

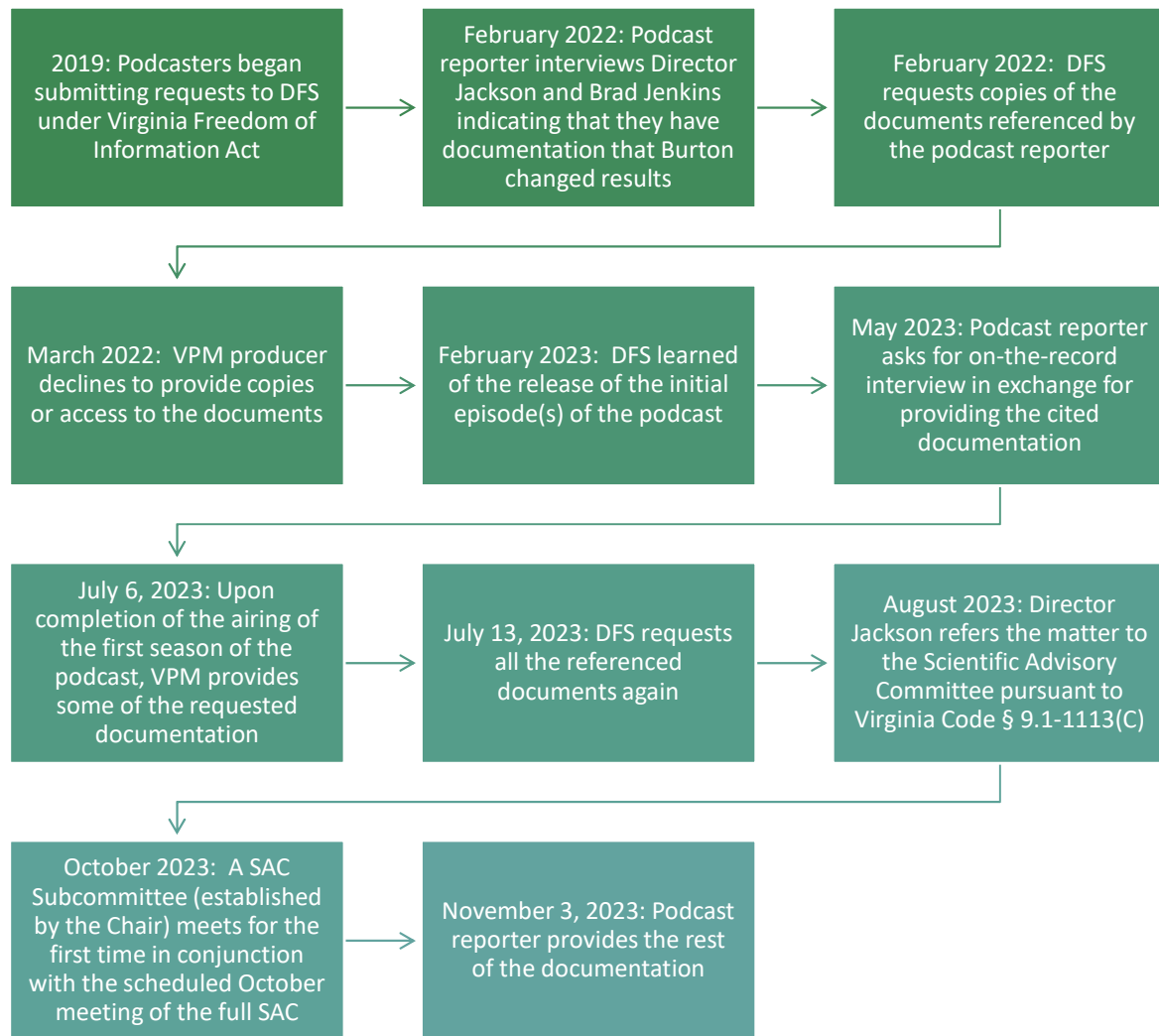


# MJB Cases

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AMY C. JENKINS

CHIEF DEPUTY DIRECTOR



## *Admissible: Shreds of