

Virginia State Crime Commission

DNA Notification Project Update

2014

DNA Notification Project Update

The Crime Commission continues to be involved in the Forensic Science Board's DNA Notification Project. The Crime Commission's Executive Director serves as a member of the Forensic Science Board as a designee and is the Chair of the DNA Notification Subcommittee, which is charged with the oversight of the notification project.

In 2004, following the discovery of over 3,000 criminal case files containing biological evidence that were found to be suitable for DNA testing, Governor Mark Warner ordered a review of all the files in an effort to determine whether there were individuals who had been wrongly convicted and could be exonerated by the saved evidence. The case files were from the years 1973-1988, when DNA testing results had not yet been ruled admissible in Virginia courts. With advancements in science, testing the DNA evidence now may provide evidence that could show whether the individuals were guilty or innocent of the crimes for which they were convicted. During the 2005 Session of the Virginia General Assembly, Delegate David Albo introduced House Bill 2216, which created the Department of Forensic Science and the Forensic Science Board. This legislation led to the creation of the DNA Notification Subcommittee which was tasked with identifying and notifying individuals whose case files were found to have biological evidence suitable for testing.

Crime Commission staff is responsible for confirming the notification of all individuals who meet the relevant criteria: a criminal conviction, and DNA evidence contained in their case file. Crime Commission staff worked closely with the Department of Forensic Science (DFS) to create databases with all the pertinent information of each case file in an effort to begin notifications. During the 2009 Session of the Virginia General Assembly, Senator Kenneth Stolle introduced Senate Bill 1391, which mandated that the Forensic Science Board ensure that everyone entitled to notification is notified, allowed certain information to be disseminated to pro bono attorneys assisting with the notification portion of the project, and expressly authorized the involvement of the Crime Commission in making notification determinations. The Mid-Atlantic Innocence Project, along with Crime Commission staff, helped prepare and train the pro bono attorneys for the notification process. Crime Commission staff, court clerks, and Commonwealth's Attorneys from around Virginia assisted in verifying convictions for named suspects in the files. In 2014, the Indigent Defense Commission hired contract employees who successfully notified over 100 individuals and identified information for numerous other cases as well.

Crime Commission staff has continued to work diligently to ensure that every measure is undertaken to notify individuals who are entitled to notification. The Crime Commission, DFS, the Mid-Atlantic Innocence Project and the Indigent Defense Commission plan to work together continuously until the project is complete.

At its September meeting, the Crime Commission was presented with several policy options for consideration:

Policy Option 1: Should all misdemeanor cases containing biological evidence be tested? If so, should only those determined to be “eliminated” be included in the testing?

Crime Commission members voted to only test misdemeanor cases, regardless of testing outcome, by request, as it is hard to distinguish circuit court cases that have been pled down to misdemeanor cases. Additionally, most evidence from misdemeanor cases is destroyed after ten years, so testing the DNA evidence now, when all other evidence in the case is destroyed or unavailable would not necessarily prove to be beneficial.

Policy Option 2: Should DFS reexamine testing in cases resulting in an inconclusive outcome?

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.
- Inconclusive: Insufficient evidence to reach a conclusion.

Crime Commission members recommended that DFS retest cases where the initial post-conviction laboratory results were deemed “inconclusive,” meaning there was insufficient evidence after the initial DNA testing to determine a profile. Advancements in technology may allow profiles to be developed with additional testing. Retesting the biological evidence, when appropriate, could be probative of the defendant’s guilt or innocence in these cases.

Crime Commission members decided to prioritize the testing of cases with “inconclusive” results as follows:

1. Individuals with spermatozoa present in the DNA sample who are currently incarcerated.
2. Individuals who are incarcerated.
3. Individuals with spermatozoa present in the DNA sample who are not incarcerated.
4. All remaining cases.

Policy Option 3: Should the family members of deceased convicted suspects, who were “eliminated” by testing results, be notified?

The Crime Commission decided that if an individual whose DNA testing resulted in an “eliminated” outcome was deceased, then staff would attempt to locate and notify the individual’s next of kin.

Staff plans to continue work on this project in 2015.