**Draft Minutes**

**PERK Work Group**

**November 9, 2015 Meeting**

**Patrick Henry Building, East Reading Room**

**Work Group Members Present**

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

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, Secretary of Public Safety and Homeland Security, Chair

Deputy Chief Dan Murray, Arlington County Police Department

Bonnie Price, Director, 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

**Work Group Members Absent**

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

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

**Staff Members Present**

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, Legislative Liaison, Department of Criminal Justice Services

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

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

Rachel Levy, Office of the Governor

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

Office of the Attorney General

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

**Other Attendees**

Lisa Furr, GEAP Program Coordinator, Office of the Attorney General

Mary Fraser, Legislative Assistant, Senator Richard Black, District 13

Lindsey Watson, Office of the Governor

**Call to Order**

Brian Moran, Chair of the Physical Evidence Recovery Kit (“PERK”) Work Group, called the meeting of the Work Group to order at 10:35 a.m. The Chair welcomed the Work Group members.

**Approval of Draft Minutes of the October 23, 2015 Meeting**

The Chair asked if there were any changes or corrections to the draft minutes from the October 23, 2015 meeting. Being none, Chief Murray made a motion to adopt the minutes, which was seconded by Sheriff Townsend and approved by unanimous vote.

**Review of Mandatory PERK Testing Laws**

Amy Curtis, Counsel for the Department of Forensic Science, provided an overview of statutory language for ten states that have passed legislation that address 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.

**Review, Discussion and Adoption of Recommendations**

The Work Group discussed the recommendations included in the chart below, which were proposed by the Group’s four Subcommittees. Similar recommendations from different Subcommittees are grouped together in the chart. Actions taken by the Work Group, which were all approved without objection, are noted in the chart after each Subcommittee recommendation. Some of the recommendations included in the chart were discussed and addressed at the October 23 meeting. All recommendations have been included below, including any modifications made to previously adopted recommendations.

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| **PROPOSED RECOMMENDATION** | | **SUBCOMMITTEE** |
| 1 | The existing consent form (i.e., Consent for the Storage of PERK for Non-Reported Sexual Assaults) should be reviewed and edited, as needed, in consultation with DCLS, DFS, forensic nurses and other stakeholders. The form should be included in the PERK.  Adopted as follows: DFS to convene group of stakeholders to revise form. Form should reference it is a medical form and be included in PERK. Language on form should allow victim to specify if he/she wishes to be contacted by closest rape crisis center. | Victim |