Evidence Podcast*

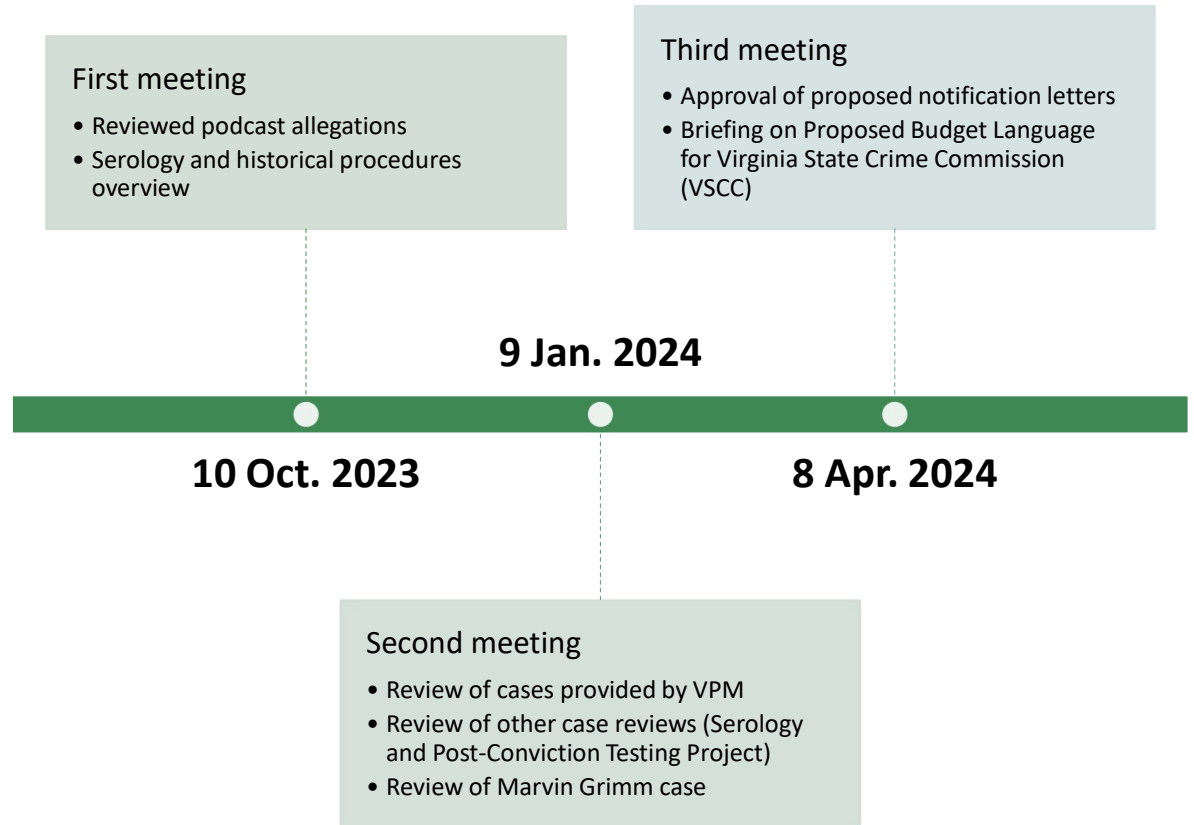
# DFS Accreditation Requirement

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## Duty to review received complaints

