

REPORT OF THE PHYSICAL EVIDENCE RECOVERY KIT (PERK) WORK GROUP DECEMBER 2015

Background

In 2014, the General Assembly passed, and Governor McAuliffe signed into law, Senate Bill 658 (Chapter 642 of the 2014 Acts of Assembly), which directed “[a]ll local and state law-enforcement agencies [to] report an inventory of all physical evidence recovery kits in their custody that may contain biological evidence that were collected but not submitted to the Department of Forensic Science for analysis prior to July 1, 2014.” Pursuant to the legislation, the Department of Forensic Science (hereafter, DFS or the Department) received inventory reports from law enforcement agencies across the Commonwealth and reported the results to the General Assembly on July 1, 2015.¹

The PERK Work Group was convened by the Governor in response to the PERK Inventory Report to evaluate criteria for PERK evidence testing in the Commonwealth. The Work Group, which was chaired by Secretary of Public Safety and Homeland Security Brian Moran, included as members First Lady Dorothy McAuliffe and representatives of victim advocate groups, Commonwealth’s Attorneys, the criminal defense bar, law enforcement, forensic nurses, and the Department of Forensic Science. A complete list of members of the PERK Work Group is included as Appendix A. A list of staff members who provided support to the Work Group is included as Appendix B.

Meetings of the PERK Work Group and Its Subcommittees

The PERK Work Group held three meetings; on September 17, 2015, at the Department of Forensic Science’s Central Laboratory, and on October 23, 2015, and November 9, 2015, at the Patrick Henry Building.

At its initial meeting, the Work Group heard from Senator Richard H. Black, the patron of Senate Bill 658, regarding the history behind his introduction of the bill. The Work Group also received information on the PERK Inventory, a summary explanation of DNA testing of PERKs and testing considerations, and an overview of state laws addressing PERK testing. After discussion of the information presented, the Work Group elected to create Subcommittees that would meet to further discuss and make recommendations to the full Work Group on the issues specific to each Subcommittee.

The following four Subcommittees were created: Hospital/Collection Issues; Law Enforcement/Submission Issues; Data Bank/Testing Issues; and Victim Consent/Notification Issues. A list of the Work Group members and staff who participated in each Subcommittee is included as Appendix C. The Subcommittees met on the following

¹ The Inventory Report submitted to the General Assembly on July 1, 2015, revealed a total of 2,369 untested PERKs in the custody of law enforcement that met the criteria of Senate Bill 658. However, supplemental information received by DFS after the Report’s submission identified a total of 2,902 untested PERKs. DFS will be submitting an updated Inventory Report to the General Assembly.

dates:

- Data Bank/Testing Issues: October 13, 2015
- Law Enforcement/Submission Issues: October 16, 2015
- Victim Consent/Notification Issues: October 16, 2015
- Hospital/Collection Issues: October 19, 2015

Each Subcommittee developed proposed recommendations for presentation to the full Work Group.

At its October 23 meeting, the Work Group heard presentations from the Virginia State Police on data from reported forcible sex offenses in Virginia and from the Virginia Criminal Sentencing Commission on charges and case outcomes in forcible sex offense cases. The Work Group also received an update on the PERK Inventory. A chart of proposed recommendations from the Work Group's four Subcommittees was distributed, and the Work Group began its review and discussion of the proposed recommendations.

At the final meeting on November 9, the Work Group received an overview of statutory language used in ten states that have passed legislation addressing issues related to the submission of sexual assault evidence kits, including the time frame for submission to the laboratory, mandatory submission for testing and the time frame for laboratory testing. The Work Group completed its review of proposed recommendations at its November 9 meeting and concluded its work.

Work Group Recommendations

The Work Group adopted, by consensus without objection, the fourteen recommendations requiring action set forth below. These recommendations were proposed by the Work Group's four Subcommittees.

1. The existing consent form for anonymous/blind report PERKS (i.e., Consent for the Storage of PERK for Non-Reported Sexual Assaults) should be reviewed and edited, as needed. The Department of Forensic Science should convene a group of stakeholders to revise the form. The form should reference that it is a medical form and be included in the PERK. Additionally, language on the form should allow a victim to specify if he/she wishes to be contacted by the closest rape crisis center.
2. All anonymous/blind report PERKS should be submitted to the Division of Consolidated Laboratory Services (DCLS) for storage (this portion of the recommendation should be included as part of a legislative proposal the Work Group designated as the "PERK Act"). Additionally, information should be added to the outside of the PERK box to capture information on jurisdiction of offense for anonymous/blind report PERKS. DCLS should develop procedures to notify law enforcement of the number of anonymous/blind report PERKS from their

jurisdiction so that law enforcement is made aware of the volume of non-reported incidents occurring in their jurisdictions.

