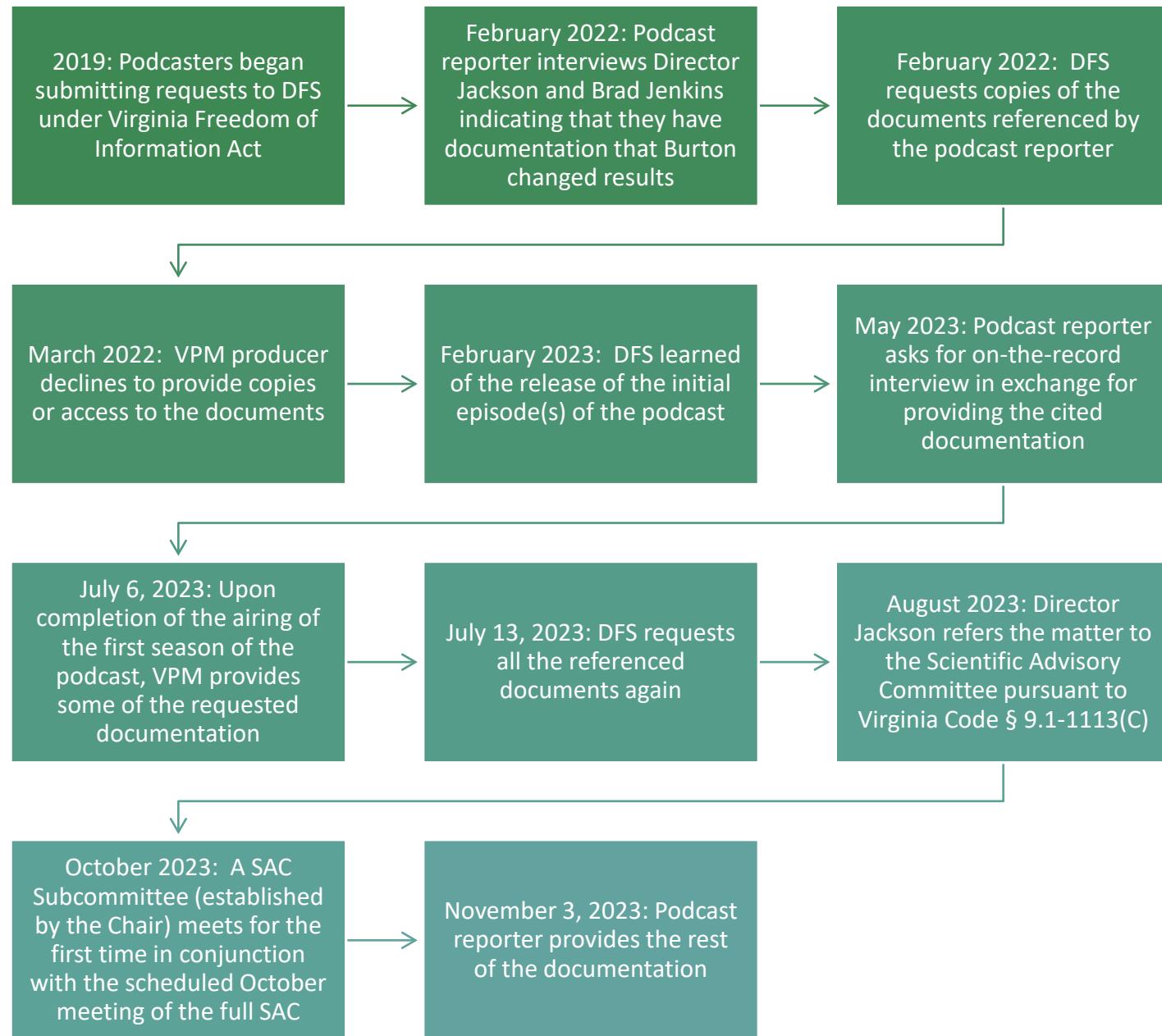




MJB Cases

AMY C. JENKINS

DEPARTMENT COUNSEL



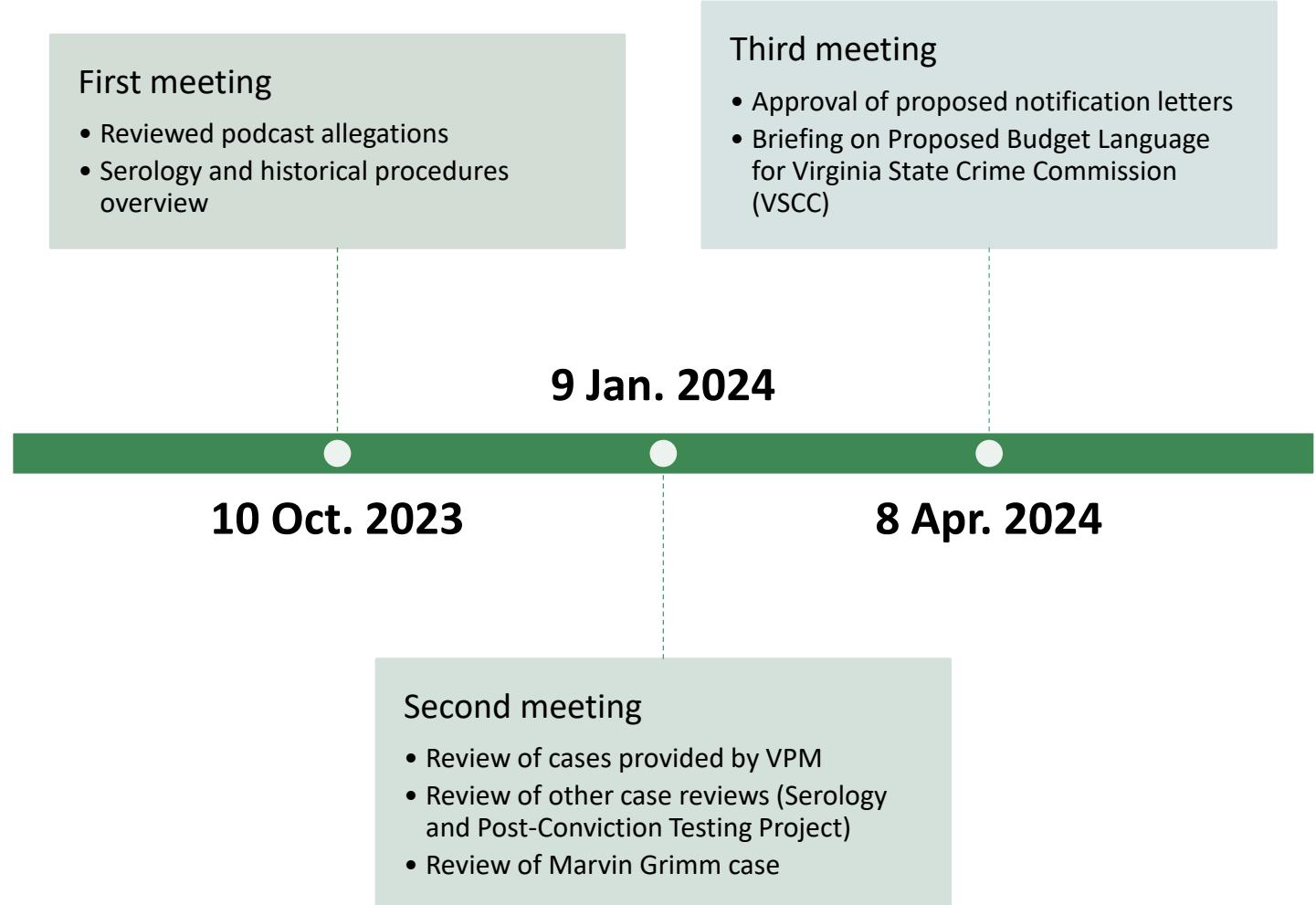
Admissible: Shreds of Evidence Podcast

DFS Accreditation Requirement

Duty to review received complaints

- 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 Review of Podcast Allegations

76-20619 (Fairfax homicide case):

Information Provided by Submitting Law Enforcement Agency:

TYPE OF OFFENSE AND STATEMENT OF FACT: VICTIM WAS ASSAULTED BY THE SUSPECT OVER AN ARGUMENT OVER THE SUSPECT'S WIFE. VICTIM DIED FROM SEVERE WOUNDS, FROM A BUCK KNIFE, SCREW DRIVER AND WRENCH.

Only VPM allegations provided:

Contains: Lab Report, Examiner's Record Sheets, etc. Shows discrepancies, errors, and alterations of test results by Mary Jane Burton.

Logbook excerpt:

1 2 (1) 76-20052 (M)
1 2 (1) 76-20619 Victim
1 2 (1) (2)

Comments on Certificate copies:

Item #15- A small amount of blood was noted on the sock. ? No Such type!
Item #16- No examination conducted.
Item #17- Tests indicate the blood is type A O/Bcc E21-1 EAP-LAC ESD-1.

