

**DEPARTMENT OF FORENSIC SCIENCE**

**REPORT ON AUDIT  
FOR THE PERIOD  
JULY 1, 2006 THROUGH JUNE 30, 2008**



## **AUDIT SUMMARY**

Our audit of the Department of Forensic Science for the period July 1, 2006 through June 30, 2008 found:

- proper recording and reporting of all transactions, in all material respects, in the Commonwealth Accounting and Reporting System;
- a matter involving internal control and its operations necessary to bring to management's attention and corrective action; and
- an instance of noncompliance with applicable laws and regulations that is required to be reported.

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## AUDIT FINDINGS AND RECOMMENDATIONS

### Properly Complete Employment Eligibility Verification Forms

The Department of Forensic Science (Forensic Science) was not properly completing Employment Eligibility Verification forms (I-9) in accordance with guidance issued by the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security in its Handbook for Employers (M-274). Our review of 20 I-9 forms for employees hired during fiscal years 2007 and 2008 found that 11 of the forms were either incomplete or improperly completed. Specific exceptions included the following:

- In two instances, the employee did not complete and/or date Section 1 on or before the first day of employment.
- In five instances, the employer did not date Section 2 within three days of the employee's first day of employment.
- In three instances, the employer did not record either the issuing authority or expiration date of the documents reviewed for employee identity and employment eligibility.
- In one instance, the employer did not properly establish the employee's identity and employment eligibility per the list of acceptable documents in the Department of Homeland Security's Handbook for Employers.

In addition, we found that Forensic Science does not have a documented policy or formalized training regarding I-9 compliance separate from the guidance provided in the Department of Homeland Security's Handbook for Employers. The lack of a documented policy and formalized training increases the risk of non-compliance and the likelihood that errors will occur. We recommend that the Forensic Science's Human Resources Division review the I-9 process, train staff on the requirements for completing I-9 forms, and develop an internal policy and procedures for completing I-9 forms in compliance with federal regulations.

### FOLLOW-UP ON PRIOR YEAR AUDIT FINDINGS

Our 2006 review of Forensic Science's Status of Security measures noted matters involving internal control and its operation that required management's attention and corrective action. Our special review entitled "Status of Security Measures" as of July 31, 2006 described these matters.

During this audit, we did a follow-up review, and found that Forensic Science has implemented adequate data security measures, policies, and procedures, and this implementation complies with the Commonwealth's standards.

## AGENCY HIGHLIGHTS

Forensic Science is a nationally accredited forensic laboratory system. Forensic Science provides forensic laboratory services to state and local law enforcement officials, medical examiners, local fire departments, and other state agencies. Forensic Science examiners evaluate and analyze evidence, provide technical assistance and training, and provide expert testimony on crime scene evidence.

Forensic Science provides services from four state-owned facilities. The agency's administrative operations and the central laboratory are in Richmond. The three regional laboratories are in Fairfax, Roanoke, and Norfolk. Each laboratory shares its building with a state Department of Public Health, Office of the Chief Medical Examiner. Forensic Science is currently constructing a new laboratory in Northern Virginia under the Public-Private Education and Infrastructure Facilities Act and plans to begin construction to expand its Norfolk laboratory in fiscal year 2009.

Forensic Science became a separate state agency July 1, 2005. Prior to then, it was a single program within the Department of Criminal Justice Services (DCJS). Fiscal year 2006 was a transition year for Forensic Science. During the year, DCJS performed the finance and administrative functions for Forensic Science. In addition, DCJS continued to administer federal grants it had initiated on behalf of Forensic Science. Beginning July 1, 2006, Forensic Science took over its finance and administrative functions as well as the administration of all but one of its federal grants, which DCJS continues to administer.

Forensic Science's primary funding source is the general fund, with a small amount of federal grant funding. The following table shows operating budget and expense information for the last several years as well as the proposed budget for fiscal year 2009.

