

**Presentation to  
Senate Finance Public Safety  
Subcommittee  
October 16, 2008**

Peter Marone

Director

Virginia Department of Forensic Science



# The Post-Conviction Status

- All cases with conviction information have been transferred to the contract lab
- More than 50% have been returned with results
- Moving steadily toward completion



# Where we began

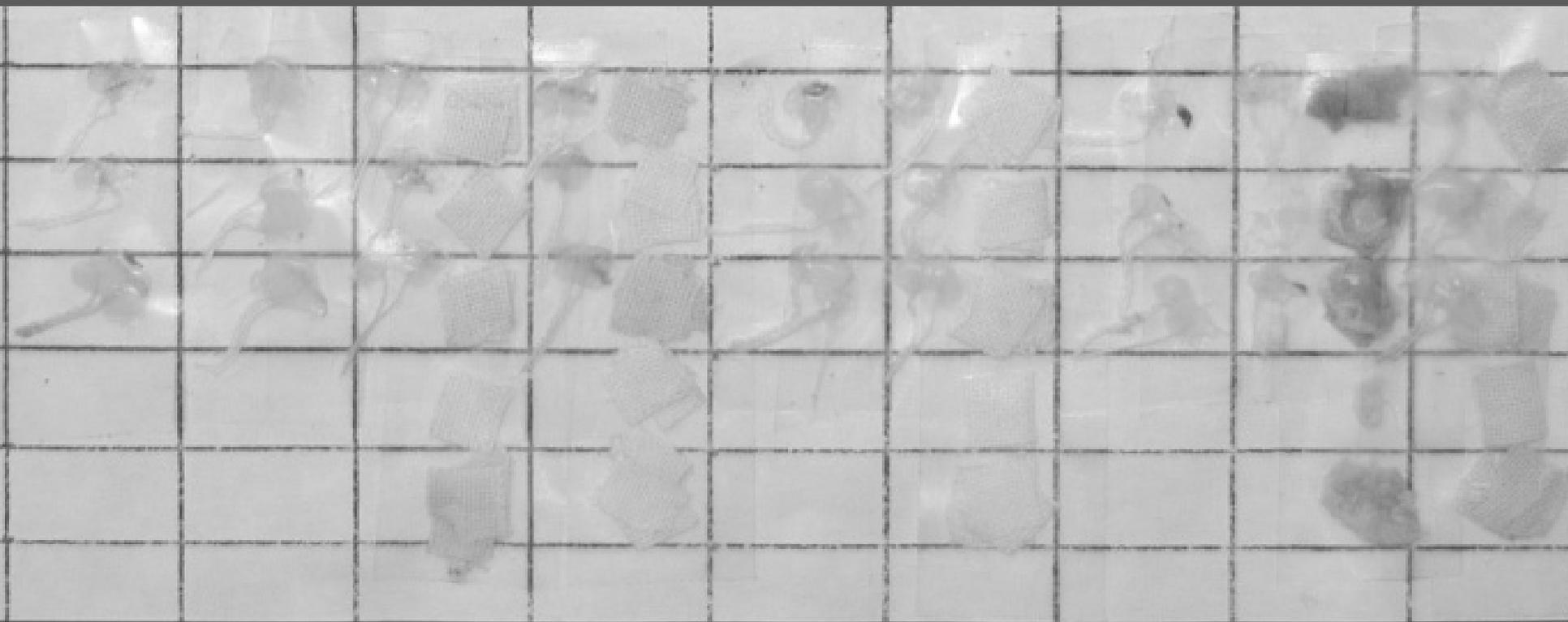
- Retrieval of 534,000 – or a half million case files. This project had no precedent
- Identifying and securing relevant case files as evidence