|  |  |  |
| --- | --- | --- |
| 2 | Procedures should be developed to inform law enforcement of the number of anonymous kits collected in their locality so that law enforcement is made aware of all of these incidents occurring in their locality.  Adopted as follows: information should be added to outside of PERK box to capture information on jurisdiction of offense for anonymous PERKs. Combined with #4. | Victim |
| 3 | Consideration should be given to expanding the evidence submitted to DCLS for anonymous PERKs, which could include blood/urine samples and clothing.  Discussed and tabled. However, DFS will look into options for Toxicology kit to supplement PERK. | Hospital/Collection |
| 4 | All anonymous PERKs should be submitted to DCLS for storage.  Adopted as recommended. Combined with #2.  New statutory language should be part of separate PERK Act. | Victim |
| 5 | Anonymous PERKs submitted to DCLS should be retained for a minimum of two years with no restriction on DCLS maintaining the PERKs for longer, if requested.  Increase the time frame for anonymous PERKs to be held from 120 days to two years. Ensure this includes two years post age of majority for persons who were minors at the time the PERK was collected.  Retention of anonymous PERKs should be extended from 120 days to a minimum of two years. After two years, retention should be at the discretion of the agency.  Adopted as follows: anonymous PERKs should be retained for a minimum of two years. PERKs may be retained for longer, if requested.  New statutory language should be part of separate PERK Act. | Hospital/Collection  Victim  Law Enforcement |
| 7 | Law Enforcement to pick up PERKs as soon as practicable or within 10 business days upon notification from a hospital. A good faith provision should be included.  Permitting law enforcement officers up to 10 days to pick up sexual assault evidence from the hospital is of concern as hospitals are not equipped for the secure storage of evidence. Hospitals should have alternate options if law enforcement is not able to respond immediately, including but not limited to mailing the evidence to the law enforcement agency.  Adopted as follows: law enforcement to pick up PERKs “forthwith” upon notification from hospital that PERK has been collected. Good faith exception to be included in statutory language.  New statutory language should be part of separate PERK Act. | Law Enforcement  Hospital/Collection |
| 8 | Law Enforcement should have 60 days from receipt of the PERK to submit it to DFS for analysis. A good faith provision should be included.  All kits should be submitted to DFS for testing within a “reasonable” timeframe (suggested 45 days).  Adopted as follows: law enforcement should submit each PERK to DFS for analysis within 60 days of receiving it.  New statutory language should be part of separate PERK Act. | Law Enforcement  Victim |
| 9 | Every PERK related to a criminal investigation should be submitted to DFS for analysis except the following:   1. When the PERK is not necessary for identification of the suspect; 2. Anonymous/blind report PERKs; 3. PERKs collected by OCME in routine death investigations; and 4. PERKs related to out of state investigations.   The Office of the Chief Medical Examiner should not be limited in any way in the use of PERKs in routine death investigations. Submission of the PERKs for testing should be in the discretion of law enforcement, working in cooperation with and with the advice of the OCME.  All kits should be submitted to DFS for testing (there will be a fiscal impact to DFS).  Adopted as follows: all PERKs should be submitted to DFS for testing except:   1. Anonymous/blind report PERKs; 2. PERKs collected by the OCME in a routine death investigation; 3. PERKs related to out of state investigations; and 4. When it has been determined that the evidence in the PERK was not related or connected to a criminal offense.   New statutory language should be part of separate PERK Act.  Fiscal Impact (preliminary, DFS will be reviewing): DFS anticipates an additional 6 FTEs (DNA examiners in the Forensic Biology Section) will be required to analyze the estimated 700+ PERKs that will be received annually. Estimated cost is ~$900,000 (includes salary/benefits for 6 FTEs, plus DNA kits, chemistries and other associated costs). Funding for outsourced testing during first year will allow for the increased volume of PERKs to be tested as DFS builds additional capacity through training of 6 new DNA examiners.  Budget language to include 90 day turnaround time as aspirational goal for all DNA cases (public safety concern). Priority for PERK testing should be stressed.  DFS to report information on turnaround times (precise mechanism not specified – discussed Forensic Science Board Annual Report and Performance Measures in Virginia Performs). | Law Enforcement  Hospital/Collection  Victim |
| 10 | Code § 19.2-11.01 (Crime victim and witness rights) and the Crime Victims Bill of Rights should be modified to include language addressing the victim’s right to be informed about submission to lab, testing timeframes, results of analysis, and timeframes regarding destruction of evidence. The subcommittee also discussed the need for there to be discretion in the timeline for notifications based on the investigation. See Pennsylvania statute for possible language (e.g., allows for discretion, but requires victim and/or guardian to be informed of expected timeframe for being told relevant information).  Adopted as follows: any necessary changes should be made to Crime Victims Bill of Rights; however, new victim notification statutory language should be part of separate PERK Act. | Victim |
| 11 | DFS should amend its Request for Laboratory Examination (RFLE) Form to increase the font size of the language referencing the evidence is being submitted in connection with a criminal investigation and also look at making it a certification by the investigating officer, perhaps requiring the investigating officer to initial or sign the certification.  Adopted; however, because of the large volume of RFLEs already in print, DFS advised that it will provide the information on a handout distributed to the submitting officer anytime a PERK is received by the laboratory and that it will look to implement the certification language once its moves to electronic entry of RFLEs. | Data Bank/Testing |
| 12 | Language should be added to the DFS Request for Laboratory Examination (RFLE) form requesting law enforcement to notify DFS of a case status change which may impact CODIS status (i.e., when law enforcement determines the evidence is not related to a criminal offense).  Adopted; however, because of the large volume of RFLEs already in print, DFS advised it will provide the information on a handout distributed to the submitting officer anytime a PERK is received by the laboratory. | Law Enforcement |
| 13 | No new statutory language regarding the scope of testing is required as DFS already appropriately has discretion to conduct scientific testing as deemed necessary by the law enforcement investigation.  Adopted as recommended. | Data Bank/Testing |
| 14 | No legislation is necessary regarding outsourcing.  Adopted as recommended. | Data Bank/Testing |
| 15 | Legislation specifying a time frame for analysis is not necessary; however, should the Work Group recommend a specific time frame for analysis as a result of time frames being provided for other stakeholders handling PERK evidence, it is recommended that any specific time frame for analysis include statutory language that the time frame is applicable “if sufficient personnel and resources are available.”  Discussed, but no specific recommendation adopted; however, turnaround time for analysis to be addressed in budget language, see Recommendation #9. | Data Bank/Testing |
| 16 | Statutory language should provide that DFS would only upload developed DNA profiles and search them in the DNA Data Bank if the developed profiles met CODIS requirements.  Adopted as recommended.  New statutory language should be part of separate PERK Act. | Data Bank/Testing |
| 17 | Legislation should specify that a sample developed from a PERK shall 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.  Adopted as recommended.  New statutory language should be part of separate PERK Act. | Data Bank/Testing |
| 18 | Modify DCJS law enforcement sexual assault model policy and the Sexual Assault Response Team (SART) Model Protocol as needed to reflect these recommendations adopted by the PERK Work Group.  Adopted as recommended. | Victim |
| 19 | Code § 15.2-1627.4 (Coordination of multidisciplinary response to sexual assault) should be amended to reflect the recommendations adopted by the PERK Work Group.  Adopted as recommended. | Victim |
| 20 | 1. 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. 2. A study group should be convened to consider the reimbursement for forensic exams and forensic science services (including testimony). 3. A study group should review and make recommendations on the standard of care for victims of sexual assault to provide for consistent care and notification to victims and consider supportive oversight for forensic nursing programs to standardize services provided to victims on a statewide level. 4. A study group should be convened to strengthen and clarify guidance and to establish criteria for when a PERK should be collected from a sexual assault victim who is a minor. 5. A study group should be convened to review the resources available for forensic nursing programs and to consider 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.   Adopted as follows: DCJS to convene a work group of stakeholders to study recommended issues (#20a – #20e). | Law Enforcement  Hospital/Collection  Hospital/Collection  Hospital/Collection  Hospital/Collection |