### Budget and Actual Expense Analysis

	<u>Final</u> <u>Fiscal Year 2006</u>	<u>Final</u> <u>Fiscal Year 2007</u>	<u>Final</u> <u>Fiscal Year 2008</u>	<u>Original</u> <u>Fiscal Year 2009</u>
Appropriation	\$29,954,315	\$34,762,037	\$37,172,893	\$37,209,975
Expenses	29,512,527	33,771,596	35,669,331	-
Authorized				
Staffing Level	281	310	317	320

The 2007 operating budget increased \$4.8 million over the previous fiscal year. A portion of this increase resulted from the addition of 29 positions in fiscal year 2007. These positions included administrative positions transferred from DCJS to Forensic Science, positions to increase scientific and support staff for the four regional laboratories, positions to establish a Division of Administration and Finance within the agency, and positions to assume operations and maintenance services for the Department's four regional laboratories. Forensic Science also received an increase in appropriation for salary and health insurance premium increases and changes in retirement and disability contribution rates. Appropriations increased for federal grant funds received during the fiscal year for DNA backlog reduction, DNA capacity enhancement, and criminal justice system improvements.

The 2008 operating budget increased \$2.4 million over the previous fiscal year. A portion of this increase resulted from the addition of seven new positions in fiscal year 2008 to increase scientific and support staff for the four regional laboratories and provide appropriate internal controls relating to

network security. Additionally, Forensic Science received an increase in appropriation for salary and health insurance premium increases and changes in retirement and disability contribution rates.

The agency also received a transfer from the Governor's Economic Contingency fund in fiscal year 2008 for post-conviction analysis of evidence stored in case files dating prior to the availability of DNA analysis. Appropriations increased for federal grant funds received during the fiscal year to support forensic science improvements, criminal justice system improvements, DNA capacity enhancement, DNA backlog reduction, and highway safety as it relates to breath alcohol testing. Furthermore, in accordance with the Governor's budget reduction plan to address the Commonwealth's revenue shortfall, Forensic Science saw a \$1.86 million reduction in its budget during the 2008 fiscal year, which offset appropriation increases discussed above.

### Forensic Cases

Forensic Science provides examination and analysis of crime scene evidence in the following disciplines: forensic biology (DNA and body fluid identification), controlled substances, toxicology, trace evidence, firearms/toolmarks, latent prints, blood pattern, video and audio imaging, and questioned documents. Consistent with the national trend between 2003 and 2006, Forensic Science experienced an increase in the demand for scientific analysis of evidence to support law enforcement investigations. Over the past two years, Forensic Science has seen a decrease of almost 15 percent in caseloads. This is almost entirely due to legislation passed by the General Assembly in 2006 allowing law enforcement officers to use the results of marijuana field tests in court versus sending the case to the laboratory for analysis.

In fiscal year 2007, Forensic Science received evidence for over 64,700 new cases, which was a decrease of over 7,600 cases from the previous year. In fiscal year 2007, the controlled substances section received approximately 17 percent fewer drug cases than in fiscal year 2006, and receipt of such cases decreased again by almost 13 percent in fiscal year 2008.

In fiscal year 2008, the total new caseload dropped to just below 62,000. Since 2005, the total number of new cases has decreased almost 13 percent. The decrease in controlled substances cases would have been offset by a significant increase in DNA cases. However, DFS implemented a new policy in the later part of calendar year 2004 that requires a written request from the Commonwealth's Attorney for testing of evidence for property crime cases where the only evidence is "touch evidence," limiting growth in DNA caseloads.

#### New Caseload by Type and Fiscal Year\*

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Drugs	45,188	46,320	38,266	33,384
Toxicology	9,263	9,668	9,974	10,306
Firearms	4,405	4,949	5,094	5,845
DNA	3,747	3,717	3,836	4,254
Other	<u>8,268</u>	<u>7,686</u>	<u>7,545</u>	<u>7,890</u>
Total Cases	<u>70,871</u>	<u>72,340</u>	<u>64,715</u>	<u>61,679</u>

\*Source: Workload Summary Projects for the fiscal years 2005 through 2008 from the Forensic Advantage System

Forensic Science historically has not been able to keep up with the rising caseload, resulting in a backlog of cases; however, since 2006, the backlog and turnaround time have significantly decreased. The following table shows the case statistics for the last four fiscal years. In 2007, the ending backlog of cases decreased by almost 62 percent over 2006. In 2008, the ending backlog of cases decreased by 23 percent over 2007. The 2008 backlog is less than one quarter of the 2005 backlog, and the average case turnaround time has decreased 63 days since 2005.