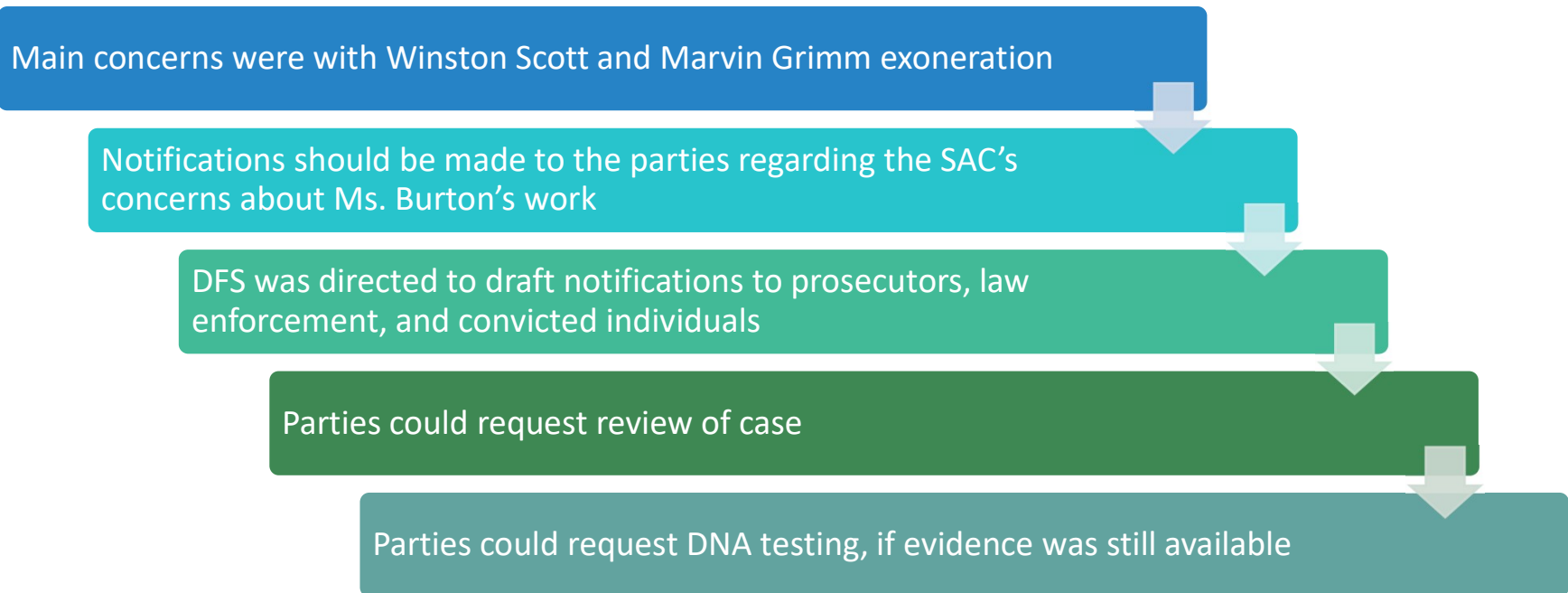
- Scientific Advisory Committee (SAC) Review Subcommittee was created to review the podcast allegations
- Virginia Code § 9.1-1113(C): “Upon request of the Director of the Department . . . the Committee shall review analytical work, reports, and conclusions of scientists employed by the Department. The Committee shall recommend to the Forensic Science Board a review process for the Department to use in instances where there has been an allegation of misidentification or other testing error made by the Department during its examination of evidence.”

# Scientific Advisory Committee (SAC) Subcommittee



# SAC Subcommittee Findings and Recommendations

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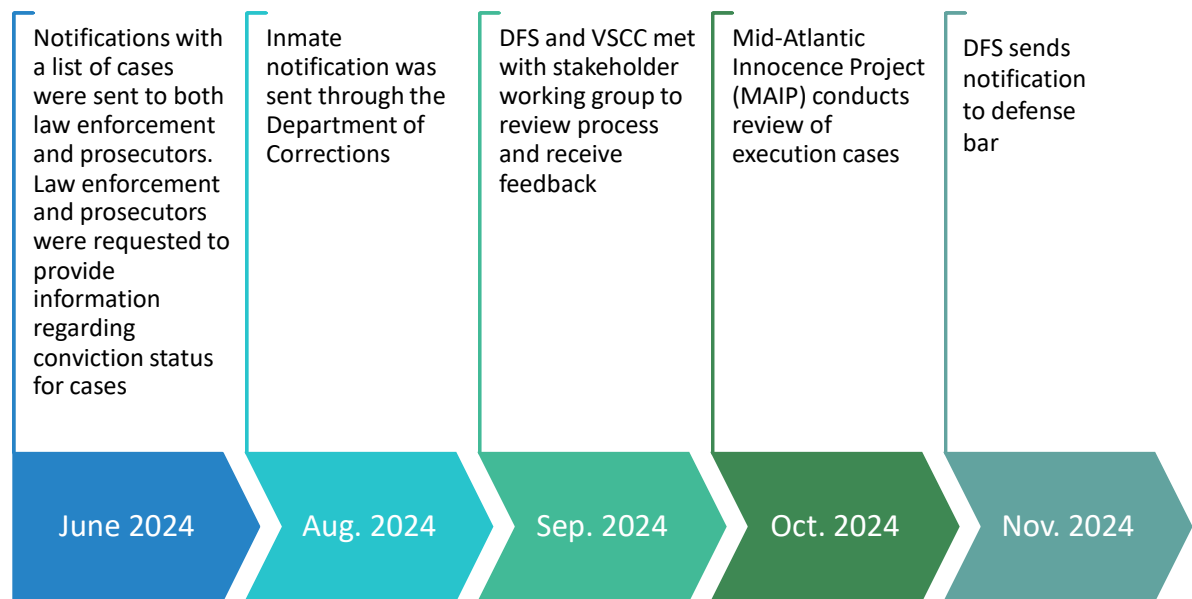
# DFS Accreditation Requirement