	(17) item 2	(18) item 3	(19) ① item 4	(20) ② item 5	(21) item 7	(22) ③ item 8	(23) item 9	(24) ④ item 10	Baby's blood
BENZIDINE TEST	+	+	+	+	+	+	+	+	
PHENOPHTHALEIN TEST	+	+	+	+	+	+	+	+	
PRECIPITIN TEST	+	+	+	+	+	+	+	+	
A - C	-	-	- +	+ <sup>2</sup> +	+ <sup>2</sup>	+ <sup>2</sup> +	-	+ <sup>2-3</sup> +	+ <sup>3</sup> +
B - D	+ <sup>2-3</sup>	+ <sup>1-2</sup>	+ <sup>2</sup> +	+ <sup>2</sup> +	+ <sup>2-3</sup>	+ <sup>2</sup> +	+ <sup>2</sup>	- +	+ <sup>1</sup> +

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# The 10% Sampling

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## COMMONWEALTH of VIRGINIA

Office of the Governor

Mark R. Warner  
Governor

Robert M. Blue  
Counselor to the Governor

September 30, 2004

Paul Ferrara  
Division of Forensic Science  
700 North Fifth Street  
Richmond, VA 23219

Dear Paul:

As we have discussed, the Governor has directed the Division of Forensic Science ("DFS") to carry out an evaluation of old serology cases using new DNA technologies.

Obviously, post-conviction DNA testing should be limited to those cases in which testing can provide probative evidence of innocence or guilt. For purposes of this project, you have recommended that sexual assault cases provide the best opportunity for DNA testing that could yield useful results (understanding, of course, that your past experience in post-conviction DNA testing has often shown that no conclusion as to guilt or innocence can be reached).

The Division of Forensic Science has approximately 150,000 case files in which it conducted testing during the period of 1973-1988 where portions of evidence may have been retained in these files. Obviously, it would require a substantial amount of time and staff resources at DFS to conduct a detailed review of every one of these files. While the Governor is committed to DNA testing in appropriate post-conviction cases, he believes it is critical that this project not impede DFS's work in ongoing criminal investigations. Accordingly, as we have agreed, DFS will review ten percent of its serology cases chosen randomly and select those cases that meet the following criteria:

1. The serologist retained remnants of the evidence originally tested in his/her case files,
2. The serology test result indicated the presence of seminal fluid,

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Paul Ferrara  
September 30, 2004  
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3. There was a suspect listed and a suspect known sample submitted (or DFS has a profile of the suspect in the DNA databank), and
4. The named suspect was eventually charged and convicted for the crime referenced in the Request for Laboratory Examination.

Based on the review conducted thus far, once you complete a review of ten percent of your files, you believe you are likely to find approximately 40 case files that meet the criteria listed above. In order to ensure that DFS's work on pending criminal cases is not slowed, you will send these post-conviction cases to an outside laboratory for testing. You expect that a private lab will charge between \$3,000 and \$4,000 per case. When staff time is included, the estimated cost of this project will be between \$150,000 and \$200,000. It should take approximately four months to complete.

Once this testing is completed, the Governor will review the results with you to determine whether any further review and testing of old serology cases would be productive.

The Governor appreciates the thought and effort that you and your staff at DFS have put into this project, and he looks forward to discussing the results with you after the testing is completed.

Sincerely,

Robert M. Blue

# Press Release

## December 14, 2005



COMMONWEALTH OF VIRGINIA  
Office of the Governor

Mark R. Warner  
Governor

FOR IMMEDIATE RELEASE  
December 14, 2005

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### GOVERNOR WARNER ANNOUNCES TWO MEN EXONERATED WITH ASSISTANCE OF DNA TESTING NOT AVAILABLE AT TRIAL ~Results of Random Sample Review of Old Serology Files Prompt Full-Scale Review~

RICHMOND – Governor Mark R. Warner today announced that DNA testing has provided evidence to help exonerate two men, both of whom had served time for sexual assault, but had already been released from prison.

The cases have been investigated by the Commonwealth's Attorneys in Norfolk and Alexandria. As a result of their investigations, the Commonwealth's Attorneys have requested that the Governor issue absolute pardons. Both exonerated men have requested that their names not be released at this time. The Governor has asked that their petitions go through the normal review, but in an expedited manner.

The two exonerations came out of 31 cases that underwent DNA testing as a result of the random sample review ordered by Governor Warner in September 2004. The DNA testing in the Alexandria case eliminated the person convicted and further resulted in a "cold hit" to the Commonwealth's DNA data bank. The Department of Forensic Science has recommended, and the Governor has concurred, that the remainder of the old serology case files be reviewed, and DNA testing done where appropriate.