Caseload Summary by Fiscal Year – All Case Types \*

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total Cases Including Beginning Backlog	87,424	92,400	80,176	67,067
Number of Cases Completed	67,353	77,143	74,704	63,022
Percentage of Cases Completed	77%	84%	93%	94%
Ending Backlog	20,060	15,257	5,840	4,486
Average Days in Process	100	99	64	37

\*Includes all forensic cases, as well as training and laboratory support

\*Source: Workload Summary from the Forensic Advantage System

Forensic Science has taken multiple steps to address the backlog issue and decrease processing time. The General Assembly has supported these actions by providing additional positions and funding to Forensic Science and passing legislation allowing the results of marijuana field test kits to be used as evidence in court. Forensic Science has received federal grants to fund backlog reduction expenses and had scientific staff work overtime to reduce the backlog. Forensic Science has also researched new technology that may result in faster processing of evidence in the future.

POST-CONVICTION ANALYSIS REVIEW

The Commonwealth discovered in 2001 that former state forensic serologist Mary Jane Burton, who worked out of Forensic Science's Central Laboratory in Richmond, saved biological evidence in her case files prior to the availability of DNA analysis. After a man convicted of rape in 1982 sought DNA testing to overturn his cases, which resulted in his exoneration, former Governor Warner directed Forensic Science in 2004 to review a random selection approximating 10 percent of the estimated 165,000 existing case files from 1973 to 1988 at the Central Laboratory. The Governor expressed interest in case files where forensic serologists conducted examinations, but not DNA analysis, on evidence primarily associated with sexual assault cases, in which the named suspect was eventually charged and convicted for the crime. The purpose of this review was to locate evidential swabs and cuttings retained in the files that met all criteria for DNA testing as outlined by the Governor. The Governor also specified that a private laboratory would conduct the DNA analysis of the samples from the files to ensure that Forensic Science's work on pending criminal cases continued unaffected.

From the initial review of case files at Forensic Science's Central Laboratory, Bode Technology Group, Inc. tested 182 samples at a price of \$750 per sample. Forensic Science funded the \$136,500 cost of this testing with federal funds under the Byrne grant. Following this initial DNA testing, the Commonwealth exonerated additional convicted defendants because their DNA did not match the biological evidence retained in Forensic Science's files. Former Governor Warner then directed Forensic Science to review the remaining 90 percent of cases at the Central Laboratory and contract with a private laboratory for DNA testing of additional samples.

Based upon the results of the initial testing and related costs, Forensic Science estimated that as many as 300 or more cases consisting of approximately 2,000 individual samples might meet the testing criteria, and the cost of testing these samples would total approximately \$1.5 million. Forensic Science had a remaining balance of almost \$78,000 in federal funds from the Byrne grant; therefore, the agency estimated that \$1.42 million would be necessary to complete this testing. The Governor provided funding out of the Governor's Economic Contingency account pursuant to Item 506, Chapter 951, 2005 Acts of Assembly. Forensic Science did not begin using the \$1.42 million from the Economic Contingency account until fiscal year 2008.

Following an Invitation for Bid process, Forensic Science contracted with Bode Technology Group, Inc. to perform the additional DNA testing. In February 2006, Forensic Science hired wage employees to review the remaining 90 percent of cases at the Central Laboratory. Forensic Science incurred personnel and laboratory expenses related to this project during fiscal years 2006 and 2007, totaling just under \$200,000. Forensic Science used applicable federal grant funds as well as its General fund appropriation to support these expenses. Fiscal year 2008 expenses related to this project totaled approximately \$1.22 million. Forensic Science paid a small portion of related personnel expenses with federal grant funds in fiscal year 2008. The agency received its \$1.42 million transfer from the Economic Contingency account in January 2008.