From DFS Case file:

From CoA dated May 9, 1977:

Item 7 (Blue jeans from suspect):

Item #7 - Stains on the front of both legs and some stains on the back were identified as human blood. Further tests on these stains indicate the type is A O/Bcc E21-1 EAP-CB ESD-1.

Item 10 (Blue jeans shirt from suspect)

- 75-10986 (Cat case): Homicide case had been lost because MJB did not conduct origin testing to rule out non-human origin
- 76-09468 (Deer case): Issue with origin testing and lack of documentation
- 76-23383 (Inmate felony assault case): MJB did not report ABO type although reflected in the notes; write up is confusing
- 76-16982 (Rape case): no blood confirmation or origin determination; change to typing in logbook and report (Item 33)
- 76-20619 (Homicide case): Records show discrepancies and reported a type that did not exist

SAC Subcommittee Findings and Recommendations

Main concerns were with Winston Scott and Marvin Grimm exoneration

Notifications should be made to the parties regarding the SAC's concerns about Ms. Burton's work

DFS was directed to draft notifications to prosecutors, law enforcement, and convicted individuals

Parties could request review of case

Parties could request DNA testing if evidence was still available

DFS Accreditation Requirement

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
- Will conduct testing if evidence is available

Notifications with a list of cases were sent to both law enforcement and prosecutors



Law enforcement and prosecutors were requested to provide information regarding conviction status for cases



Notification was sent through the Department of Corrections



Mid-Atlantic Innocence Project (MAIP) conducted a review of the executed cases

DFS Follow Up

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



Notification letters to non-incarcerated content:

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

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

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

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

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

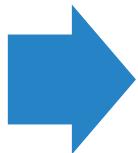
Testing conducted in 860 cases

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

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 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.



In 2015, VSCC dedicated two staff members to assist with the completion of the Notification 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 10th 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 three of those cases.

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

Execution Cases

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)

