



Post-Conviction DNA Notification Project

October 15, 2019



Overview

- Background
- Notification Efforts
- DNA Testing Outcomes
- Pending Notifications
- Acknowledgements



Background

- In 2001, over 530,000 archived case files were discovered at the Department of Forensic Science (DFS) which contained biological evidence swabs for cases between 1973-1988.
- In 2002, a DNA test was completed for evidence in one of the archived files, which led to the exoneration of Marvin Anderson, clearing him of a wrongful rape conviction.
 - 2 additional individuals were subsequently exonerated based on evidence in the archived files.

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3



Background

- In 2004, Governor Warner directed DFS to test a random sample of the archived files for cases containing evidence related to sex offenses.
 - This review of 31 cases led to 3 additional exonerations.
- In December 2005, Governor Warner ordered a full review and DNA testing of biological evidence in the remaining archived files at DFS for all felony crimes against persons.

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4



Background

- In 2008, the General Assembly mandated that the Forensic Science Board (FSB) ensure all individuals who were convicted between 1973-1988 be notified if their case file contained evidence suitable for DNA testing.

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5



Background

- In 2009, the General Assembly directed the Crime Commission to provide guidance in regard to notification efforts (SB 1391).
- Since 2009, the Crime Commission has authorized staff to provide assistance to the FSB with notification efforts.

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6



Notification Efforts

- Notification eligibility criteria:
 - DNA evidence suitable for testing in case file; and,
 - Named suspect in case convicted of offense(s) per named victim(s).
- 3,026 named suspects in the 2,204 archived case files were identified who needed to have their conviction status determined.

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7



Notification Efforts

- **969** convicted individuals required notification.
- Notification status:
 - Notified: 436
 - Deceased: 280
 - Unable to Locate (all leads exhausted): 253

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8



Notification Efforts

- Challenges to notification efforts included:
 - Cases were 30-45 years old.
 - Vital identifying information (DOB, SSN) were unavailable for many individuals.
 - Many individuals had common names.
 - Frequent changes of residency in Virginia, other states, and other countries.
 - Legal name changes.

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9



Notification Efforts

Staff ensured that all information in DFS lab and legal files for each individual was captured with countless hours of cross validation.



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10



Notification Efforts

➤ Crime Commission staff:

- Coordinated numerous courthouse visits and conviction verification requests to clerks of circuit courts;
- Partnered with multiple state agencies, local government officials, associations, non-profit entities, law schools, law firms, and pro bono attorneys to locate individuals;
- Requested frequent assistance from the Virginia State Police and Department of Corrections to run searches within their internal databases;

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11



Notification Efforts

➤ Crime Commission staff:

- Performed hundreds of searches in Virginia and other states' on-line sex offender registries and inmate locator resources;
- Completed hundreds of searches in various national people finder and public record search tools; and,
- Prepared as many as 4-5 certified and first-class mailings for any leads on addresses to notify individuals.

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12



DNA Testing Outcomes

- Crime Commission staff prioritized notification efforts for convicted individuals based upon DNA lab testing outcomes once made available:
 - **Eliminated:** individual was not a contributor to the DNA profile. (Not the same as exonerated)
 - **Need Known:** a reference sample is needed to reach a conclusion.
 - **Inconclusive:** insufficient evidence to reach a conclusion.
 - **Indicated:** individual was a contributor to the DNA profile.

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13



DNA Testing Outcomes

- DNA lab testing outcomes of the 969 convicted individuals:
 - Eliminated: 84
 - Need Known: 144
 - Inconclusive: 490
 - Indicated: 251

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14



DNA Testing Outcomes

Lab Testing Outcome of Convicted Individuals by Notification Status

Lab Testing Outcome	Notified	Deceased	Unable to Locate	TOTAL
Eliminated	64	18	2	84
Need Known	30	59	55	144
Inconclusive	191	158	141	490
Indicated	152	46	53	251
Total	436	280	253	969

Source: Virginia State Crime Commission analysis of DFS' Post-Conviction DNA Notification Project Database.
 Note: These figures exclude the 289 convicted individuals originally classified as "ineligible".

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15



DNA Testing Outcomes

- DNA testing and follow-up action related to the DFS archived case files has resulted in the exoneration of 13 individuals, including:
 - 6 pardons;
 - 6 writs of actual innocence; and,
 - 1 special circumstance.
- DNA testing has also led to at least 16 "hits" to DNA profiles in the Virginia DNA Databank of persons not named in the case file.

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16



DNA Testing Outcomes

Exonerated Individuals:

- Marvin Lamont Anderson
- Bennett Barbour
- Victor Anthony Burnette
- Calvin Cunningham
- Willie Neville Davidson
- Garry Diamond
- Thomas Haynesworth
- Curtis Jasper Moore
- Julius Earl Ruffin
- Winston Scott
- Philip Leon Thurman
- Roy Watford, III
- Arthur Lee Whitfield



Pending Notifications



Pending Notification

- 1,809 additional case files were originally classified as “ineligible” by DFS in the early phases of this Project due to federal grant funding for testing being restricted to “violent felonies”.
 - 289 individuals in these cases were convicted:
 - 122 felony convictions; and,
 - 167 misdemeanor convictions.

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19



Pending Notification

- Staff reviewed the 122 felony convictions:
 - Previously Notified: 11
 - Deceased: 41
 - Pending Notification: 44
 - Unable to Locate (all leads exhausted): 26
- Letters were sent to the 44 individuals pending notification in September 2019.

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20



Pending Notification

- Staff verified convictions for the 167 individuals convicted of misdemeanors:
 - Previously Notified: 35
 - Previously Determined to be Deceased: 28
 - Pending Notification: 104
- Staff plans to review the case files, determine who may be deceased, and attempt to notify remaining individuals pending notification.

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21



FSB Due Diligence Determination

- On October 3, 2019, the FSB unanimously voted that all reasonable efforts have been made to notify convicted individuals as mandated by the General Assembly once the final pending notifications are made.
- DFS plans to submit an annual report to the General Assembly by November 1st .

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22



Acknowledgements


Staff extends its appreciation to:


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- Circuit Court Clerks
- Indigent Defense Commission
- Law School Students
- Mid-Atlantic Innocence Project
- Office of the Chief Medical Examiner
- Office of the Attorney General
- Pro Bono Attorneys



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- Virginia Department of Corrections
- Virginia Department of Forensic Science
- Virginia Department of Health- Division of Vital Records
- Virginia Department of Motor Vehicles
- Virginia State Bar
- Virginia State Police





Discussion

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25