In fiscal year 2007, Forensic Science determined that there were approximately 369,000 cases in its other three regional laboratories dating between 1973 and 1988 with approximately 5,600 samples that might also require testing. To fund this testing, Forensic Science applied for a Post-Conviction DNA Testing Assistance federal grant for \$4.52 million through the National Institute of Justice under the U.S. Department of Justice. Forensic Science estimated its funding needs on the testing price per sample according to its current contract with the private laboratory.

#### Estimates of Post Conviction Testing Cost

	Central Lab Initial Sample	Central Lab Remaining Cases	Other 3 Laboratories
Population of cases from 1973 - 1988	165,000	165,000	369,000
Percentage of Cases to be Reviewed	10%	90%	100%
Number of Cases to be Reviewed	16,500	148,500	369,000
Actual or Estimated cases with Evidence	31	300	700
Cases as a percent of population	0.19%	0.20%	0.19%
Actual or Estimated number of samples	182	2,000	5,600
Samples per case	6	7	8
Cost per sample - actual or estimated	\$750	\$750	\$810
Cost to process	\$136,500	\$1,500,000	\$4,536,000
Money from a previous & future grants	\$(136,500)	\$(78,000)	\$(4,520,000)
Non-Grant Funds Needed (Estimated.)	\$-	\$1,422,000	\$16,000

During our audit of the period from July 1, 2006 through June 30, 2008, we reviewed the \$1.42 million spent from the Governor's Economic Contingency account and found that the expenses were proper and reasonable. We also reviewed the method used to estimate the cost of post-conviction testing at each stage of the process and found this method to be reasonable.





# Commonwealth of Virginia

**Walter J. Kucharski, Auditor**

**Auditor of Public Accounts  
P.O. Box 1295  
Richmond, Virginia 23218**

September 4, 2008

The Honorable Timothy M. Kaine  
Governor of Virginia  
State Capital  
Richmond, Virginia

The Honorable M. Kirkland Cox  
Chairman, Joint Legislative Audit  
and Review Commission  
General Assembly Building  
Richmond, Virginia

We have audited the financial records and operations of the Department of Forensic Science for the period July 1, 2006 through June 30, 2008. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Audit Objectives

Our audit's primary objectives were to evaluate the accuracy of recorded financial transactions on the Commonwealth Accounting and Reporting System, review the adequacy of Forensic Science's internal controls, test compliance with applicable laws and regulations, and review corrective actions of audit findings from prior year reports.

## Audit Scope and Methodology

Forensic Science's management has responsibility for establishing and maintaining internal control and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

We gained an understanding of the overall internal controls, both automated and manual, sufficient to plan the audit. We considered materiality and control risk in determining the nature and extent of our audit procedures. Our review encompassed controls over the following significant cycles, classes of transactions, and account balances.

Federal grant revenues and expenditures  
Contractual services expenditures

Payroll expenditures  
Small purchase charge card purchases  
Appropriations  
Capital assets

We performed audit tests to determine whether Forensic Science's controls were adequate, had been placed in operation, and were being followed. Our audit also included tests of compliance with provisions of applicable laws and regulations. Our audit procedures included inquiries of appropriate personnel, inspection of documents, records, and contracts, and observation of Forensic Science's operations. We reviewed the appropriate sections of the Code of Virginia and the 2007 Virginia Acts of Assembly. We tested transactions and performed analytical procedures, including budgetary and trend analyses.

### Conclusions

We found that Forensic Science properly stated, in all material respects, the amounts recorded and reported in the Commonwealth Accounting and Reporting System. Forensic Science records its financial transactions on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The financial information presented in this report came directly from the Commonwealth Accounting and Reporting System.

We noted a matter involving internal control and its operation and compliance with applicable laws and regulations that requires management's attention and corrective action. This matter is described in the section entitled "Audit Findings and Recommendations."

Forensic Science has taken adequate corrective action with respect to audit findings reported in the prior year that are not repeated in this letter.

### Exit Conference and Report Distribution

We discussed this report with management on September 19, 2008. Management's response has been included at the end of this report.