"The powerful crime-fighting tool of DNA has helped add certainty to our justice system for many years now," said Governor Warner. "I believe a look back at these retained case files is the only morally acceptable course, and what truth they can bring only bolsters confidence in our system. Our Department of Forensic Science has taken an impartial, scientific, and unrelenting approach to this review, and I commend their effort."

Several former serologists saved biological evidence (swabs/cuttings) from their testing in their case files between 1973 and 1988, prior to the advent of DNA testing. The lab implemented a policy requiring the return of all such evidence to the submitting law enforcement agencies in 1989 in order to meet national accreditation standards. The Department of Forensic Science has stored 660 boxes containing an estimated 165,000 case files from that time period.

The samples retained by the Department of Forensic Science constitute a finite universe of cases where the evidence remnants are retained by the state have a documented chain of custody.

On September 30, 2004, Governor Warner directed DFS to review 10% of the case files from 1973-1988 where forensic serological examinations, but no DNA analysis, had previously been conducted on evidence associated (primarily) with sexual assault cases (which were most likely to yield a conclusion based on new DNA evidence alone), in which the named suspect was eventually charged and convicted of the crime. The purpose of this review was to locate evidential swabs and cuttings previously retained in the files that met all the criteria for DNA testing as outlined by the Governor. The Governor also specified that the DNA analysis of the samples from the files would be conducted by a private laboratory (Bode Technology Group, Inc. in Springfield, Virginia) in order to ensure that DFS's work on pending criminal cases was not slowed.

This review by DFS resulted in 284 samples in 31 cases that met the Governor's criteria. Of those, the DNA testing in two cases led to exclusions of previously convicted people.

"Any math we do to try to calculate the possible impact of this new full-scale review is simply guesswork," said Paul Ferrara, Director of the Virginia Department of Forensic Science. "That being said, as many as 300 or more cases may meet the testing criteria. One could apply the same ratio of exonerations – two out of 31 – but again, that is unlikely to be statistically valid."

As appropriate, cases selected for DNA testing will be developed in batches of 10 to 15, sent to the private lab for expedited handling, and then reviewed by DFS staff immediately upon return. In this manner, DFS anticipates that the first results of the review project would become available for distribution in about four months after initiation, rather than have cases held up for months while others work their way through the process.

The process the Governor has ordered is in addition to the legal remedy the Code of Virginia has provided since May 2001 to allow convicted felons to petition a court for post-conviction DNA testing of retained biological evidence. Such requests from case files retained by Mary Jane Burton, a former serologist at DFS, led to the recent exonerations of defendants Marvin Anderson, Arthur Whitfield, and Julius Ruffin, with the assistance of DNA testing of original evidence that had only undergone conventional serological testing at the time of their trials. Those three exonerations led to Governor Warner's September 2004 decision to initiate the review of 10% of the files retained at DFS.

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# Expansion

“I believe a look back at these retained case files is the only morally acceptable course, and what truth they can bring only bolsters confidence in our system. Our Department of Forensic Science has taken an impartial, scientific and unrelenting approach to this review...” Gov. Warner



# Full Review

## Criteria for selection

- Evidence in the case file
- Named Suspect
- Conviction



# Involving Stakeholders

- ★ Commonwealth's Attorneys
- ★ Law Enforcement
- ★ Innocence Project



# Obtaining Conviction Information

- DFS requested assistance of:
  - ★ Virginia State Police
  - ★ Clerks of the Court
  - ★ Commonwealth's Attorneys



# The Independent Lab

- Utilized to not affect current casework
- ASCLD/LAB accredited
- In February, 2007, DFS began transferring the first cases to the contract lab for testing



# Current Status

## Post-Conviction Project Cases

- 797 cases have been sent to the contract laboratory
- 406 cases have results returned
- 369 cases presently at the contract lab
  - 148 cases awaiting conviction status



# Grant

- The Post-Conviction DNA testing grant was awarded by NIJ this past month in the amount of \$4.52 million.