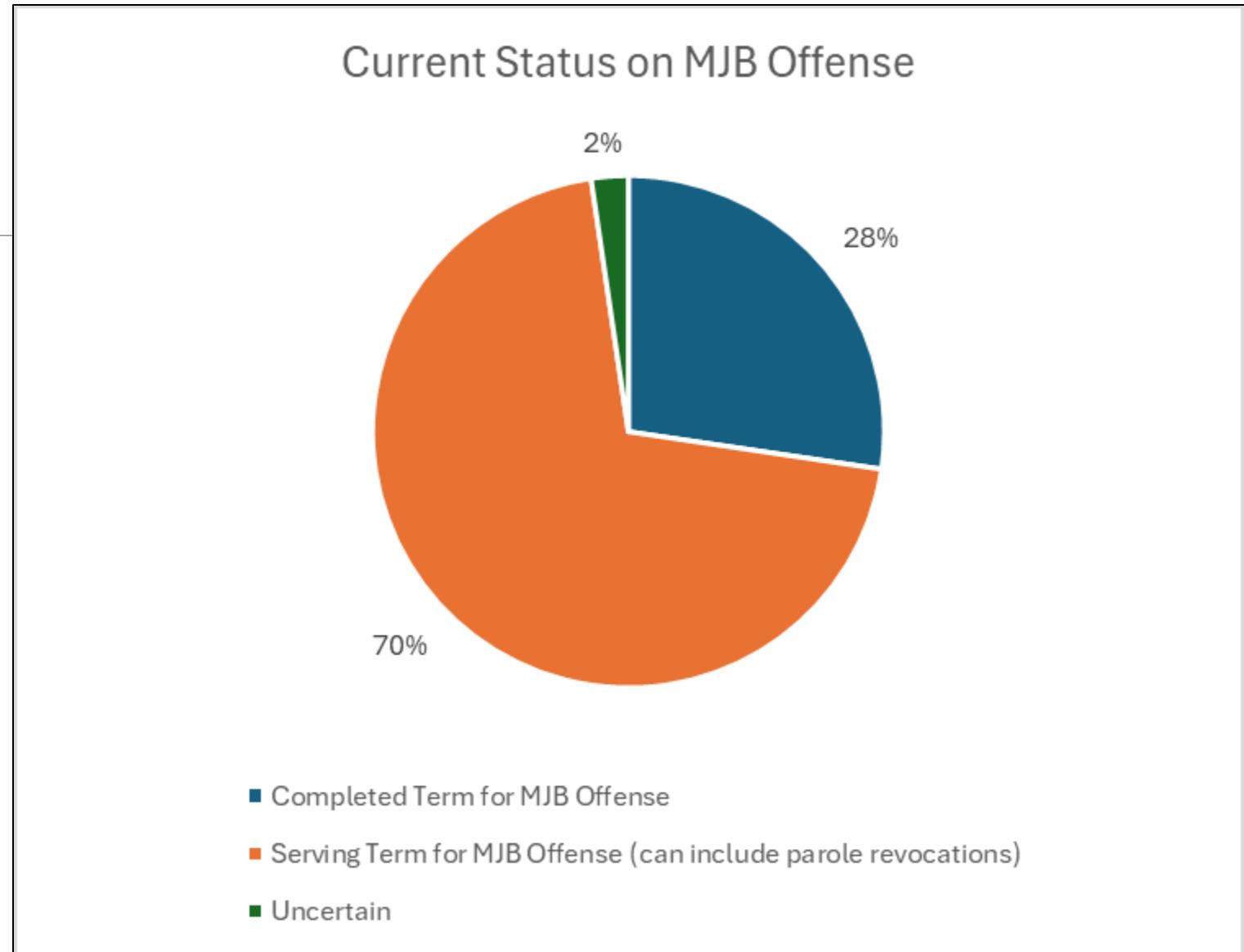
Correll

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

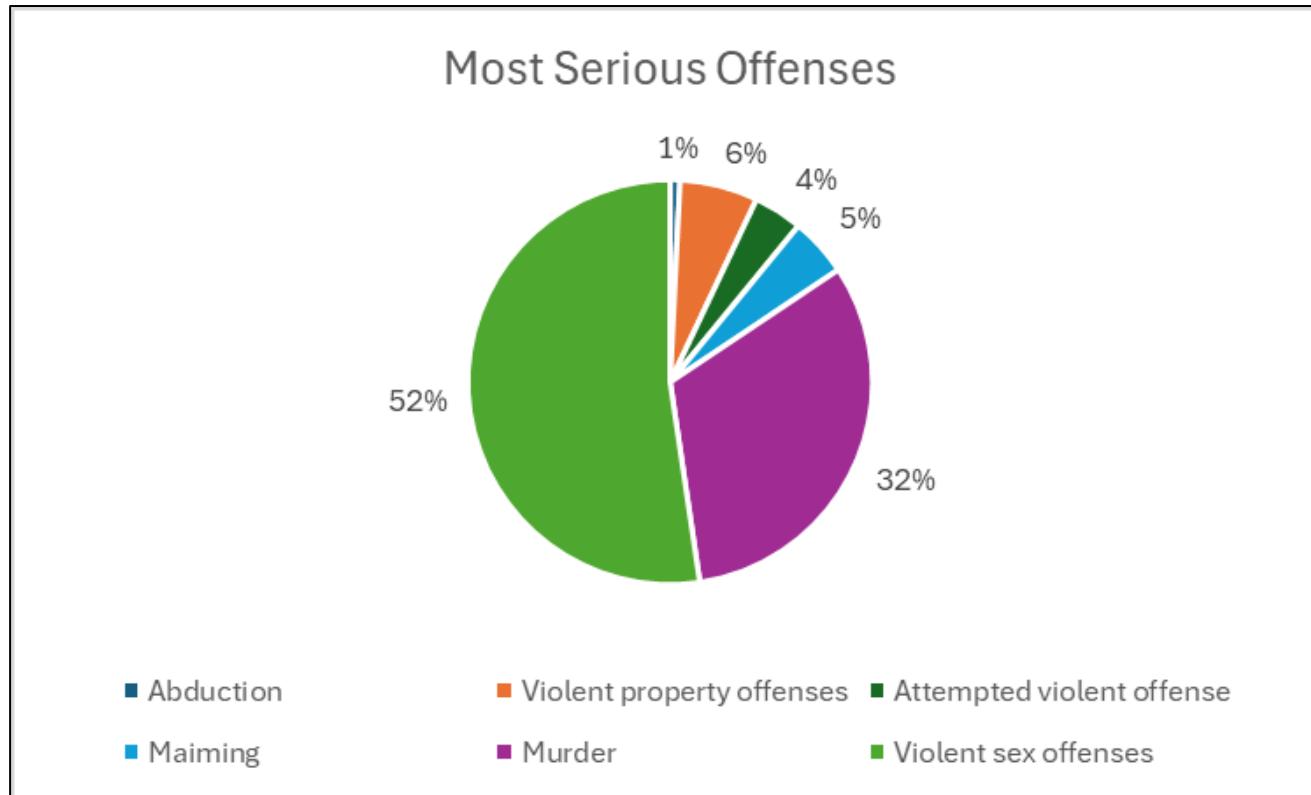
Clanton

No PC Testing—Defendant found under victim's bed

Incarcerated Cases

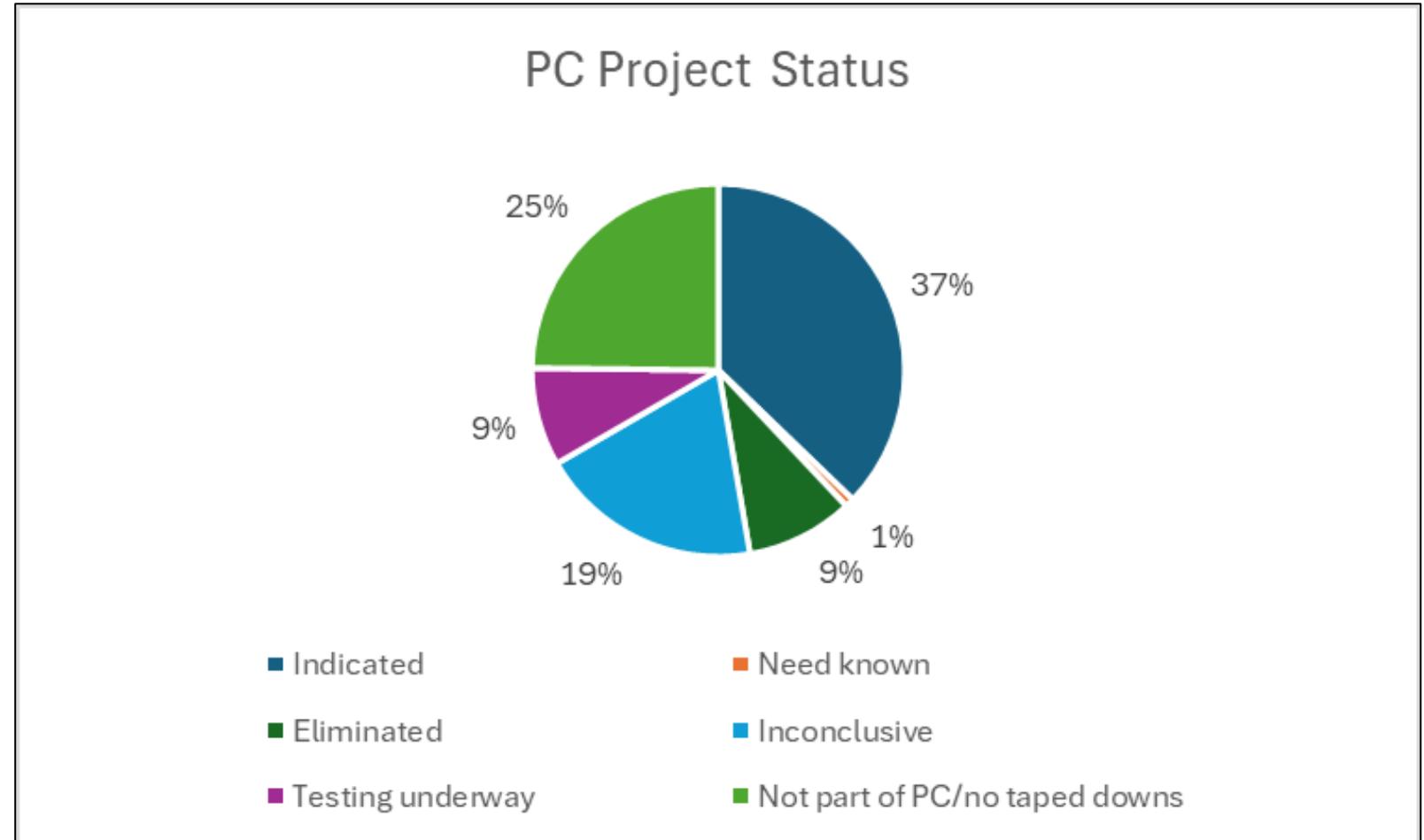


Incarcerated Cases



Incarcerated Cases

- 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



Defendant Notification Letter Updates

- 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
- We 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