This report is intended for the information and use of the Governor and General Assembly, management, and the citizens of the Commonwealth of Virginia and is a public record.

AUDITOR OF PUBLIC ACCOUNTS

DBC/wdh



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF FORENSIC SCIENCE

September 23, 2008

OFFICE OF THE DIRECTOR  
A Nationally Accredited Laboratory

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The Auditor of Public Accounts  
P. O. Box 1295  
Richmond, Virginia 23218

Dear Mr. Kucharski:

We are providing this letter in response to the management recommendation to "Properly Complete Employment Eligibility Verification Forms" issued as part of your audit of the financial records and operations of the Department of Forensic Science for the period July 1, 2006 through June 30, 2008.

All I-9 exceptions noted during the audit have been reviewed with the auditors and, following consultation with an immigration attorney, all possible corrections have been made, in accordance with proper procedures and Citizenship and Immigration Services (CIS) guidelines. Following the auditor's findings, and a review of the forms, the following additional information was gathered.

- Two of the forms were cited for errors that appear to be due to lack of attention to detail in fully and accurately completing the date in section one on the form on or before the employees first day of work. DFS will ensure that staff members are aware of the seriousness of the I-9 form and the need for full attention to all details included therein. Added emphasis will be placed on this during ongoing training as noted below.
- Five of the forms were, cited for errors because they contained language that was frequently misunderstood by staff. Specifically, the form requested a date be entered with the following additional guidance "(State employment agencies may omit the date the employee began employment.)" It has been noted that many staff members misinterpreted this statement to mean that state agencies did not have to complete this form. In fact the term "state employment agencies" applies only to agencies whose primary mission is employment, such as the Virginia Employment Commission. Unfortunately, there is no information on the form to provide this clarification. DFS will ensure that staff members are clear on this audit point through ongoing training as noted below.
- Two of the forms were cited for errors due to omission of the designated supporting documents issuing authority. For example, when noting that the acceptable form was a Social Security card, failure to also note that the card was issued by the Social Security

Administration caused these forms to be noted as incorrectly completed. Staff members were under the assumption that there was no need to note that the Social Security card was issued by the Social Security Administration when the words Social Security card were written on the I-9 form in the appropriate block and an actual copy of the Social Security card from the Social Security Administration was attached. DFS will ensure that staff members are clear on this audit point through ongoing training as noted below.

- One of the forms was cited for errors due to an omission of the expiration date for the supporting documentation. Staff members were unclear about the need for inclusion of expiration dates for the supporting documentation in columns B and C of the I-9 form since the arrangement of the I-9 form does not make it clear that an expiration date is needed in these particular columns and the staff member had properly attached a copy of the supporting documentation with the expiration date contained on the copy. DFS will ensure that staff members are clear on this audit point through ongoing training as noted below.
- One of the forms was cited for errors due to acceptance of inappropriate supporting documentation. It was determined that the staff member was unclear as to the correct form due, in part, to a change in guidelines for completion of the form, where previously accepted documentation was no longer valid. DFS will ensure that staff members are clear on this audit point through ongoing training as noted below.

### **Ongoing Training and Corrective Actions**

Staff members, who have primary responsibility for completing these forms in labs statewide, have been notified in writing, of the auditors' findings, and attended mandatory training July 9, 2008. This training was conducted by an immigration attorney, free of charge, at the DFS Central Laboratory and relayed by videoconference to all DFS Labs.

During the July 9, 2008 training, each participant was given the I-9 forms from their respective areas and instructed on how to properly address any errors. This allowed us to effectively audit every DFS I-9 form in our files, at that time, and to have them reviewed by the immigration attorney. At the completion of the training, all forms were fully updated and/or corrected.

Instructions provided by the Department of Homeland Security have been identified and staff has been instructed to strictly adhere to them at all times. Updates to these instructions will be provided by Human Resources to appropriate staff. These instructions will serve as the DFS procedures for completion of I-9 forms now and in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Marone", with a stylized, flowing script.

Peter M. Marone  
Director

DEPARTMENT OF FORENSIC SCIENCE

Peter Marone  
Director

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