** – Term: ending 6/30/2022  
Governor Appointee – Forensic Chemist
- **Carl Sobieralski (Vice-Chair)** – Term: ending 6/30/2019  
Governor Appointee – Forensic Biologist
- **Maureen C. Bottrell** – Term: ending 6/30/2022  
Governor Appointee – Trace Evidence Scientist
- **Barry S. Levine, Ph.D.** – Term: ending 6/30/2022  
Governor Appointee – Toxicologist certified by the American Board of Forensic Toxicologists
- **Kenneth Zercie** – Term: ending 6/30/2019  
Governor Appointee – Member of the Board of the International Association for Identification
- **Travis Spinder** – Term: ending 6/30/2021  
Governor Appointee – Member of the Board of the Association of Firearms and Toolmark Examiners
- **Randall E. Beaty** – Term: ending 6/30/2022  
Governor Appointee – Member of the International Association for Chemical Testing
- **Kathleen Corrado, Ph.D. (Chair)** – Term: ending 6/30/2021  
Governor Appointee – Member of the American Society of Crime Laboratory Directors