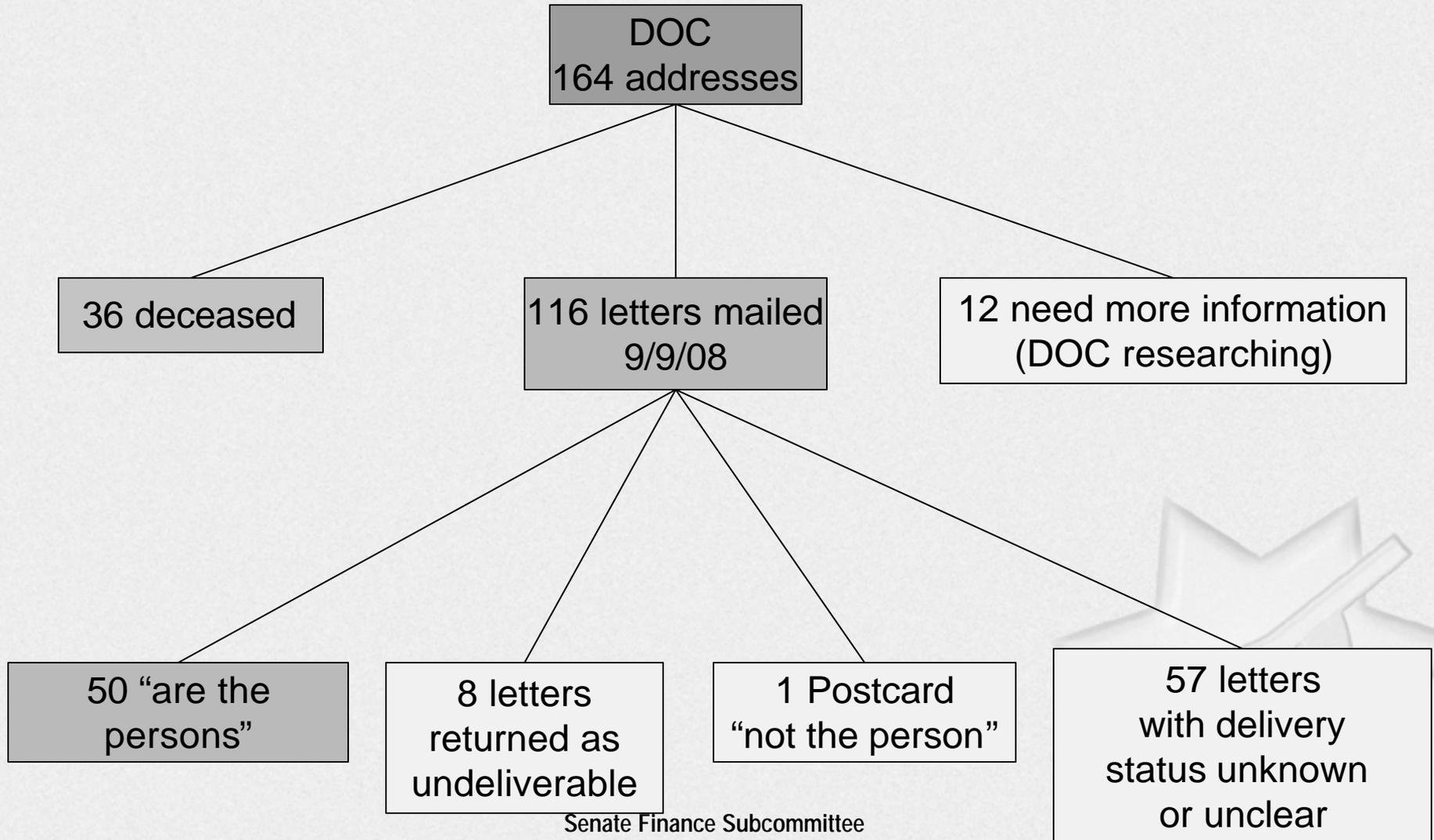


# August 6, 2008 – September 9, 2008

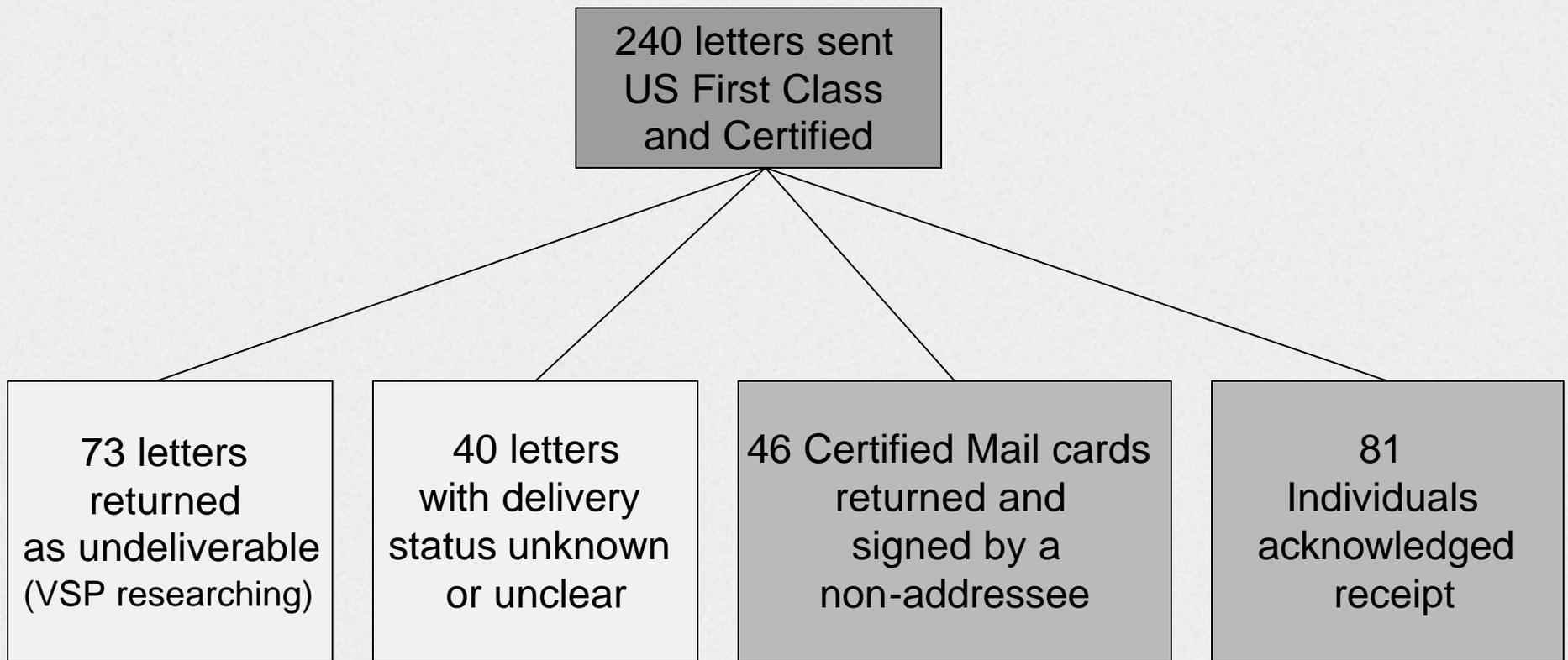
- DOC provided information to DFS
- DFS met with VSP on August 12, 2008
- DFS provided data to VSP on August 13, 2008
- Addresses received from VSP and DOC in early September
- Mailing began September 9, 2008



# Letters sent in September based on Department of Corrections Information



# Letters sent in September



# October 2008

- October 6, 2008
  - ★ Information received from VSP
    - 33 Deceased
    - 55 Incarcerated – sent to DOC for further research
    - 200 addresses provided
- October 7, 2008
  - ★ 200 letters sent Certified Mail and U.S. First Class Mail



# In Summary

- Awaiting addressee receipt from letters mailed October 7, 2008
- Further information from DOC and VSP on some letters mailed in September is forthcoming
- VSP is continuing research on individuals whose address has not yet been identified