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**Duty to  
notify  
customers  
and correct**

- Notifications were made to all Commonwealth's Attorneys and law enforcement agencies
- Notifications are currently being made to affected individuals to fulfill that requirement
- DFS will conduct testing, if evidence is available

# DFS Follow Up



Notifications are currently being made to affected individuals to fulfill that requirement



Must have conviction information  
Must have enough personally identifiable information (PII)  
Must be able to locate valid address through non-law enforcement databases available

Notification letters to non-incarcerated content:

MJB provided forensic casework in your case, and her work has been questioned  
We cannot provide any legal advice; you should talk to a lawyer of your choice regarding available options  
DFS will provide forensic analysis results  
DFS will discuss testing options available if (i) evidence is located and (ii) either the parties agree to DNA testing, or (iii) it is ordered by a court

## DFS Follow Up

## Post-Conviction Testing Project Overlap

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Full scale review of DFS serology files from 1973 to 1988 to identify cases in which swabs and cuttings were retained

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Several DFS staff members retained swabs and cuttings in the files, but MJB did so consistently for a longer period of time

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Initial testing for cases where individual was convicted of a violent felony offense

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Testing conducted in 860 cases

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2008 budget language requiring Board to notify all convicted defendants whose case files were found to contain swabs and cuttings that such evidence existed and was available for testing

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Notification Subcommittee of the Board was established

# Post-Conviction Testing Project Overlap

In 2014, VSCC recommended DFS retest “inconclusive” cases if spermatozoa or seminal fluid were indicated, the defendant was incarcerated, and the evidence was probative. An additional 34 cases were recommended for additional testing by the Notification Subcommittee members.



In 2014, VSCC directed its staff to notify next of kin for any deceased “eliminated” defendants. There were 19 deceased “eliminated” individuals identified. After reviewing probative value of the evidence, VSCC attempted notification to the next of kin for 11 individuals. VSCC was able to successfully notify 8 of the 11 defendants’ next of kin.



In 2015, VSCC dedicated two staff members to assist with the completion of the Notification Project.



In 2016, VSCC worked with DFS to identify “need known” cases. VSCC made efforts to notify those individuals. At least three separate attempts have been made to notify these individuals.

# PC Project Exonerations

There were 13 individuals exonerated because of the testing associated with the PC Project.

MJB performed some analysis in 9 of the cases. She may have performed serology in a 10<sup>th</sup> case, but DFS expunged the entirety of the original serology documentation from the case file.

The Innocence Project and/or the National Registry of Exonerations have published contributing factors to wrongful convictions. “False or misleading forensic evidence” is indicated in 3 of those 9 cases.

One of the cases, Winston Scott, was included in the cases of concern by the SAC Review Subcommittee.

# Execution Cases

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## **Poyner**

Could not be eliminated in PC Testing--Defendant confessed

## **Spencer**

Could not be eliminated in PC Testing—first DNA case in Virginia (multiple offenses)

## **Wilson**

Could not be eliminated in PC Testing—Survivor testimony

## **Waye**

DNA hit to immediate family member in PC Testing—Defendant confessed and took officers to crime scene

## **Fitzgerald**

No foreign DNA profiles from PC Testing—Co-Defendant testified

## **Smith**

Foreign DNA profile developed—Need Defendant's DNA sample (full confession)

## **Correll**

No PC Testing—Serology results not informative (Co-defendant testified)