3. Anonymous/blind report PERKs should be retained by DCLS for a minimum of two years. After two years, DCLS may destroy the anonymous/blind report PERK or, in its discretion or upon request, retain the PERK for a longer period of time. This recommendation should be included as part of "PERK Act" legislation.
4. Law enforcement should pick up any PERK "forthwith" upon notification from a hospital that the PERK has been collected. This recommendation should be included as part of "PERK Act" legislation. A good faith provision should be included in the proposed statutory language.
5. Law enforcement should submit each PERK to DFS for analysis within 60 days of receiving it. This recommendation should be included as part of "PERK Act" legislation. A good faith provision should be included in the proposed statutory language.
6. All PERKs should be submitted to DFS for testing except:
 - a. Anonymous/blind report PERKs;
 - b. PERKs collected by the OCME in a routine death investigation;
 - c. PERKs related to out of state investigations; and
 - d. When it has been determined that the evidence in the PERK was not related or connected to a criminal offense.

This recommendation should be included as part of "PERK Act" legislation. A good faith provision should be included in the proposed statutory language.

Recommendation #6 will have a fiscal Impact on DFS. DFS anticipates that an additional six FTEs (DNA examiners in the Forensic Biology Section) will be required to analyze the estimated 700+ additional PERKs that will be received annually as a result of this recommendation. The estimated cost is ~\$900,000 (includes salary/benefits for six FTEs, plus DNA kits, chemistries and other associated costs). Funding for outsourced testing during the first year will allow for the increased volume of PERKs to be tested as DFS builds additional capacity through training of the six new DNA examiners.

Budget language for the funding should include a goal of an average turnaround time of 90 days for all DNA cases; however, priority for PERK testing should be stressed, given the public safety concern with these cases. Additionally, DFS should report information on average turnaround times for all DNA cases and DNA cases involving PERKs.

7. Victims should be notified of information related to submission of PERKs to the laboratory for analysis, testing timeframes, and the results of analysis. Discretion should be provided to withhold such information if disclosing it would interfere with the investigation. This recommendation should be included as part of "PERK Act" legislation.
8. DFS should amend its Request for Laboratory Examination (RFLE) Form the next time new forms are ordered to increase the font size of the language referencing the evidence is being submitted in connection with a criminal investigation.
9. When a PERK is submitted to the laboratory for analysis, DFS will provide a handout to the submitting officer, which advises the agency to notify DFS if it subsequently determines that the PERK is not related to a criminal offense.

10. Proposed “PERK Act” legislation should reflect that DFS only uploads developed DNA profiles and searches them in the DNA Data Bank when they meet Combined DNA Index System (CODIS) requirements.
11. A sample developed from a PERK should be expunged from the DNA Data Bank if the investigating law enforcement agency or the Commonwealth’s Attorney provides written confirmation to DFS that the individual was not the putative perpetrator of a crime or if the evidence submitted was determined not to be related or connected to a criminal case. Failure to expunge in good faith should not be the basis for challenging the validity of a Data Bank hit or database information. This recommendation should be included as part of “PERK Act” legislation.
12. The Department of Criminal Justice Services (DCJS) law enforcement sexual assault model policy and the Sexual Assault Response Team (SART) Model Protocol should be modified, as needed, to reflect the recommendations adopted by the Work Group.
13. Code § 15.2-1627.4 (Coordination of multidisciplinary response to sexual assault) should be amended to reflect the recommendations adopted by the Work Group.
14. DCJS should convene a group of stakeholders to study the following recommended issues:
 - a. the creation of a “Preservation of Biological Evidence” Task Force, a multi-disciplinary group that would meet annually to review trends, technology advances, and backlog issues that may arise and report any recommendations;
 - b. the reimbursement for forensic exams and forensic science services (including testimony);
 - c. the standard of care for victims of sexual assault to provide for consistent care and notification to victims, as well as oversight for forensic nursing programs to standardize services provided to victims on a statewide level;
 - d. the criteria for when a PERK should be collected from a sexual assault victim who is a minor; and
 - e. the resources available for forensic nursing programs and the appropriate allocation of resources to provide for the needs of sexual assault victims across the state, including grant opportunities for forensic nursing programs and training needs.

During the discussion of the Subcommittee’s proposed recommendations at the November 9 meeting, it was suggested that a victim advocate and a forensic nurse be added as members to the DFS Forensic Science Board in order to provide these additional perspectives to the Board. After discussion, the members voted on the recommendation to add a victim advocate and a forensic nurse to the Forensic Science Board. The recommendation was adopted by the Work Group, although not unanimously. Additionally, Linda Jackson, the Director of DFS, abstained from the vote on the recommendation.

Appendix A

PERK Work Group Members

Nikki T. Ambrose
Lead Medicolegal Death Investigator
Office of the Chief Medical Examiner, Central District

Robin L. Bostic
Director
King William and King and Queen Victim/Witness Assistance Program

The Honorable K. Mike Fleenor, Jr.
Commonwealth's Attorney
Pulaski County

Kristine Hall
Policy Director
Virginia Sexual and Domestic Violence Action Alliance

Linda Jackson
Director
Department of Forensic Science

Dorothy McAuliffe
First Lady of Virginia

Chief David McCoy
University of Richmond Police Department

Colette McEachin
Deputy Commonwealth's Attorney
City of Richmond

The Honorable Brian Moran, Chair
Secretary of Public Safety and Homeland Security