During the discussion of the Subcommittee’s proposed recommendations, it was suggested that a victim advocate and a forensic nurse be added as members to the Forensic Science Board in order to provide these additional perspectives to the Board. The Forensic Science Board is the Department of Forensic Science’s policy board.

There were concerns expressed about changing the composition of the Forensic Science Board without knowing the history of its formation or understanding its functions. Additionally, it was noted that there was a separate recommendation for a group to continue a study of forensic nursing issues related to PERKs and, given that there are a limited number of forensic nurses across the Commonwealth, that group may be a more targeted application of the forensic nursing community's limited resources. It was also noted that the Forensic Science Board was created with 15 members, likely so there would be an odd number. However, the Board seat designated for "[t]he Chairman of the Virginia Institute of Forensic Science and Medicine" has been vacant because that entity no longer exists so that the Board currently has only 14 members.

After discussion, the Chair asked for members to vote on the recommendation to add a victim advocate and a forensic nurse to the Forensic Science Board. Acknowledging that there were “nay” votes, the Chair indicated that the “ayes” have it and that the recommendation was adopted. Linda Jackson, the Director of DFS, abstained from the vote.

**Public Comment**

None.

**Closing Remarks**

On behalf of the Governor, Chairman Moran thanked all of the Perk Work Group Members and staff members for their participation in the meetings and their help in developing the proposed recommendations. He praised the group for its very substantive work in identifying and addressing many issues. Finally, Chairman Moran noted that this is not the end because the Work Group has recommendations for legislation that will need to be addressed in the upcoming General Assembly Session.

**Adjournment**

The meeting adjourned at 1:30 p.m.