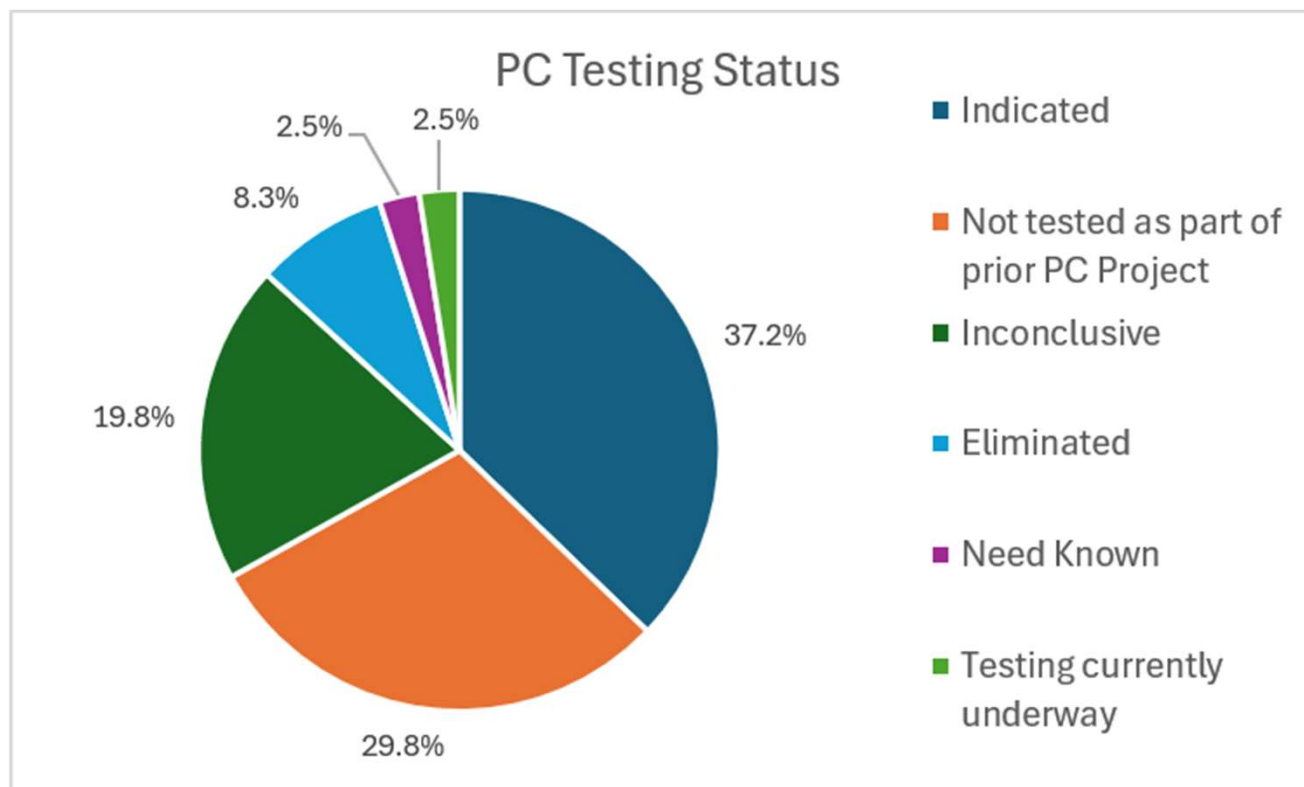
## **Clanton**

No PC Testing—Defendant found under victim's bed

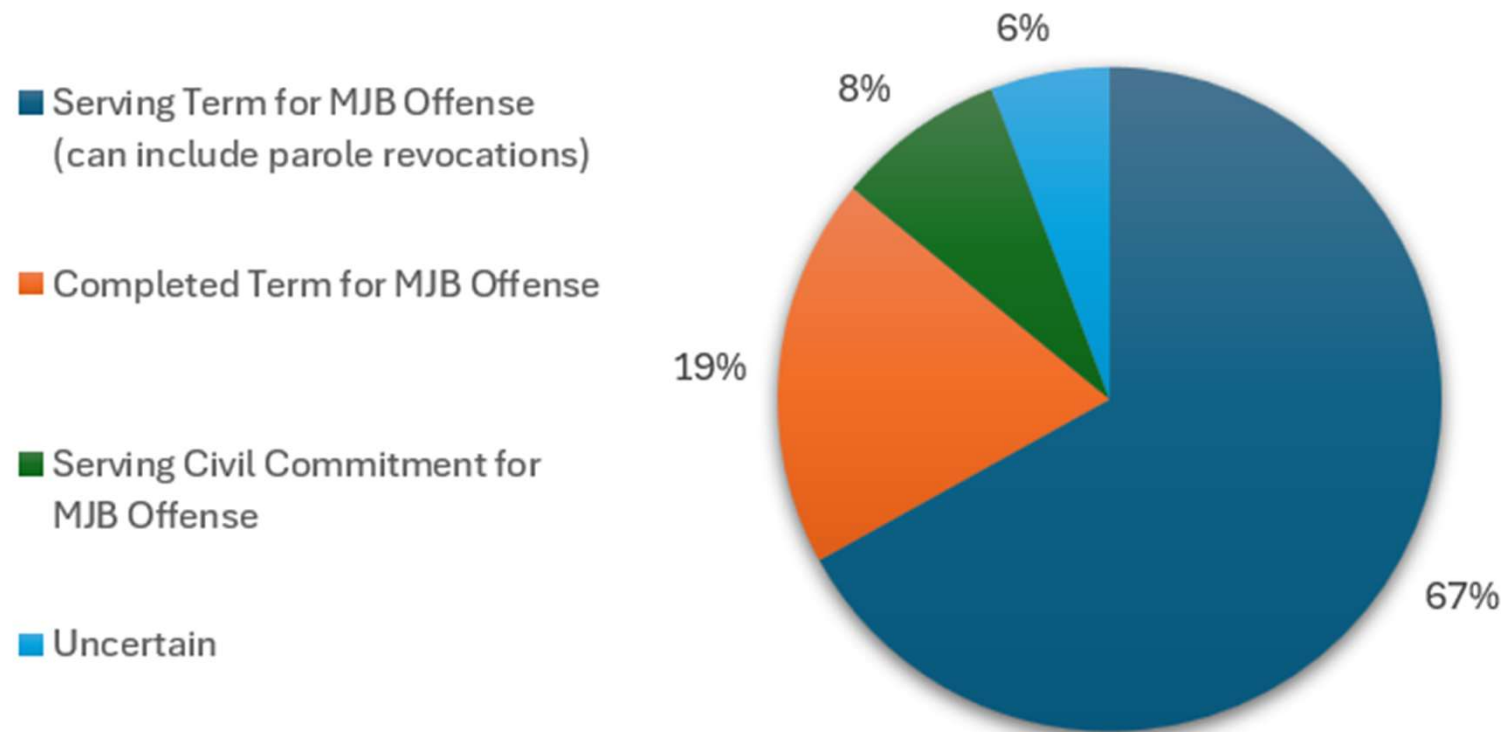
# Incarcerated Named Suspects

(N=121 Named Suspects)

- Eliminated does not mean exonerated (results shared with parties)
- Inconclusive is usually due to no DNA results or no DNA types of value developed from taped down swabs
- Not part of PC/no taped downs means that the case was previously not included in PC Project, and no swabs or cuttings were present in the case file
- Testing underway means previously not included in PC Project and taped downs present

