



# Overview of DNA Notification Project

September 23, 2014

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# Overview



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# Background



- In 2001, Paul Ferrara, former DFS Director, found old case files that contained portions of swabs affixed to worksheets.
- Mary Jane Burton, a forensic scientist who worked for the Virginia Division of Forensic Science (now DFS), kept files containing biological evidence, between 1973-1988.

# Background



- There were approximately 534,000 case files.
- Over 3,000 of these files contained biological evidence suitable for DNA testing.
  - At least 2,200 files were associated with a named suspect, of which 860 involved state violent felony offenses.

# Background



- DNA testing of biological evidence may result in the following outcomes:
  - Indicated: Person was a contributor to the DNA profile.
  - Eliminated: Person was not a contributor to the DNA profile.
  - Need known: A reference sample is needed to reach a conclusion.
  - Insufficient Evidence: Inconclusive.

# Background



- In 2002, a DNA test was completed for one of the archived files, which led to the exoneration of Marvin Anderson, clearing him of a wrongful rape conviction.
- In 2004, Gov. Warner directed DFS to review 10% of the case files containing biological evidence where DNA analysis had not been conducted.
- In December 2005, after three more exonerations, Gov. Warner ordered a full review and DNA testing of biological evidence remaining in archived files at DFS.

# Background



- A DNA testing outcome of “eliminated” does not automatically result in an exoneration.
  - There were approximately 80 cases where the test result outcome was “eliminated.”
  - There have been 11 exonerations as a result of this project.
  - In 10 of the 11 cases, the victim had mistakenly identified the person as the perpetrator.

# Background



- House Bill 2216, introduced during the 2005 General Assembly Session by Delegate David Albo, created the Department of Forensic Science (DFS) as a department within the executive branch of state government.
- The Forensic Science Board (FSB) was also created in 2005.
  - The Crime Commission Chair serves as a member of the FSB, but the Crime Commission Director has continually served as the designee since 2007.



# Background



- In 2008, the General Assembly passed budget language requiring that the FSB “shall ensure that all individuals who were convicted due to criminal investigations, for which its case files for the years between 1973 and 1988 were found to contain evidence possibly suitable for DNA testing, are informed that such evidence exists and is available for testing.”

# Background



- In 2008, DFS received a \$4.5 million grant from the National Institute of Justice to support the post-conviction DNA testing of forensic samples associated with these cases.
  - The grant only funded testing of cases deemed to be violent felony crimes or offenses.
  - The majority of the cases involved sex offenses and murders.

# Background



- In August 2008, the FSB approved a plan to send notification letters to the then-identified people required by legislation to be notified.
  - 1,094 people were identified as “convicted suspects” and deemed eligible for notification.
- In December 2008, the Crime Commission met and determined additional parameters for notification.

# Background



- During the 2009 Session of the General Assembly, Senate Bill 1391 was passed (patroned by Senator Ken Stolle), that mandated the dissemination of criminal histories to certain volunteers for the identification, location, and notification of individuals convicted of crimes prior to the advent of DNA testing and whose files had been found to contain evidence suitable for DNA testing.
  - “The services of such individuals shall include, but not be limited to... (iv) notifying any additional individual for whom receipt of notification is otherwise uncertain, to be determined by the Chairman of the Virginia State Crime Commission.”

# Background



- In May 2008, the FSB created the DNA Notification Subcommittee.
- The Director of the Crime Commission was selected to chair the subcommittee.
  - Members include representatives from Va. State Police (VSP), and a defense attorney.
- The subcommittee was responsible for overseeing details of the project and developing a work plan which was adopted by the full FSB.

# Background



- Crime Commission staff was tasked with coordinating notification efforts, as well as verifying convictions, and identifying individuals eligible for notification.

# Background



- In June 2009, the Crime Commission received a spreadsheet from DFS containing information for cases found to contain biological evidence believed to be suitable for DNA testing.
  - The spreadsheet contained information from multiple sources including DFS case files, VSP, OCME, Circuit Court Clerks, and Commonwealth's Attorney's Offices.

# Background



- The Crime Commission received assistance from Dept. of Motor Vehicles (DMV), Vital Records, Circuit Court Clerks, the Indigent Defense Commission, the Va. Clerks Association, and Commonwealth's Attorneys in an effort to locate individuals.
- The Crime Commission worked with DFS, the Department of Corrections (DOC), Mid-Atlantic Innocence Project (MAIP), pro bono attorneys, and law school students in an effort to notify individuals.
- Staff utilized two different people finder systems via subscription to West (Batch Processing and CLEAR).
  - Indigent Defense Commission staff utilized Accurint system for most recent address identification efforts.



# Background



- Crime Commission staff managed the pro bono attorneys and volunteers:
  - Ensured waivers and confidentiality forms were completed from all 129 volunteers;
  - Worked with the VA State Bar to allow for CLE credits for attorneys completing notification training;
  - Assisted in the development and scheduling of 14 trainings around the state;
  - Assigned 233 cases to the pro bono attorneys and volunteers;
  - Collected notification reporting forms; and,
  - Provided information to DFS and regular updates at each FSB meeting.

# Background



- From 2011-2013, Crime Commission staff assisted with confirming convictions of additional cases in order to determine eligibility for DFS to test the evidence.
- As a result of these efforts, approximately 100 additional cases were added to the total number of cases requiring notification and testing.

# Current Status



- From January-May 2014, the Indigent Defense Commission (IDC) offered to hire contract employees to assist with the notification effort.
  - 3 contract employees assisted in successfully notifying over 100 individuals, as well as determining an additional 46 as deceased.
  - They identified best known addresses for an additional 175 and we are still awaiting responses.
  - Crime Commission and DFS staff coordinated efforts for mailing the notification letters to the individuals.

# Current Status



- A total of 975 convicted suspects involved in 860 cases required notification.
  - 268 have been determined to be deceased.
  - 707 believed to still be alive.
- Of the 707 living suspects:
  - 60% (425 of 707) have been notified.
  - 40% (282 of 707) still require notification.
    - Letters have been sent to best known addresses multiple times. Still awaiting confirmation from recent mailings; and,
    - Very little information exists to locate others.

\* All data provided by DFS, September 2014.

# Work Plan



- DFS and Crime Commission staff are currently working to verify the testing and notification status of all named eligible suspects.
- Staff plans to cross validate the DFS database.
  - Numerous errors have been found within the current database, which may lead to some individuals not being notified.

# Policy Options



- Should notifications continue to be sent to individuals whose test outcome is indicated (i.e., contributor to DNA profile)?
  - Rationale: When project began, test results were not made available.
  - DFS released testing outcomes in 2011.
    - Notification efforts could then be prioritized.

# Policy Options



- Should all cases containing biological evidence, including misdemeanors, be tested?
  - If so, should notification efforts only include those individuals whose testing outcome is eliminated/not indicated?
  - Rationale: The budget language and legislation do not distinguish between felonies and misdemeanors in regards to testing.
  - To date, DFS has only tested felony cases.

# Policy Options



- Should DFS reexamine testing in cases with an inconclusive outcome?
  - Rationale: Results may differ due to improved technological advances in DNA testing.
  - There are 482 convicted suspects whose cases yielded insufficient scientific data upon which to draw a conclusion.
  - Unsure as to whether these individuals have been notified.

\* Data provided by FSB, April 2014.



# Policy Options



- Should family members of deceased convicted suspects, who were eliminated/not indicated by testing results, be notified?



## **Discussion**

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