Deputy Chief Dan Murray
Arlington County Police Department

The Honorable W.Q. "Bill" Overton, Jr.
Sheriff, Franklin County

Bonnie Price
Director of Forensic Nurse Examiners
Bon Secours St. Mary's Hospital

Marjorie Signer
Legislative Vice President
Virginia NOW

The Honorable Arthur Townsend, Jr.
Sheriff
Lunenburg County

Tom Turbeville, Esq.
Yoffy & Turbeville, PLC

Appendix B

PERK Work Group Staff Members

Wanda W. Adkins
Office Manager Senior
Department of Forensic Science

Kelly Carpenter
Safe Payment Program Coordinator
Criminal Injuries Compensation Fund

Victoria Cochran
Deputy Secretary of Public Safety and Homeland Security

Amy M. Curtis
Department Counsel
Department of Forensic Science

Marc Dawkins
School and Campus Safety Coordinator, Division of Law Enforcement and Security Services
Department of Criminal Justice Services

Shannon Dion
Director of Policy and Legislative Affairs
Department of Criminal Justice Services

Theresa Francis
Central Laboratory Forensic Biology Section Group Supervisor
Department of Forensic Science

Katya N. Herndon
Chief Deputy Director
Department of Forensic Science

Bradford C. Jenkins
Forensic Biology Program Manager
Department of Forensic Science

Tracey Jenkins
Legislative Liaison
Department of Criminal Justice Services

Rachel Levy
Office of the Governor

Charles Quagliato
Assistant Attorney General, Major Crimes and Emerging Threats Section
Office of the Attorney General

Lisa Schiermeier-Wood
Central Laboratory Forensic Biology Section Supervisor
Department of Forensic Science

Denise Toney, Ph.D.
Director
Division of Consolidated Laboratory Services, Department of General Services

Kristina Vadas
Violence Against Women Program Coordinator, Division of Programs and Services
Department of Criminal Justice Services

Appendix C

PERK Work Group Subcommittee Participants

Hospital/Collection Issues Subcommittee

Bonnie Price, Chair
Director, Forensic Nurse Examiners, Bon Secours St. Mary's Hospital

Nikki T. Ambrose,
Lead Medicolegal Death Investigator, Office of the Chief Medical Examiner, Central District

Kelly Carpenter
Safe Payment Program Coordinator, Criminal Injuries Compensation Fund

Amy M. Curtis
Department Counsel, Department of Forensic Science

Theresa Francis
Central Laboratory Forensic Biology Section Group Supervisor, Department of Forensic Science

Rachel Levy
Liaison—Governor's Task Force on Combating Campus Sexual Violence and Special Assistant, Constituent Services, Office of the Governor

Lisa Schiermeier-Wood
Central Laboratory Forensic Biology Section Supervisor, Department of Forensic Science

Charles Quagliato
Assistant Attorney General, Major Crimes and Emerging Threats Section, Office of the Attorney General

Denise M. Toney
Director, Division of Consolidated Laboratory Services, Department of General Services

Lindsey R. Watson
Executive Assistant to First Lady Dorothy McAuliffe, Office of the Governor

Law Enforcement/Submission Issues Subcommittee

Chief David McCoy, Chair
University of Richmond Police Department

Kelly Carpenter
Safe Payment Program Coordinator, Criminal Injuries Compensation Fund

Marc Dawkins
School and Campus Safety Coordinator, Virginia Department of Criminal Justice Services

Katya Herndon
Chief Deputy Director, Department of Forensic Science

Lauren Huddle
Office of Chief Medical Examiner

Cynthia R. Micklem
Assistant Commonwealth's Attorney, City of Richmond

Deputy Chief Daniel Murray
Arlington County Police Department

Charles Quagliato
Assistant Attorney General, Major Crimes and Emerging Threats Section, Office of the Attorney General

Lisa Schiermeier-Wood
Central Laboratory Forensic Biology Section Supervisor, Department of Forensic Science

Marjorie Signer
Legislative Vice President, Virginia NOW

Lindsey Watson
Office of the Governor

Data Bank/Testing Issues Subcommittee

Linda Jackson, Chair
Director, Department of Forensic Science

D. Jeffery Ban
Central Laboratory Director, Department of Forensic Science

Amy M. Curtis
Department Counsel, Department of Forensic Science

Katya N. Herndon
Chief Deputy Director, Department of Forensic Science

Bradford C. Jenkins
Forensic Biology Program Manager, Department of Forensic Science

Chief David McCoy
University of Richmond Police Department

Charles Quagliato
Assistant Attorney General, Major Crimes and Emerging Threats Section, Office of the
Attorney General

Victim Consent/Notification Issues Subcommittee

Kristine Hall, Chair
Virginia Sexual and Domestic Violence Action Alliance

Lauren Allen
Virginia Department of Criminal Justice Services

Robin Bostic
King William/King & Queen Victim/Witness, and Virginia Victim Assistance Network

Amy Curtis
Virginia Department of Forensic Science

Theresa Francis
Virginia Department of Forensic Science

Rachel Levy
Office of the Governor

Kristina Vadas
Virginia Department of Criminal Justice Services