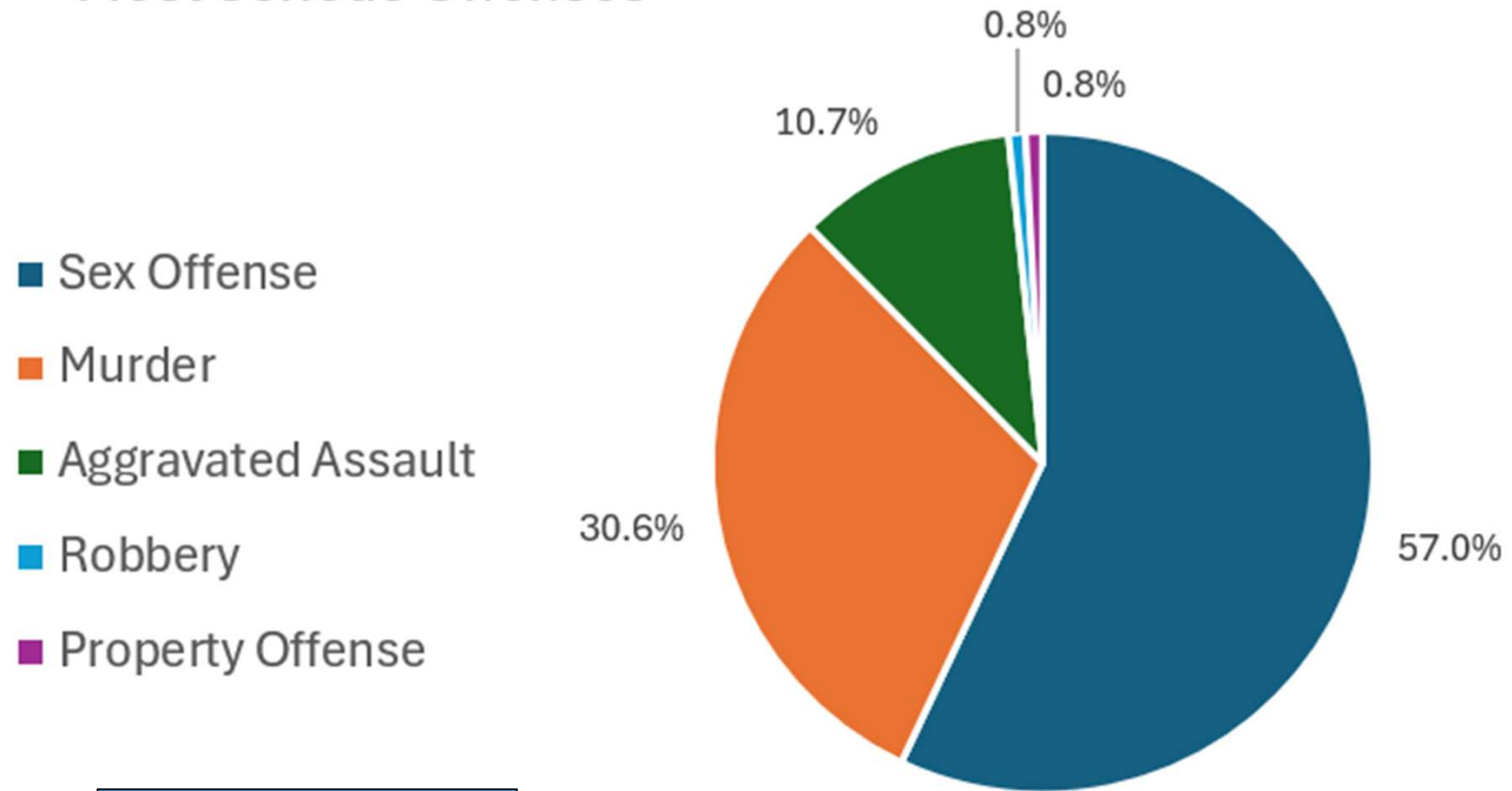


## Term of Incarceration Status Classification



N=121 Named Suspects

## Most Serious Offenses



N=121 Named Suspects

# Additional PC Testing Completed

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- VSCC and DFS have identified 28 cases with taped down swabs that were excluded from the PC Testing Project based on incorrect information received regarding conviction status.
- DFS has been conducting testing on the taped down swabs.
- Results have been shared with the parties once testing is completed.
- If/as similar additional cases are identified, DFS will continue to test the taped down swabs.



# Defendant Notification Letter Updates

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- DFS continues to utilize Lexis Public Records to locate current addresses for convicted individuals as conviction status is determined. DFS notes those individuals that are deceased for VSCC staff.
- If a letter is returned and another potential address is identified, another letter is sent until all viable options are exhausted.
- For many individuals, we do not have enough PII to locate them.
- To date, DFS has reviewed all 1,281 named suspect cases. DFS has provided notifications to 569 convicted named suspects and determined that 492 named suspects are deceased. To date, DFS has been unable to locate the remaining 220 named suspects but will continue to make efforts if additional PII is obtained.
- We are awaiting additional updates from VSCC on conviction status for 2,844 named suspects. DFS will continue with this process until all cases have been reviewed, conviction status has been determined, and we have exhausted all leads in notifying affected individuals.
- If the independent panel makes additional findings, we can provide additional notifications to affected individuals.





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